



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2014-0497; FRL-9962-47-Region 6]**

**Approval and Promulgation of Implementation Plans; Texas Control of Air Pollution from Motor Vehicles with Mobile Source Incentive Programs**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas that pertain to regulations to control air pollution from motor vehicles with mobile source incentive programs.

**DATES:** This rule is effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comment, the 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-2014-0497, at <http://www.regulations.gov> or via email to [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Randy Pitre, (214) 665-7299, [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://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).

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy Pitre, 214-665-7299, [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Randy Pitre or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

### *A. CAA and SIPs*

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards. These ambient standards

currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

### *B. Texas' Submittals*

Revisions with changes, additions, and extensions to the Texas SIP Mobile Source Incentive Programs found in Title 30 of the Texas Administrative Code (30 TAC), Chapter 114, (Control of Air Pollution from Motor Vehicles), Subchapter K (Mobile Source Incentive Programs) were submitted by the Texas Commission on Environmental Quality (TCEQ) on June 11, 2014, December 23, 2014, and September 15, 2016. The June 11, 2014 submittal (1) revised regulations for the Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles (Division 3) and the Texas Clean Fleet Program (Division 5), and (2) added regulations for a new Drayage Truck Incentive Program (Division 8). The December 23, 2014 submittal revised the Texas Clean School Bus Program (Division 4) to reflect the extension of this program by the Texas Legislature. The September 15, 2016 submittal amended the Drayage Truck Incentive Program regulations that were submitted on June 11, 2014.

## **II. The EPA's Evaluation**

We have prepared a Technical Support Document (TSD) for this rulemaking which details our evaluation. Our TSD may be accessed online at <http://www.regulations.gov>, Docket No. EPA-R06-OAR-2014-0497. Because the SIP revisions pertain to economic incentive programs to reduce air pollution emissions from mobile sources we evaluated them using (1) CAA section 182(g) (Economic Incentive Program) (2) our policy guidance on economic incentive programs found in 40 CFR part 51, subpart U (Economic Incentive Programs) and (3)

our guidance document “*Improving Air Quality with Economic Incentive Programs*” (EPA-452/R-01-001, January 2001, [www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf](http://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf)).

An economic incentive program 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 analysis concluded that the SIP revisions to the Texas mobile source incentive programs meet these principles and are approvable. The Mobile Source Economic Incentive Programs are consistent with the CAA as they will reduce air pollution and emissions of NO<sub>x</sub>, which is a precursor to ozone and particulate matter. The emission reductions from replacing vehicles or replacing, repowering or retrofitting engines can be quantified, and provide an environmental benefit by reducing air pollution emissions by encouraging the use of newer diesel technologies in the Texas nonattainment areas. If Texas includes emission reductions from these programs in future attainment or reasonable further progress SIPs, EPA will evaluate the amount of reductions it achieves at that time. We are approving the Texas SIP submittals as part of the Texas SIP. A short discussion of the programs is discussed below. For more information, please see the TSD.

*A. Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles*

The revisions to this program revise 30 TAC Sections 114.622 and 114.629. The revisions (1) remove the maximum cost-effectiveness limit of \$15,000 per ton of emissions of nitrogen oxides (NO<sub>x</sub>) reduced for a project, (2) allow TCEQ to set cost-effectiveness limits for projects and (3) add Wise County to the list of counties eligible for the program.<sup>1</sup> Removing the maximum cost-effectiveness limit and allowing TCEQ to set the limits allows for selection of

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<sup>1</sup> Wise County was included in the Dallas-Fort Worth ozone nonattainment area for the 2008 ozone national ambient air quality standard (77 FR 30088, 30147, May 21, 2012).

eligible projects to improve air quality, even if the cost-effectiveness increases above \$15,000 per ton of NOx. Including Wise County in the program ensures that all the Dallas-Fort Worth ozone nonattainment counties are in the program.

