

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval Submittal date	EPA approval date	Explanation
Section 114.314	Registration of Diesel Producers and Importers	09/26/2001	[Insert 11/14/01 Federal Register Cite.]	
Section 114.315	Approved Test Methods	12/06/2000	[Insert 11/14/01 Federal Register Cite.]	
Section 114.316	Monitoring, Recordkeeping, Reporting and Requirements	12/06/2000	[Insert 11/14/01 Federal Register Cite.]	
Section 114.317	Exemptions to Low Emission Diesel Requirements	12/06/2000	[Insert 11/14/01 Federal Register Cite.]	
Section 114.318	Alternative Emission Reduction Plan	09/26/2001	[Insert 11/14/01 Federal Register Cite.]	
Section 114.319	Affected Counties and Compliance Dates	09/26/2001	[Insert 11/14/01 Federal Register Cite.]	
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[FR Doc. 01-27581 Filed 11-13-01; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-134-4-7508; FRL-7093-1]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Administrative Orders Issued to Airport Operators and Airlines Regarding Control of Pollution From Ground Support Equipment (GSE) for the Houston/Galveston (HGA) Ozone Nonattainment Area and a Non-Road Large Spark-Ignition Engine Rule for the HGA and Dallas/Fort Worth (DFW) Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Texas. This rule making covers two separate actions. The EPA is approving: Administrative

Orders and Memoranda of Agreement (MOA) requiring owners and operators at major airports in the HGA area to implement reductions in oxides of nitrogen (NO_x) emissions for sources under their control, primarily GSE; and a rule requiring that non-road large spark-ignition engines of 25 horsepower (hp) or larger in all counties of the State of Texas conform to requirements identical to Title 13 of the California Code of Regulations, Chapter 9. This rule includes the HGA and DFW ozone nonattainment areas.

This new rule and the orders will contribute to attainment of the ozone standard in the HGA and DFW ozone nonattainment areas. The EPA is approving these revisions to the Texas SIP to regulate emissions of NO_x in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This final rule is effective on December 14, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the

appropriate office at least 24 hours before the visiting day. 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 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr., Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7237.

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

What Action Is EPA Taking Today?

We are granting final approval of Texas’ administrative orders requiring owners and operators at major airports in the HGA area to implement reductions in NO_x emissions for sources under their control and a rule requiring that non-road large spark-ignition engines of 25 hp or larger in all counties of the State of Texas conform to requirements identical to Title 13 of the California Code of Regulations, Chapter 9. This rule includes the HGA and DFW ozone nonattainment areas. A proposed

approval of the large spark-ignition rules for the HGA ozone nonattainment area was published at 66 FR 36226 on July 11, 2001, and a proposed approval of the non-road large spark-ignition rules for the DFW nonattainment area was published at 66 FR 16432 on March 26, 2001. A proposed approval of the Administrative Orders and Memoranda of Agreement issued to airport owners and airlines regarding pollution controls on GSE for the HGA area was published at 66 FR 36226 on July 11, 2001.

What Are the Clean Air Act Requirements?

Section 172 of the Act provides the general requirements for nonattainment plans. Section 172(c)(6) and section 110 require SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Today's SIP revision involves approval of two of a collection of controls adopted by the State to achieve the ozone standard in the DFW and HGA ozone nonattainment areas as required under section 172. EPA approval of this SIP revision is governed by section 110 of the Act.

Why Is EPA Taking This Action?

We are taking this action because the State submitted these SIP revisions and they are necessary to achieve the National Ambient Air Quality Standards in the DFW and HGA ozone nonattainment areas.

What Is Included in the State's Non-Road Large Spark-Ignition Rule?

Texas developed a non-road large spark-ignition (LSI) engine strategy which establishes emission requirements for non-road, LSI engines 25 hp and larger for model year 2004 and subsequent model-year engines, and all equipment and vehicles that use such engines, by requiring non-road LSI engines in all counties in the State to meet emission limits equivalent to, and certified in, a manner identical to 13 California Code of Regulations, Chapter 9. Texas has met the statutory and regulatory requirements for adoption of the California LSI program. All counties in the State are affected by this rule, including counties in the HGA and DFW ozone nonattainment areas.

