



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2006-0885; FRL - 9906-03-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Approval of Texas Motor Vehicle Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting direct final approval of revisions submitted by the State of Texas that affect the Texas State Implementation Plan (SIP) concerning Texas' motor vehicle air pollution rules. Based upon the State's submitted Texas clean fuel fleet (TCFF) program equivalency demonstration that the new Tier 2 and 2007 heavy-duty diesel vehicles and engines meet or exceed the LEV requirement, we are approving the removal of the TCFF program's repealed low emission vehicle (LEV) rules and mobile emission reduction credit (MERC) rules from the Texas SIP. We also are approving the removal of the Transportation Control Measures (TCM) substitution repealed rules from the Texas SIP. We are approving as part of the SIP a new Texas Clean Fleet (TCF) program, with submitted revisions, to incentivize replacement of diesel vehicles and engines with alternatively fueled vehicles and engines, including hybrids.

DATES: This rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2006-0885, by one of the following methods:

- *www.regulations.gov*. Follow the on-line instructions.
- E-mail: John Walser at *walser.john@epa.gov*.
- Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental

Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2006-0885. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made

available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser (6PD-L), Air Planning Section, telephone (214) 665-7128, e-mail walser.john@epa.gov.

SUPPLEMENTARY INFORMATION

Throughout this document, whenever "we" "us" or "our" is used, we mean the EPA.

Outline

I. Background

- II. Analysis of the State's Submittals
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

This action covers four separate submittals by the State of Texas. These include the State's repeal of its TCFE LEV rules (May 15, 2006); repeal of the TCFE MERC rules, and TCM substitution rule (July 25, 2007); new Texas Clean Fleet (TCF) rules (March 25, 2010); and revisions to the new TCF rules (April 13, 2012). These revisions address Title 30 of the Texas Administrative Code, Chapter 114 (denoted as 30 TAC 114), which provides for Control of Air Pollution from Motor Vehicles in Texas.

Repeal of the TCFE Low-Emission Vehicle Rules. Texas adopted LEV fleet rules to meet, in part, the federal Clean Fuel Fleet program (CFFP) requirements. The federal CFFP requirement is contained in the Clean Air Act (CAA), as amended November 15, 1990. The CAA requires certain States to adopt and submit to EPA SIP revisions containing a CFFP for nonattainment areas with 1980 populations greater than 250,000 that are classified as serious or worse for ozone, or which have a design value of at least 16.0 ppm for carbon monoxide (CO). Section 182(c)(4) of the CAA, 42 U.S.C. 7511a(c)(4), allows States to opt-out of the federal CFFP by submitting, for EPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emissions reductions in ozone-producing and toxic air emissions as the federal CFFP. In Texas, four 1-hour ozone nonattainment areas were classified as serious and above and were required to implement a CFFP: the Houston/Galveston/Brazoria Severe 1-hour

ozone nonattainment area; the Dallas/Fort Worth Serious 1-hour ozone nonattainment area; the El Paso Serious 1-hour ozone nonattainment area; and the Beaumont/Port Arthur Serious area that has been found to meet the 1-hour ozone standard and redesignated to attainment for the 1997 8-hour ozone standard¹.

For the Houston, Dallas, and El Paso areas, Texas complied with the federal CFFP requirement by opting to implement a substitute program. We approved a substitute program for these three areas as part of the Texas SIP on February 7, 2001 (66 FR 9203). The SIP's substitute program covers transit, local government and private fleets. It requires transit fleets to ensure that at least 50% of their fleet vehicles are certified to meet or exceed the LEV standards. In addition, local government and private fleets after September 1, 1998, have to ensure that certain percentages of their vehicle purchases be certified by EPA as LEVs. To make up the shortfall in emissions, the SIP relies upon excess emission reductions from state mandated reductions of VOC from transfer operations at gasoline terminals in nonattainment areas, and NOx reductions from electric generating facilities. In this submittal, Texas has submitted its repeal of the LEV fleet portion of the TCFP program accompanied by an equivalency demonstration. The remaining substitute program emission reductions remain in place in state law and in the Texas SIP.

¹ On October 20, 2010 (75 FR 64675), EPA approved as part of the BPA SIP, a Texas CFFP Program Equivalency Demonstration. This demonstration showed that relying upon EPA's data, beginning with the 2006 model year, Tier 2 Light-Duty Vehicles (LDVs), Light-Duty Trucks (LDTs 1-4), and Medium Duty Passenger Vehicles (MDPVs) certified to certain Tier 2 bin standards, to be equivalent to or more stringent than the CFFP program LEV emission standards. In addition, Texas demonstrated that Tier 2 LDVs, LDTs 1-4, and MDPVs certified to other Tier 2 bin standards, are equivalent to or more stringent than the CFFP program LEV emission standards. Texas performed a similar analysis, showing that standards for 2006 and later model years for Otto cycle and diesel heavy-duty vehicles ranging from 8501-14,000 Gross Vehicle Weight Rating are more stringent than the CFFP program LEV emissions standards for these vehicles.