*B. Texas Clean School Bus Program*

The revisions to this program revise 30 TAC Sections 114.640, 114.642, 114.644, 114.646 and 114.648 by repealing and replacing existing provisions and revising 30 TAC Section 114.648 to clarify that the Texas Legislature had extended the program until August 31, 2019. Previously 30 TAC 114.648 stated that the program expired on August 31, 2013, unless the program is extended or reauthorized by the Texas Legislature. Other than the clarification of the current program expiration date, the revisions did not change the EPA approved SIP provisions for this program.

*C. Texas Clean Fleet Program*

The revisions to this program revise 30 TAC Sections 114.650, 114.653 and 114.656. The revisions allow certain projects related to agricultural product transportation (i.e., projects for trucks that move goods from a farm), to be eligible for the program to replace older heavy-duty on-road vehicles. The revisions also include a new maximum grant amount for replacement of a heavy-duty on-road vehicle or a light-duty on-road vehicle with a grant of up to 80% of the replacement vehicle.

*D. Drayage Truck Incentive Program*

Drayage refers to the transport of goods over a short distance. This program provides financial incentives to encourage owners to replace drayage trucks with pre-2007 model engines with drayage trucks with 2010 or later model year engines. The intent is to reduce emissions

from heavy-duty on-road and non-road vehicles used for drayage activities through a seaport or rail yard.

### **III. Final Action**

We are approving revisions to the Texas SIP that pertain to regulations to control air pollution from motor vehicles with mobile source incentive programs. The revisions were submitted on June 11, 2014, December 23, 2014 and September 15, 2016. The revisions revise regulations for (1) the Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles (30 TAC Sections 114.622 and 114.629), (2) the Texas Clean School Bus Program (30 TAC Sections 114.640, 114.642, 114.644, 114.646 and 114.648), and (3) the Texas Clean Fleet Program (30 TAC Sections 114.650, 114.653 and 114.656). The revisions also add regulations for Drayage Truck Incentive Program (30 TAC Sections 114.680, 114.681 and 114.682), and the amendments to 30 TAC Sections 114.680 and 114.682.

The 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 **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant 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 relevant 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. Incorporation by Reference**

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the EPA Region 6 office.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 CAA; 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 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. The EPA will submit a report containing this rule 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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).)

Samuel Coleman was designated the Acting Regional Administrator on May 30, 2017 through the order of succession outlined in Regional Order R6-1110.13, a copy of which is included in the docket for this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 30, 2017.

**Samuel Coleman,**  
*Acting 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 (c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by:

a. Revising the centered heading for Chapter 114, Subchapter K, Division 3 and the entries for sections 114.622, 114.629, 114.640, 114.642, 114.644, 114.646, 114.648, 114.650, 114.653, and 114.656; and

b. Adding, after the entry for section 114.658, the centered heading for “Division 8: Drayage Truck Incentive Program” followed by entries for sections 114.680, 114.681, and 114.682.

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
* * * * *				
<b>Chapter 114 (Reg 4) – Control of Air Pollution from Motor Vehicles</b>				
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<b>Subchapter K -- Mobile Source Incentive Programs</b>				
<b>Division 3: Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles</b>				

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Section 114.622	Incentive Program Requirements	4/9/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Section 114.629	Affected Counties and Implementation Schedule	4/9/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
<b>Division 4: Texas Clean School Bus Program</b>				
Section 114.640	Definitions	3/26/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 114.642	Applicability	3/26/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 114.644	Clean School Bus Program Requirements	3/26/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

Section 114.646	Monitoring, Recordkeeping, and Reporting Requirements	3/26/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 114.648	Expiration	3/26/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
<b>Division 5: Texas Clean Fleet Program</b>				
Section 114.650	Definitions	4/9/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Section 114.653	Grant Eligibility	4/9/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Section 114.656	Eligible Grant Amounts	4/9/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
<b>Division 8: Drayage Truck Incentive Program</b>				

Section 114.680	Definitions	8/3/2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	
Section 114.681	Applicability	4/9/2014	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	
Section 114.682	Eligible Vehicle Models	8/3/2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	
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[FR Doc. 2017-11900 Filed: 6/8/2017 8:45 am; Publication Date: 6/9/2017]