

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/submittal date	EPA approval date	Explanation
Section 101.353	Allocation of allowances	09/26/2001	11/14/2001 [Insert Federal Register citation.]	Subsections 101.353(a)(3)(B) 101.353(a)(3)(D) NOT IN SIP.
Section 101.354	Allowance deductions	09/26/2001	11/14/2001 [Insert Federal Register citation.]	
Section 101.356	Allowance Banking and Trading.	09/26/2001	11/14/2001 [Insert Federal Register citation.]	
Section 101.358	Emissions Monitoring and Compliance Demonstration.	12/09/2000	11/14/2001 [Insert Federal Register citation.]	
Section 101.359	Reporting	12/09/2000	11/14/2001 [Insert Federal Register citation.]	
Section 101.360	Level of activity certification	09/26/2001	11/14/2001 [Insert Federal Register citation.]	
Section 101.363	Program audits and reports	09/26/2001	11/04/2001 [Insert Federal Register citation.]	
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-134-3-7528; FRL-7092-9]

Approval and Promulgation of Air Quality State Implementation Plans; Texas: Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Texas on establishing a Vehicle Inspection and Maintenance (I/M) Program for the Dallas/Fort Worth (DFW), Houston-Galveston Area (HGA), and El Paso (ELP) nonattainment areas. EPA proposed approval of the DFW I/M SIP

revision on January 22, 2001, and the HGA I/M SIP revision on June 11, 2001. The revisions replace the two-speed idle test in Dallas, Tarrant, and Harris Counties with ASM-2, expand the upgraded I/M program to cover the entire DFW nonattainment area plus five additional counties, and the eight county HGA nonattainment area. The revisions also implement On-Board Diagnostic (OBD) testing in the DFW and HGA testing areas, and El Paso County.

The I/M SIP revisions are part of the DFW and HGA Attainment Demonstrations.

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: Ms. Sandra G. Rennie, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7367.

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

What action is EPA taking today?

We are granting final approval of Texas’ Motorist Choice (TMC) vehicle/I/M program. The program applies to the HGA and ELP nonattainment areas, and the DFW nonattainment area plus five adjoining attainment counties. EPA proposed approval of the DFW I/M SIP revision on January 22, 2001 (66 FR 6521), and the HGA I/M SIP revision on June 11, 2001 (66 FR 31199).

What are the Clean Air Act Requirements?

EPA approval of this SIP revision is governed by sections 110 and 182 of the Act, and section 348 of the National Highway Systems Designation Act (NHSDA) of 1995.

Section 182 of the Act provides for plan submissions and plan requirements. Section 182 (b)(4) requires vehicle I/M programs in nonattainment areas classified as moderate or above. Section 182(c)(3) requires enhanced vehicle I/M programs in areas classified serious or above.

Under the NHSDA, EPA cannot apply an automatic 50 percent credit discount to I/M SIPs under section 182, 184, or 187 of the Act because the I/M program in the SIP revision is decentralized or a test-and-repair program. (See EPA's I/M program requirements final rule published November 5, 1992, at 57 FR 52950.) The automatic discount has been effectively replaced with a presumptive equivalency criterion, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA.

The NHSDA directs EPA to grant interim approval for a period of 18 months to approve I/M submittals. The NHSDA also directs EPA and the states to review the interim program results at the end of that 18-month period, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort, to reflect the emission reductions actually measured by the state during the program evaluation periods. Per the NHSDA requirements, this conditional interim rulemaking expired February 11, 1999, 18 months after the interim final rule became effective on August 11, 1997.

Why is EPA taking this action?

We are taking this action because the State submitted an approvable enhanced vehicle I/M program SIP for each nonattainment area requiring a program. The Beaumont-Port Arthur nonattainment area is not required to have a program because the 1995 I/M flexibility amendments (60 FR 48029, September 18, 1995) set a population requirement of 200,000 or more for a 1990 Census-defined urbanized area to implement a program.

Previous actions taken toward full approval of the TMC I/M program include: a proposed conditional interim approval proposed on October 3, 1996

(61 FR 51651); an interim final conditional approval published on July 11, 1997 (62 FR 37138); and a direct final action on April 23, 1999 (64 FR 19910) to remove the conditions.