Motor Vehicle Emission Reduction Credit Rules, and Transportation Control Measures

Substitution Rules. The July 25, 2007 submittal contains revisions to 30 TAC 114: Control of Air Pollution from Motor Vehicles in three specific areas: repeal of the TCM substitution program; repeal of the MERC program portion of the TCFF program and associated fund and definitions; and repeal of the Light-duty Motor Vehicle Purchase or Lease Incentive Program Vehicle Emissions Information Brochure requirement for manufacturers rule (§114.618). The State of Texas accidentally submitted this brochure repeal since this particular Program is not part of the SIP; consequently, we are returning it to the State.²

Repeal of the TCM substitution program. Regulations to implement the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (January 24, 2008, 73 FR 4420) added a provision to the CAA to allow states to substitute or add TCMs into approved SIPs without the standard SIP revision process. Thus, states are no longer required to include a TCM substitution mechanism in their SIPs. The submitted revision includes the repeal of 30 TAC 114.270(f): the TCM substitution program.

Repeal of the TCFF MERC program. The TCFF MERC program was approved into the SIP as an element of the TCFF program on February 7, 2001 (66 FR 9203). The TCFF MERC program is unrelated and separate from the Mobile Emission Reduction Credit Generation and Certification program found in 30 TAC 101.304 which regulates MERCs that are generated under the state's banking and trading program.

² The State has confirmed that it never submitted the original Light-duty Motor Vehicle Purchase or Lease Incentive Program for approval into the SIP. This Program was never relied upon for any SIP credits or to meet any CAA requirement. Because this Program is not part of the SIP and has never been relied upon, the submitted repeal of a brochure requirement for this Program clearly was an inadvertent error by the State.

In 2005, the Texas Legislature enacted Senate Bill (SB) 1032, which repealed the TCF program but for the VOC rules governing transfer operations at gasoline terminals and the NOx rules governing electric generating facilities. With the repeal of the TCF program, the TCF MERC program, the TCF MERC fund, and associated definitions are no longer relevant. These repealed rules are found in the SIP rules at Chapter 114, Subchapter A - Definitions, and Subchapter F – Vehicle Retirement and Mobile Emission Reduction Credits; Division 1: Mobile Emission Reduction Credits.

New Texas Clean Fleet (TCF) Rules and Revisions. On March 25, 2010, the TCEQ submitted revisions to 30 TAC 114: Control of Air Pollution from Motor Vehicles, establishing a new, voluntary state grant program called the Texas Clean Fleet (TCF) Program. The revisions implement SB 1759, adopted by the 81st Legislature (2009, Regular Session) which created the TCF program. This program is designed to encourage eligible entities to replace on-road diesel-powered vehicles with vehicles powered by fuels other than gasoline or diesel. The TCF Program provides incentives to owners of large fleets in Texas to replace on-road diesel-powered vehicles with alternative fuel vehicles including hybrids. The TCF is a program under the umbrella of the Texas Emission Reduction Plan (TERP), which provides financial incentives to eligible individuals, businesses or local governments to reduce emissions from polluting vehicles and equipment.

The April 13, 2012 submittal makes revisions to the TCF program, including, but not limited to, the eligibility criteria and disposition of the replaced vehicles.

II. Analysis of the State's Submittals

For a detailed analysis of these submittals, see the Technical Support Document that accompanies this action. The TSD may be accessed online at <http://www.regulations.gov>, Docket No. EPA-R06-OAR-2006-0885.

The LEV rules portion of the TCFE program was repealed by the state and in the submittal requesting removal of these LEV rules from the SIP, the State demonstrates federal emission standards now are more stringent than the emission standards for low emission vehicles (LEV) established under the TCFE program. We can approve the removal of the TCFE program's associated repealed LEV rules from the Texas SIP because the submitted equivalency demonstration shows the new Tier 2 and 2007 heavy-duty diesel vehicles and engines meet or exceed the LEV requirement. See the TSD for further technical information about the equivalency demonstration. In addition, the State continues to meet the CAA requirement for a CFE program by retaining the emission reductions from stationary sources for NO_x and VOCs from the substitute program that more than cover all emission requirements for the entire TCFE program. The TCFE repealed MERC program, its MERC fund, and associated definitions, which also are in the SIP, are intertwined with the SIP's TCFE Program. The part D SIPs for the Texas ozone nonattainment areas did not rely upon any emissions reductions credits from the TCFE program and its associated MERC program in the attainment demonstrations or to meet reasonable further progress. We are approving the removal of the TCFE Program's repealed LEV rules and the TCFE Program's associated repealed rules for the MERC program, fund, and definitions from the Texas SIP. The repealed rules that are removed from the SIP are 30 TAC 114.4, and 30 TAC 114.201 and 114.202.

