the Federal SIP finding of failure to implement does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the finding of failure to implement action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to find failure to implement pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 25, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–19439 Filed 7–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–140–1–7540; FRL–7254–5]

Proposed Approval, or in the Alternative, Disapproval of State Implementation Plan; Texas; Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to take one of two alternative actions regarding the Dallas/Fort Worth (DFW) State Implementation Plan (SIP). First, the EPA proposes to approve the Texas Emission Reduction Program (TERP) submission if the State provides a funding mechanism that will ensure funding at or above the level contemplated in the State's SIP submission. Second, in the alterative, EPA proposes to disapprove the SIP submission of the TERP because the state does not have adequate funding as required by the Clean Air Act. Because the TERP is necessary to achieve emission reductions relied on in the attainment demonstration for the DFW area, EPA also proposes to disapprove the DFW attainment demonstration SIP if funding at or above the level contemplated in the attainment demonstration is not reinstated or other equivalent emission reduction measures are enacted. If EPA makes final these proposed disapprovals, Texas will have to correct the identified deficiencies within 18 months or the first set of sanctions will begin pursuant to sections 179(a)and(b)of the Clean Air Act (Act)and conformity will lapse.

DATES: Written comments must be received on or before September 3, 2002.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 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. e-mail: sherrow.herb@epa.gov.

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

What Is the Background for This Action?

The DFW attainment demonstration SIP was submitted on April 25, 2000.

On April 30, 2000, the Governor of Texas submitted to us two SIP rule revisions. The rules established non-road construction equipment operating limitations and accelerated purchase and operation of non-road compression-ignition fleet equipment in the DFW area.

The accelerated purchase rule required those in the DFW ozone nonattainment area who own or operate non-road equipment powered by compression-ignition engines 50 hp and up to meet certain requirements regarding Tier 2 and Tier 3 emission standards. For more information on the Tier 2 and Tier 3 emission standards, see 40 CFR 89.112, ''Oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter exhaust emission standards.''

The rule phased-in Tier 2,3 engines on a schedule earlier than the federal schedule, depending on horsepower. The rule would have the effect of accelerating the turnover rate of compression-ignition engine, non-road equipment. Generally, the rule affected diesel equipment 50 hp and larger used in construction, general industrial, lawn and garden, utility, and material handling applications.

The purpose of the construction ban rule was to establish a restriction on the use of construction equipment (non-road, heavy-duty diesel equipment rated at 50 hp and greater) as an air pollution control strategy until after 10 o'clock a.m. As a result, production of ozone precursors would be stalled until later in the day when optimum ozone formation conditions no longer existed, ultimately reducing the peak level of ozone. The restrictions were to apply from June 1 through October 31.

The rule allowed operators to submit an alternate emissions reduction plan by

May 31, 2002. The alternate plan would allow operation during the restricted hours, provided the plan achieved reductions of NO_X that would result in ozone benefits equivalent to the underlying regulation.

The DFW attainment demonstration showed that emission reductions of 16 tons per day from these two rules were necessary for the area to reach attainment. Thus, the DFW attainment demonstration relied on these two rules. Please refer to our proposed approval of the rules for more information (66 FR 16432, March 26, 2001).

In May, 2001, the 77th Legislature of the State of Texas passed Senate Bill 5 (SB 5) entitled ''The Texas Emission Reduction Program'' (TERP). Section 18 of SB 5 required the Texas Natural Resource Conservation Commission to submit a SIP revision to us deleting the requirements of the two rules requiring a ban on construction activities during the morning hours and accelerated purchase of Tier 2,3 diesel engines for the DFW ozone nonattainment area from the SIP no later than October 1, 2001. Repeal of the rules was adopted on August 22, 2001, and submitted to us as a SIP revision on September 7, 2001. The rule repeals were submitted concurrently with the SIP revision as part of the implementation of SB 5. The rules were contained in Chapter 114 relating to Control of Air Pollution from Motor Vehicles.

The TERP legislation included a grant program designed to accelerate the early introduction and use of lower emitting diesel technologies in the nonattainment and near nonattainment areas of Texas; a grant program to fund improved energy efficiency in public buildings; purchase and lease incentives to encourage the introduction of clean light duty cars into the Texas fleet; and funding for research into new air pollution reducing technologies.