What does the State's Texas Motorist Choice I/M program include?

The State's TMC program requires that gasoline powered light-duty vehicles, and light and heavy-duty trucks between two and twenty-four years old, that are registered or required to be registered in the I/M program area, including fleets, are subject to annual inspection and testing.

Vehicles in Dallas, Tarrant, Collin, Denton, Ellis, Johnson, Kaufman, Parker, and Rockwall counties in the DFW area, and Harris, Galveston, Brazoria, Fort Bend, Montgomery, Liberty, Waller, and Chambers in the HGA nonattainment area that are 1995 and older will be subject to an ASM-2 tailpipe test. Vehicles in those counties that are 1996 and newer will receive the On-Board Diagnostic (OBD) test in place of the tailpipe test.

Vehicles in El Paso county will be subject to the two-speed idle tailpipe test if they are 1995 or older, or an OBD test if they are 1996 or newer.

All vehicles in the area programs are currently subject to a gas cap pressure check and an antitampering inspection.

The schedule to begin this new testing is as follows:

May 1, 2002. On-Board Diagnostic (OBD) testing will be added to the low-enhanced, two-speed idle test currently being implemented in Harris, Dallas, Tarrant, and El Paso Counties. The shortfall in vehicle coverage for the DFW and HGA nonattainment areas will continue to be made up by remote sensing within Dallas, Tarrant, and Harris Counties to identify gross polluting vehicles commuting in from the surrounding nonattainment counties only until tailpipe testing begins in those counties.

May 1, 2002. ASM-2 and OBD vehicle testing in Dallas, Tarrant, Collin, Denton, and Harris Counties.

May 1, 2003. The State will expand the I/M program to include the DFW attainment counties of Ellis, Johnson, Kaufman, Parker, Rockwall, and the HGA nonattainment counties of Galveston, Brazoria, Fort Bend, and Montgomery. May 1, 2004. The State will expand the I/M program further to include the HGA nonattainment counties of Chambers, Liberty, and Waller.

The vehicle coverage shortfall in the HGA area will continue to be covered by the remote sensing program until all counties become subject to I/M testing.

An optional opt-out alternative for Chambers, Liberty, and Waller Counties allows any or all of these counties to opt-out of I/M and substitute an alternative air control strategy. This provision is subject to an expedited timeline and the State's submission of SIP revisions substituting equivalent reductions of VOC and NO_x, based on modeling. Remote sensing would then be used to monitor vehicles from those counties which are not part of the urbanized area.

What did the State submit?

The State submitted SIP revisions for 30 Texas Administrative Code (TAC) 114 on March 14, 1996, April 25, 2000, and December 20, 2000. The submittals contained documentation to support an approval under section 182 of the Act and 40 CFR part 51, Subpart S-Inspection/Maintenance Program Requirements. For further discussion of the submittals, see the proposed approvals, October 3, 1996 (61 FR 51651), January 22, 2001 (66 FR 6521), June 11, 2001 (66 FR 31199) and accompanying Technical Support Documents.

We are not approving as part of the Texas I/M SIP the State's 30 TAC 114.50(b)(2). This rule places an additional reporting burden upon commanders at Federal facilities regarding affected Federal vehicles, that is not imposed upon any other affected non-federal vehicle. The additional reporting requirement is not an essential element for an approvable I/M program, since affected Federal vehicles are also subject to the same reporting requirements as other affected non-federal vehicles. See 30 TAC 114.50(b)(1) and (7). These rules apply to vehicles operated on Federal facilities as well as to non-Federal vehicles. They in turn require compliance with the Department of Public Safety (DPS) annual vehicle inspection requirements. Section 02.25.00 (Details of Inspection) of the DPS manual for vehicle emissions describes how the inspector must enter required data into the exhaust gas analyzer as prompted by the analyzer. Upon completion of the inspection, the report must be signed by the inspector and forwarded to Vehicle Inspection Records. Therefore, the additional reporting requirement for Federal vehicles is not essential for reporting and compliance purposes. The same purposes are served by the other reporting requirement that applies to all affected vehicles, whether Federal or non-federal.