What Is Included in the State's Airport Ground Support Equipment Orders?

The State signed an Agreed Order with Continental Airlines for its operations at Houston's George Bush Intercontinental Airport on October 18,

2000, and signed a similar Agreed Order with Southwest Airlines for its operations at William Hobby Airport on December 6, 2000. The Orders make enforceable specific local emission reductions of NO_x from sources under the airlines' control. On October 18, 2000, Texas approved a Memorandum of Agreement with the City of Houston to bring about additional reductions from operations in the Houston Airport System. The sum of these reductions is equal to those reductions required in the HGA Attainment Demonstration SIP.

What Did the State Submit?

On April 30, 2000, the Governor of Texas submitted to us revisions to the 30 TAC, Chapter 114, "Control of Air Pollution From Motor Vehicles," as a revision to the SIP for the DFW area. That submission included requirements that non-road large spark-ignition engines of 25 hp or larger conform to Title 13 of the California Code of Regulations, Chapter 9. For further discussion of the submittal, see the proposed approval, 66 FR 16432, March 26, 2001, and accompanying Technical Support Document.

On December 22, 2000, the Governor of Texas submitted to us revisions to the 30 TAC, Chapter 114, "Control of Air Pollution From Motor Vehicles," as a revision to the SIP for the HGA area. That submission included requirements that non-road large spark-ignition engines of 25 horsepower (hp) or larger conform to Title 13 of the California Code of Regulations, Chapter 9; and NO_x reductions from airport Ground Support Equipment (GSE). For further discussion of the submittal, see the proposed approval, 66 FR 36226 (July 11, 2001) and accompanying Technical Support Document.

Also on December 22, 2000, the Texas Natural Resource Conservation Commission (TNRCC) submitted orders with airlines and airport operators in the HGA area for NO_x reductions. For further discussion of the submittal, see the proposed approval, 66 FR 36226 (July 11, 2001) and accompanying Technical Support Document.

What Comments Did EPA Receive in Response to the Proposed Approval of Agreed Orders for HGA Airport Ground Support Equipment?

EPA received comments from Environmental Defense. A summary of the comments received and EPA's response is presented below.

A. The Orders Do Not Require the Specific Levels of Emissions Reductions Claimed in the SIP

Comment: The agreements do not limit total emissions from airport GSE equipment. The Attainment Demonstration SIP assumes that total controlled emissions in 2007 will be 0.5 tpd, 90% below the 5.65 tpd that TNRCC projected from uncontrolled GSE NO_x emissions in the HGA nonattainment area in 2007. These agreements afford no certainty that the 0.5 tpd level of emissions will be achieved (even if one considers the flexibility provided to parties to seek reductions outside of the GSE fleet).

Response: The agreed orders require percentage reductions from a 1996 baseline which achieve the same purpose as an emissions limitation. The reductions specified in each order are enforceable against the owner/operator of the equipment, thus providing a degree of certainty that the reductions will take place.

B. The Orders Are Not Enforceable

Comment: The orders are not enforceable within EPA's national guidance for determining enforceability.

Response: The orders are enforceable through December 31, 2007. These are administrative orders that were adopted by the TNRCC under applicable State law and enforceable by TNRCC or citizens. These orders have been submitted by the Governor to EPA as a SIP revision and, upon the effective date of this action will be federally enforceable.

C. The Agreed Orders and MOAs Are Unlikely To Produce the Emissions Reductions for Which TNRCC Takes Credit in the Attainment Demonstration SIP

Comment: It is quite unlikely that the 0.5 tpd target assumed in the SIP will be achieved. The target will not be achieved if either of the following is true: (1) Growth exceeds the projected amount, such that the total uncontrolled GSE emissions in 2007 (from all airlines) are greater than 5.65 tpd; or (2) the actual reductions that will result from Southwest's and Continental's use of Reasonably Available Control Considering Cost and Best Available Technology on post-1996 equipment are less than anticipated. EPA must discount the emission reduction credit assigned to these agreements in the Attainment Demonstration SIP.