The EPA revised the transportation conformity rule (40 CFR parts 51 and 93) on January 24, 2008, to address the transportation conformity-related CAA amendments made by SAFETEA-

LU (73 FR 4420). In addition to amendments to the transportation conformity provisions, the SAFETEA-LU added a provision to the CAA that allows states to substitute or add TCMs into approved SIPs without the standard SIP revision process; see section 176(c)(8) of the Act and 40 CFR 93.101. Under this Clean Air Act provision, states are no longer required to include a TCM substitution mechanism in their SIPs in order to expedite the process for making TCM substitutions. The provision also provides a streamlined process for adding TCMs to an approved SIP. EPA determined that it was not necessary to promulgate regulations in order to successfully implement the TCM substitution and additional statutory provision (73 FR 4420, 4432). See EPA's *Guidance for Implementing the Clean Air Act Section 176(c)(8) Transportation Control Measure Substitution and Addition Provision*.³ We agree with the state that the change to the CAA requirements made by the SAFETEA-LU in 2008 renders a state TCM substitution program unnecessary. Therefore, we are approving the removal of the Texas repealed TCM substitution Program and its associated repealed rules from the Texas SIP. Texas now will rely solely on the federal statute for future actions. The repealed rule that is removed from the SIP is 30 TAC 114.270(f).

Because the submitted TCF program is a voluntary financial incentive program encouraging the replacement of large fleets of on-road diesel power engines with vehicles using fuels other than gasoline or diesel, to evaluate it, we used the EPA Guidance: *Improving Air Quality with Economic Incentive Programs* (EIP). An EIP achieves an air quality objective by providing market-based incentives or information to emission sources. Three fundamental principles apply to all approvable economic incentive programs: integrity, equity, and environmental benefit. Our

³ The guidance is posted at <http://www.epa.gov/oms/stateresources/transconf/policy/420b09002.pdf>. The document ID number is EPA-420-B-09-002, January 2009.

analysis showed that the provisions of this new, voluntary incentive program, and the subsequent revisions, meet the three fundamental principles for an acceptable incentive program, and provide a framework for achieving emission reductions. See the TSD for the further analysis. If TCEQ includes emission reductions from this program in future attainment or RFP SIPs, EPA will evaluate the amount of reductions it achieves at that time. We are approving the TCF Program and its associated revisions as part of the Texas SIP. The rules being approved into the SIP are 30 TAC 114.650 – 114.658.

III. Final Action

Pursuant to section 110 of the Act, EPA is approving four revisions to the Texas SIP that were submitted on May 15, 2006; July 25, 2007 (but omitting revision to §114.618 which was submitted accidentally and is being returned to the state); March 25, 2010; and April 13, 2012. We evaluated the State's submittals and determined that they meet the applicable requirements of the Clean Air Act (CAA) section 110 and applicable EPA guidance. Approval of these submittals will not result in any increase in ozone concentrations. In accordance with CAA section 110(l), these revisions will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress, or any other applicable requirement of the CAA. EPA is approving the removal of the TCF program's LEV and MERC rules from the Texas SIP. EPA also is approving the removal of the TCM substitution rules from the Texas SIP. Finally, EPA is approving into the Texas SIP, the new TCF program and revisions.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will

serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication in the Federal Register]** without further notice unless we receive adverse comment by **[FEDERAL REGISTER OFFICE: insert date 30 days from date of publication in the Federal Register]**. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 15, 2014.

Ron Curry,

Regional Administrator, Region 6.

40 CFR Part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In § 52.2270, amend the table in paragraph (c) entitled “EPA Approved Regulations in the Texas SIP” is amended under Chapter 114 (Reg 4) - Control of Air Pollution from Motor

Vehicles by:

a. Revising the entry for Section 114.1;

b. Removing the entry for Section 114.3;

c. Removing the centered heading "Subchapter E – Low Emission Vehicle Fleet Requirements" and removing the entries for Sections 114.150, 114.151, and 114.153 thru 114.157;

d. Removing the centered heading "Subchapter F - Vehicle Retirement and Mobile Emission Reduction Credits" and removing the centered heading "Division 1: Mobile Emission Reduction Credits" and removing the entries for Sections 114.201 and 114.202;

e. Immediately following the entry for Section 114.260, add a new entry for Section 114.270; and

f. Immediately following the entry for 114.648, add a centered heading for “Division 5: Texas Clean Fleet Program” followed by entries for Sections 114.650 to 114.658.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
Subchapter A--Definitions				
Section 114.1	Definitions.	6/27/2007	[Insert date of FR publication] [Insert FR page number where document begins]	
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Subchapter G – Transportation Planning				
* * * * *				
Section 114.270	Transportation Control Measures.	6/27/2007	[Insert date of FR publication] [Insert FR page number where document begins]	
* * * * *				
Subchapter K – Mobile Sources Incentive Programs				
* * * * *				
Division 5: Texas Clean Fleet Program				
Section 114.650	Definitions.	3/28/2012	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 114.651	Applicability.	3/28/2012	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 114.652	Qualifying Vehicles.	3/28/2012	[Insert date of FR publication] [Insert FR page number where document begins]	

Section 114.653	Grant Eligibility.	3/28/2012	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 114.654	Usage and Disposition.	3/28/2012	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 114.655	Grant Restrictions.	2/24/2010	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 114.656	Eligible Grant Amounts.	2/24/2010	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 114.657	Reporting Requirements.	2/24/2010	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 114.658	Implementation Schedule.	2/24/2010	[Insert date of FR publication] [Insert FR page number where document begins]	
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