The March 1996 I/M rules were codified differently than the April and December 2000 rules. The State

submitted a Recodification SIP that we approved on July 1, 1998 (63 FR 35839). That approval acted upon the rule numbering alone and did not approve any new or revised rules into the SIP at that time. The rule numbers that appear in this action are the current recodified rule numbers.

On February 8, 1999, the State submitted a program effectiveness demonstration as required by the NHSDA. We reviewed Texas' 18-month program effectiveness demonstration as required by the I/M provisions of the NHSDA. This Act allowed States to claim full (100%) credit for test and repair I/M networks that previously had been allowed to claim only 50% effectiveness credit. We determined that the demonstration is an acceptable approach to meeting the requirement of the NHSDA, and that the State's emission reduction credit estimate was valid. Therefore, we are approving Texas' program effectiveness demonstration.

What comments did EPA receive in response to the proposed rules?

Comments on the October 3, 1996, proposal were addressed in the Interim Final Rule (62 FR 37138, July 11, 1997).

No comments were received on the January 22, 2001, proposal.

EPA received comments on the June 11, 2001, Notice of Proposed Rulemaking (NPR) from citizens of Brazoria, Fort Bend, and Montgomery Counties under a cover letter from the Brazoria County Criminal District Attorney, and the Department of the Air Force on behalf of the Department of Defense (DoD).

Federal Facility Requirements

Comment: The DoD commented that it is illegal for Federal Facility commanders to report to the State, as required by 30 TAC 114.50(b)(2), and the I/M revision should be disapproved by our agency. This is based on the Department of Justice's opinion which concluded that the authority for States to regulate vehicle use activity in 40 CFR 51.356(a)(4) exceeded the waiver of sovereign immunity set forth in 42 U.S.C. 7418(c) and (d).

Response: Texas revised its regulations to include EPA's Federal facilities' reporting requirement found in 40 CFR 51.356(a)(4). This particular Federal regulation requires an approvable State I/M program to have Federal facilities operating vehicles in the I/M program areas(s) report certification of compliance to the State. This requirement appears to be different than those for other non-Federal groups of affected vehicles. EPA is not

requiring States to implement or adopt this reporting requirement dealing with Federal installations within I/M areas at this time. The Department of Justice has recommended to EPA that this particular Federal regulation be revised since it appears to grant States authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation or to require it for an approvable I/M program, if it is not constitutionally authorized. EPA will be addressing this provision in the future and will review State I/M SIPs with respect to this issue whenever a new rule is final. Therefore, for these reasons, EPA is not approving or disapproving the specific requirements of 30 TAC 114.50(b)(2) which apply to Federal facilities at this time as part of the Texas I/M SIP.

Remote Sensing

Comment: Citizens of Brazoria, Fort Bend, and Montgomery counties questioned the scientific validity of remote sensing.

Response: Remote sensing is a non-intrusive tool used to monitor a portion of the vehicle fleet and identify excessive polluters as a complement to the traditional mobile source emission control program. It is designed to detect potentially high-emitting vehicles. We recognize that remote sensing is not currently as accurate as the tailpipe test in characterizing vehicle emissions, and therefore the remote sensing program requires identified vehicles to submit to a confirmatory tailpipe test for validation of remote sensing results.

Comment: Citizens of Brazoria, Fort Bend, and Montgomery counties asked why commuters from Harris county to surrounding counties are not subject to remote sensing?

Response: The remote sensing program serves two functions in the TMC I/M program. One function is to identify commuters coming into Harris County from adjacent nonattainment counties. The other function is to characterize the emissions of the fleet of on-road vehicles as a whole in the entire nonattainment area, as required by Federal rule. To accomplish this objective, high emitting vehicles are also identified regardless of the nonattainment county in which they are registered. This includes Harris County.

Comment: Citizens of Brazoria, Fort Bend, and Montgomery counties also stated that remote testing is unconstitutional as it involves surveillance and documentation of the

citizenry when no crime has been committed and for innocent travel.

Response: The remote sensing program is operated on public highways and roadways on which there is no expectation of privacy. The remote sensing program tracks and documents exhaust plumes from high emitting vehicles, not the drivers of those vehicles. Vehicles are identified through license plates which are put on vehicles for law enforcement purposes, of which remote sensing is an example. Vehicle drivers are never tracked or identified.