Response: The growth projections were developed using EPA approved methodology and are appropriate for planning purposes. The orders require a

phase-in of new GSE which should permit future emission inventories to monitor the progress of the reductions. The State has committed to a 2004 mid-course review of all measures and to make any necessary adjustments to ensure the reductions claimed are being achieved. Growth exceeding the projections would be identified during that review and would necessitate implementation of additional measures to offset such growth. Further, SIPs are planning tools and cannot guarantee future absolute certainty. However, the reductions approved are enforceable, ensuring a high degree of certainty. For the reasons stated, we believe there is no basis for discounting the emission reduction credit taken by the State at this time; but, as previously stated, additional reductions will be required at the mid-course correction if the reductions claimed are not achieved.

D. The Orders Expire in 2007

Comment: There needs to be ample time for EPA and the public to verify performance under the agreement before the agreements expire.

Response: The Orders are in effect through the attainment year. The State should be preparing a maintenance plan to take effect after the attainment year, which will provide opportunity for us and the public to verify performance under the Orders before they expire. In addition, the State has committed to a 2004 mid-course review of all measures and to make any necessary adjustments to ensure the reductions claimed are being achieved. This commitment includes the requirement to institute additional measures if necessary to account for any newly discovered shortfall in reductions.

What Comments Did EPA Receive in Response to the Proposed Rule for Non-Road Large Spark-Ignition Engines?

We did not receive any comments on the Non-Road Large Spark-Ignition Engine rule for either HGA or DFW.

EPA's Rulemaking Action

We are granting final approval of Texas' Agreed Orders with the major airlines operating at the major airports in the HGA area and the Memorandum of Agreement with the City of Houston. We are also granting final approval of Texas' Non-Road Large-Spark Engine rule for the HGA and DFW areas. We are approving these revisions to the Texas SIP to regulate emissions of NO_x pursuant to sections 110 and 172 of the Act.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 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 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 approves 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 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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 rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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. This 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.*).

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 the rule in 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. section 804(2). In addition, Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding the Orders contained in this action under section 801 because this is a rule of particular applicability.

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 January 14, 2002. 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons,

Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

Gregg A. Cooke,
Regional Administrator, Region 6.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Part 52—[AMENDED]

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

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

Subpart SS—Texas

2. Section 52.2270 is amended:
 a. In the table in paragraph (c) under Chapter 114 (Reg 4) following Section 114.309 by adding under the heading “Subchapter I—Non-Road Engines” the new heading “Division 3—Non-Road Large Spark-Ignition Engines” and individual entries for Sections 114.420, 114.421, 114.422, 114.427, and 114.429;
 b. In the table in paragraph (d) entitled “EPA Approved Texas Source-Specific Requirements” by adding to the

end of the table Agreed Order No. 2000–0826–SIP for Continental Airlines and Agreed Order No. 2000–0827–SIP for Southwest Airlines;

c. In the table in paragraph (e) entitled “EPA Approved Texas Non-Regulatory Provisions and Quasi-Regulatory Measures in the Texas SIP by adding to the end of the table Houston Air Port System Memorandum of Agreement. The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *
 (c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
* * *				
Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles				
* * *				
Subchapter I—Non-Road Engines				
Division 3—Non-Road Large Spark-Ignition Engines				
Section 114.420	Definitions	04/19/2000	[Insert 11/14/01 Federal Register Cite.]	
Section 114.421	Emission Specifications	12/06/2000	[Insert 11/14/01 Federal Register Cite.]	
Section 114.422	Control Requirements	04/19/2000	[Insert 11/14/01 Federal Register Cite.]	
Section 114.427	Exemptions	04/19/2000	[Insert 11/14/01 Federal Register Cite.]	
Section 114.429	Affected Counties and Compliance Schedules.	12/06/2000	[Insert 11/14/01 Federal Register Cite.]	
* * *				

(d) * * *

EPA APPROVED TEXAS SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or order number	State effective date	EPA approval date	Comment
* * *				
Continental Airlines at George Bush Intercontinental Airport, Houston, Texas.	Agreed Order No. 2000–0826–SIP.	10/18/2000	[Insert 11/14/2001 Federal Register Cite.]	HGA, Texas 1-hour ozone standard attainment demonstrations.
Southwest Airlines at William Hobby Airport, Houston, Texas.	Agreed Order No. 2000–0827–SIP.	12/06/2000	[Insert 11/14/2001 Federal Register Cite.]	HGA, Texas 1-hour ozone standard attainment demonstrations.

