

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX-126-4-7530; FRL-7051-3]

#### Approval and Promulgation of Air Quality State Implementation Plans; Supplemental; Texas: Low Emission Diesel Fuel

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

**ACTION:** Proposed rule.

**SUMMARY:** This rulemaking supplements a previous proposal published April 23, 2001 (66 FR 20415), in which EPA proposed approving a State Implementation Plan (SIP) revision for the State of Texas establishing a Low Emission Diesel (LED) fuel program for nine counties within the Dallas-Fort Worth (DFW) Consolidated Metropolitan Statistical Area (CMSA). Today's supplemental proposal revises the April 23 proposal to reflect recent changes to the LED rule proposed by the Texas Natural Resource Conservation Commission (TNRCC). These proposed changes to the TNRCC LED rule include a change to the implementation date for this program to April 1, 2005, and possible alternate compliance methods. We previously proposed that the TNRCC LED fuel program requirements are necessary to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the DFW ozone nonattainment area, and therefore could be approved into the SIP in accordance with section 211(c)(4)(C) of the Clean Air Act (the Act).

Because TNRCC has not yet finalized the changes to the LED rule, we are proposing to approval Texas' proposed SIP revision of the LED rule for DFW in parallel with TNRCC's rulemaking activities ("parallel processing"). If the final version of the LED rule adopted by TNRCC is significantly changed from the proposed version which is being "parallel processed" today, EPA will propose a new rulemaking with the final LED rule adopted by TNRCC. If there are no significant changes to the "parallel-processed" version, EPA will proceed with final rulemaking on the version finally adopted by TNRCC and submitted to EPA.

**DATES:** Comments should be received on or before October 9, 2001.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for

public inspection during normal business hours at the following locations. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711-3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Sandra Rennie, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214)665-7214.

#### SUPPLEMENTARY INFORMATION:

Throughout this document "we," "us," and "our" refers to EPA.

#### Why Is the State Submitting This Revision?

The LED fuel program was initially submitted as part of the DFW attainment demonstration. This LED rule was codified in Chapter 114 of the Texas Administrative Code (TAC) (Sections 114.6, 114.312-114.317 and 114.319, December 6, 2000).

Numerous changes to State air pollution control laws occurred during Texas' 77th legislative session. One of these changes relates to the LED program. House Bill 2912, which became law on June 17, 2001, limits the State's authority to regulate fuel content. The law bans the establishment of fuel control measures more stringent than EPA's between September 1, 2000 and January 1, 2004. The law specifically authorizes TNRCC's adoption of the LED fuel program, but mandates that implementation be delayed until February 1, 2005. Finally, this law allows TNRCC to consider other fuels to achieve equivalent emissions reductions as an alternative method of compliance, which is intended to allow refiners flexibility in complying with the LED requirements.

In anticipation of this legislation, the TNRCC proposed amendments to the LED rule on May 10, 2001. The proposed amendments modify the LED rules to delay the implementation date from May 1, 2002, to April 1, 2005, and provide additional flexibility to allow for alternative emission reduction plans.

#### What Did the State Submit?

In a letter to EPA dated June 15, 2001, the Governor requested "parallel processing" of the LED rule with the proposed amendments. See 30 TAC 114.314, 114.318, 114.319 (May 10, 2001).

#### What Is EPA's Evaluation of This SIP Revision?

We consider the implementation date change to have no significant impact on the DFW attainment demonstration. The alternative method of compliance which is intended to provide additional flexibility for refiners to comply with LED requirements is acceptable, although we have requested clarification of certain aspects of this provision.

#### Why Are We "Parallel Processing" and How Does it Work?

Because of the urgency associated with the October 15, 2001, approval deadline imposed by a consent decree order affecting, among others, the Houston Attainment SIP (*Natural Resources Defense Council v. Browner*, Civ No. 99-2976, November 30, 1999), Texas requested that EPA proceed with expedited review and approval of these revisions to the LED program, which is relied upon in the Houston (HGA) attainment demonstration SIP as well as the DFW attainment demonstration SIP. Therefore, because these revisions affect both the HGA and DFW attainment demonstrations and because the HGA attainment SIP is subject to a consent decree deadline, we have agreed to expedited review of these revisions for both the DFW and HGA SIP revisions.

In order to expedite review, approval of this revision is being proposed under a procedure called "parallel processing" whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations (40 CFR part 51, Appendix V, section 2.3). If the State's proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those subsequent changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Texas and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the adoption of the rules may result in a re-proposal, altering the approvability of the SIP.

#### What Is EPA Proposing?

In today's action, we are proposing approval of the LED rule with the proposed amendments as they apply to the DFW nonattainment area counties plus five adjacent counties within the CMSA.

Nothing in this action should be construed as permitting or allowing or

establishing a precedent for any future implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

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

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

Dated: August 24, 2001.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[DE058-1032; FRL-7052-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-Hour Ozone Attainment Demonstration Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision submits an analysis and determination that there are no additional reasonably available control measures (RACM) available to advance the area's attainment date after adoption of all Clean Air Act (Act) required measures. On December 16, 1999, EPA proposed to approve, and to disapprove in the alternative, the attainment demonstration State implementation plan (SIP) for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area). Kent and New Castle Counties are part of the Philadelphia area. The intended effect of this action is to propose approval of a reasonably available control measure (RACM) analysis submitted by the State of Delaware. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before October 9, 2001.

**ADDRESSES:** Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179. Or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

*When Did Delaware Submit the RACM Analysis?*

On August 3, 2001, the State of Delaware (Delaware) submitted the RACM analysis for the Philadelphia area as a SIP revision.