Being detected as a high-emitter by remote sensing equipment is not a crime. If a vehicle is detected as a high emitter, the operator is required to bring the vehicle in for an emission test. If the operator chooses to repair the vehicle before the test and the vehicle passes, there are no further conditions to be met. If the vehicle fails the test, the operator must repair the vehicle or qualify for a waiver within a certain period of time. If an operator fails to bring the noncompliant vehicle in for a test or does not follow up after a failed test, only then is the operator subject to penalty under the program.

Vehicle Coverage

Comment: Citizens of Brazoria, Fort Bend, and Montgomery counties questioned why newer vehicles that come from the manufacturer equipped with emission control devices are required to submit to emission control testing, when a tampering check would be sufficient.

Response: The antitampering inspection visually identifies that certain emission control equipment is installed on the vehicle and has not been disconnected. It does not guarantee that this equipment is functioning or functioning properly. There is a small percent of newer vehicles on which emission control equipment fails. Because some newer vehicles do fail, and because vehicles subject to testing are more likely to be better maintained, the amount of emission reduction benefits that can be obtained from inspections is reduced as more model years are exempt from the program. In addition, because newer vehicles are still under manufacturer's warranty, identifying emissions-related problems is viewed as consumer protection and may potentially save the vehicle's owner future repair costs.

Repair Assistance

Comment: Citizens of Brazoria, Fort Bend, and Montgomery counties were concerned about repair assistance for low-income owners of non-compliant vehicles. They stated that when a

vehicle owner is told he cannot drive his non-compliant vehicle, that is an unconstitutional taking.

Response: In order to assist the public, the TMC I/M program includes two waiver options: the minimum expenditure waiver and the individual vehicle waiver. The minimum expenditure waiver is available to those who have made repairs to their vehicle within the established criteria and met the dollar limits established by Federal I/M rule. The individual vehicle waiver is for those who cannot meet emissions standards despite every reasonable effort by the motorist. In addition to these two waivers, the TMC I/M program offers the low-income time extension that allows one test cycle (12 months) for the owner to bring the vehicle into compliance.

Furthermore, the Texas Legislature, in the 2001 session, passed a law that provides the opportunity for participating I/M program counties to offer repair assistance to low-income vehicle owners. Also, when it is not cost-effective to repair a noncompliant vehicle, the program offers a vehicle replacement/scrappage program that will assist low-income vehicle owners to obtain cleaner vehicles. Participation in the vehicle replacement/scrappage program is entirely voluntary, and no vehicle owner will be forced to participate.

EPA's Rulemaking Action

We are granting final full approval of Texas I/M program referred to as the Texas Motorist Choice program pursuant to sections 110 and 182 of the Act, and section 348 of the NHSDA.

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 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. section 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 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, Carbon monoxide, Hydrocarbons, Incorporation by references, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 15, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the 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. In § 52.2270 the table in paragraph (c) is amended under Chapter 114 (Reg 4).

a. Under Subchapter A, by adding a new entry for Section 114.2;

b. After Subchapter A, by adding a new Subchapter B entitled "Subchapter B—Vehicle Inspection and Maintenance" and individual entries for Sections 114.50, 114.51, 114.52, and 114.53.

The 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 submittal/approval date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
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Subchapter A: Definitions				
* * *	* * *	* * *	* * *	* * *
Section 114.2	Inspection and Maintenance Definitions.	04/19/2000	11/14/2001 [Insert Federal Register citation.]	
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Subchapter B: Vehicle Inspection and Maintenance				
Section 114.50	Vehicle Emission Inspection Requirements.	12/06/2000	11/14/2001 [Insert Federal Register citation.]	Subsection 114.50(b)(2) is NOT part of the approved SIP.
Section 114.51	Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.	12/06/2000	11/14/2001 [Insert Federal Register citation.]	
Section 114.52	Waivers and Extensions for Inspection Requirements..	12/06/2000	11/14/2001 [Insert Federal Register citation.]	
Section 114.53	Inspection and Maintenance Fees	12/06/2000	11/14/2001 [Insert Federal Register citation.]	
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