(e) * * *

EPA APPROVED TEXAS NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comment
Memorandum of Agreement between TNRCC and Houston Airport System.	Houston/Galveston Area Ozone Nonattainment Area.	10/18/2000	[Insert 11/14/2001 Federal Register Cite.]	HGA, Texas 1-hour ozone standard attainment demonstrations.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-133-1-7493; FRL-7092-8]

Approval and Promulgation of Implementation Plans; Texas; Lawn Service Equipment Operating Restrictions; and Requirements for Motor Vehicle Idling for the Houston/Galveston (HG) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan. This approval covers two separate actions. We are approving: a rule that implements an operating-use restriction program requiring that the handheld and non-handheld spark-ignition engines, rated at 25 hp and below, be restricted from use by commercial operators between the hours of 6 a.m. and noon, April 1 through October 31, in the counties Brazoria, Fort Bend, Galveston, Harris, and Montgomery; and, a rule to implement idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles in the HG area counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The EPA is approving these revisions to the Texas SIP to regulate emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOC) in accordance with the requirements of the Federal Clean Air Act (the Act). These new rules will contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone standard in the HG ozone nonattainment area. For details on the SIP submittals and the EPA analysis of the submittals, refer to the June 11, 2001 proposed rule, and the associated Technical Support Document (TSD).

DATES: This final rule is effective on December 14, 2001.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733; and, the Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Steven Pratt, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733. Telephone Number (214) 665-2140, e-Mail Address: pratt.steven@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” refers to EPA.

What Action Are We Taking Today?

On December 20, 2000, the Governor of Texas submitted to EPA these two rule revisions (an operating-use restriction program for handheld and non-handheld spark-ignition engines, rated at 25 hp and below, used by commercial operators; and, idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles) to the 30 TAC, Chapter 114, “Control of Air Pollution From Motor Vehicles,” as a revision to the SIP.

These new rules will contribute to attainment of the ozone standard in the HG area. The EPA is approving these revisions to the Texas SIP to regulate emissions of NO_x and VOCs in accordance with the requirements of the Federal Clean Air Act (the Act). For more information on the SIP revision, please refer to our TSD and the State’s December 20, 2000 SIP revision.

What Are the Clean Air Act Requirements?

Section 172 of the Act provides the general requirements for nonattainment plans. Section 172(c)(6) and section 110 require SIPs to include enforceable emission limitations, and such other control measures, means or techniques

as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Today’s SIP revision involves approval of one of a collection of controls adopted by the State to achieve the ozone standard in the HG nonattainment area as required under section 172. EPA approval of this SIP revision is governed by section 110 of the Act.

Why Is EPA Taking This Action?

We are taking this action because the State submitted an adequate demonstration to show the necessity for these requirements to achieve the NAAQS in the HG ozone nonattainment area.

What Are the Requirements of the December 20, 2000, Texas SIP Revision for the Operation of Lawn Service Equipment That We Are Approving Today?

The purpose of this rule is to implement an operating-use restriction program requiring that the handheld and non-handheld spark-ignition engines, rated at 25 hp and below, be restricted from use by commercial operators between the hours of 6:00 a.m. and noon, April 1 through October 31. Spark-ignition lawn and garden service handheld equipment includes, but is not limited to, trimmers, edgers, chain saws, leaf blowers/vacuums, and shredders. Spark-ignition lawn and garden service non-handheld lawn and garden equipment covered by the rules includes such devices as walk-behind lawnmowers, lawn tractors, tillers, and small generators. The engines are both two cycle and four cycle engines, generally unable to use automotive technology, such as closed-loop engine control and three-way catalysts, to reduce emissions.

As a result of this restriction, production of ozone precursors will be stalled until later in the day when optimum ozone formation conditions no longer exist, ultimately reducing the peak level of ozone produced. It is estimated that this measure will achieve a minimum of 0.23 tons per day (tpd)