



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2020-0713; FRL-10020-73-Region 6]

### **Air Plan Approval; Texas; Revisions to the Texas Diesel Emissions Reduction Incentive Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) that pertains to the Texas Diesel Emissions Reduction Incentive Program, submitted on August 13, 2020.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0713, at <https://www.regulations.gov> or via email to [young.carl@epa.gov](mailto:young.carl@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 Carl Young, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general

guidance on making effective comments, please visit <https://www.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). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Carl Young, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

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 (NAAQS). 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.

An Economic Incentive Program (EIP) is a program that uses market-based strategies to reduce emissions of air pollutants.<sup>1</sup> The Texas Diesel Emissions Reduction Incentive Program (DERIP) for On-Road and Non-Road Vehicles is part of the Texas Emissions Reduction Program (TERP) that was established by the Texas Legislature in 2001 and approved in the Texas SIP as an economic incentive program (70 FR 48647, August 19, 2005). DERIP provides grants to eligible individuals, businesses, or local governments to reduce emissions from diesel-powered vehicles and equipment in areas designated as nonattainment for a NAAQS or other counties identified by the Texas Legislature.<sup>2</sup>

In 2019 the Texas Legislature revised the eligibility requirements for DERIP. As a result, the Texas Commission on Environmental Quality (TCEQ) revised the DERIP regulations found in Title 30, Chapter 114 (Control of Air Pollution from Motor Vehicles) of the Texas Administrative Code (30 TAC 114). The revisions were adopted on June 10, 2020 and submitted to the EPA as a SIP revision on August 13, 2020. Specifically, the TCEQ revisions: (1) changed the minimum required usage for grant-funded vehicles and equipment in the eligible area from 75% to 55% (30 TAC 114.622), and (2) removed Victoria County from the list of counties eligible for DERIP grants (30 TAC 114.629). A copy of the SIP revision submitted to EPA is available in the electronic docket for this action.

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

We approved DERIP regulations into the Texas SIP in 2005 (70 FR 48647, August 19, 2005). More recently, we approved updates to DERIP regulations in 2018 (83 FR 50018, October 4, 2018). This SIP revision further updates DERIP regulations. The effect of this update is to: (1) allow more diesel vehicles and equipment in nonattainment areas or affected counties to

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<sup>1</sup> For more information on EIPs see “Improving Air Quality with Economic Incentive Programs”, EPA-452/R-01-001, January 2001, available at <https://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf>.

<sup>2</sup> For more information on TERP and DERIP please see “Texas Emissions Reduction Plan Biennial Report (2019–2020), Report to the 87th Texas Legislature, December 2020, SFR–079/20”. The document is available at: [https://www.tceq.texas.gov/assets/public/comm\\_exec/pubs/sfr/079-20.pdf](https://www.tceq.texas.gov/assets/public/comm_exec/pubs/sfr/079-20.pdf).

be eligible for grant funding (30 TAC 114.622) and (2) exclude Victoria County from eligibility for DERIP grants (30 TAC 114.629).

Section 110(l) of the CAA requires that EPA shall not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in Section 171 of the CAA) or any other applicable requirements of the CAA. DERIP is a voluntary incentive program for reducing emissions and is not a requirement of the Act. The inclusion of DERIP in the SIP, therefore, is discretionary and as such, revisions can be made as long as they do not contribute to nonattainment or interfere with maintenance. Reductions from the TERP program were part of the emission reductions in SIP revisions relied upon to provide for attainment of (1) the 1997 ozone standard in the Dallas-Fort Worth area (70 FR 15592, March 28, 2005) and (2) the 1-hour ozone standard in the Houston-Galveston-Brazoria area (71 FR 52670, September 6, 2006). The reductions relied upon in these plans have long been achieved through grants and rebates that have already been issued and none of the subsequent ozone attainment plans submitted by the State have relied upon reductions from the TERP or DERIP programs. However, the State could use DERIP as a tool in future SIP revisions to obtain needed emission reductions.

As noted above, revisions to 30 TAC 114.622 changed the amount of time equipment needs to operate in the affected counties. This change will provide for an increase in the pool of vehicles and equipment eligible for this program and potentially generate more emission reductions through future state grants. Some of these reductions, however, will likely be outside of designated nonattainment areas. As Texas is not relying on emission reductions from future DERIP grants, it is not necessary for the reductions to occur exactly in an affected nonattainment area.

As stated previously, DERIP and TERP are not mandated by the Clean Air Act. The implementation of these programs is discretionary. The Texas legislature originally adopted the programs to apply in nonattainment areas and other affected areas deemed near-nonattainment

areas. None of the reductions that will be achieved by these programs going forward are being relied upon in any plan for any affected area in Texas. The Texas legislature decided that it no longer should implement the program in Victoria County which is meeting all current NAAQS. Not providing grants to reduce emissions from diesel equipment will not cause emissions to increase in Victoria county. Instead emissions in the county will not be impacted by this SIP revision. Therefore, approval of the revision to 30 TAC 114.629 will not contribute to nonattainment or interfere with maintenance in Victoria County. As more diesel equipment become eligible, the concentration of the DERIP program in nonattainment areas will likely result in additional emission reductions. As additional grants are issued to reduce emissions from diesel equipment, the air quality will benefit, which will assist in maintenance and attainment of the NAAQS. Therefore, the proposed approval of the SIP revision is consistent with the CAA section 110(1). Also, because the program is discretionary, it will not interfere with any applicable requirement for attainment and reasonable further progress, or any other applicable requirement of the CAA. Because the revised program will continue to achieve additional reductions not relied upon by any plan for attainment or maintenance, the revisions will not contribute to nonattainment or interfere with maintenance.

### **III. Proposed Action**

We are proposing to approve the revisions to 30 TAC 114.622 and 114.629 adopted on June 10, 2020 and submitted on August 13, 2020.

### **IV. Incorporation by Reference**

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) (please contact the person

identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **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 proposes to approve 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 proposed 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).

#### **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.

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

Dated: March 10, 2021.

**David Gray,**

*Acting Regional Administrator, Region 6.*

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