The bill provided funding mechanisms for the program and the State anticipated that about $133 million in new fees would be collected to fund the emission controls contemplated. Unfortunately, the major funding source, a tax on out-of-state vehicle registrations was found to be in violation of the commerce clause of the Fourteenth Amendment of United States Constitution and Article I. § 3 of the Texas Constitution. *See H.M. Dodd Motor Co. Inc. and Autoplex Automotive, LP.* v. *Texas Department of Public Safety, et al.,* Cause No GNID2585(200th Judicial District Court, Travis County, February 21, 2002). Without sufficient funding the State will not be able to achieve all of the emission reductions projected for the TERP in the State Implementation Plan.

What Is the Effect of the Withdrawn Rules on the DFW Attainment Demonstration SIP?

These rules supported the DFW Attainment Demonstration SIP. The emission reductions from the rules are necessary for the SIP to show attainment of the National Ambient Air Quality Standard. We cannot take final action to approve the attainment demonstration SIP since one of the measures relied upon for purposes of attainment is not adequately funded.

How Does SB 5 Replace the Withdrawn Rules?

SB 5 contains a Diesel Emissions Reduction Incentive Program to achieve emission reductions. Under this program, grant funds are provided to offset the incremental costs of projects that reduce NO_X emissions from heavy-duty diesel trucks and construction equipment in nonattainment areas. This program is expected to achieve 16 tons per day of reductions for the DFW area, out of an expected range of 40–50 tons per day. These reductions will be an alternative, but equivalent, mechanism to replace the emission reductions that would have been achieved by the two withdrawn rules.

Why Are We Proposing Approval of the TERP and Disapproval as an Alternative?

If the State secures funding at or above the level specified in the submitted SIP, we will approve the TERP submittal. If instead, the State submits alternative measures to achieve the emission reductions attributed to the TERP, we would take further rulemaking on the alternative measures before approving an attainment demonstration that relied on those measures.

Section 110(a)(2)(E) of the Act requires a SIP to have adequate funding to be approvable. A State court determined that a significant portion of the funding mechanism for the TERP violates the Constitution, thus, the State cannot collect a significant portion of the money that was intended to fund the incentives. Thus, the full amount of reductions needed for the DFW area to attain the standard, in accordance with the submitted attainment demonstration SIP, will not be achieved unless, (1) The State develops additional sources of funding for the TERP or, (2) the State adopts replacement measures that achieve equivalent reductions. Thus, in the absence of adequate funding for the TERP or an alternate program, we would need to disapprove the TERP and the associated DFW attainment demonstration.

Why Are We Proposing Disapproval of the Attainment Demonstration SIP?

If the State is unable to fund the TERP consistent with the level in the submitted SIP; or, if alternatively, to adopt and submit substitute measures to achieve any emission reductions that cannot be achieved due to a lack of funding, we will have to disapprove the attainment demonstration SIP. The TERP submission is an underlying portion of the attainment demonstration. Without implementation of the TERP or of alternative controls to reduce an equivalent amount of emissions, attainment cannot be achieved under the current attainment demonstration SIP.

What Are the Consequences of Disapproval of the TERP Submission and Disapproval of the Attainment Demonstration SIP?

If the attainment demonstration SIP is disapproved, then sanctions under section 179 of the Clean Air Act will apply. Under the authority of section 179(a) of the Act and 40 CFR 52.31, if we disapprove a SIP element or a SIP, then the deficiency identified must be corrected within 18 months or sanctions will begin to apply. There are two types of sanctions: Highway Sanctions (section 179(b)(1)) and Offset Sanctions (section 179 (b) (2)).

In accordance with our regulations implementing the sanction provisions of the Act, if the State has not corrected the deficiencies in the TERP program within 18 months of the effective date of the final disapproval, the 2 to 1 offset sanction of section 179(b) will apply in the DFW nonattainment area. The current offset ratio in the DFW area is 1.2 to 1. This sanction requires a company that is constructing a new facility or modifying an existing facility over a certain size to reduce emissions in the area by two tons for every one ton the new/modified facility will emit.

If the State has still not corrected the deficiencies within six months after the offset sanction is imposed, then the highway sanction will apply in the nonattainment area. This sanction prohibits the U.S. Department of Transportation from approving or funding all but a few specific types of transportation projects.

The order of sanctions; offsets sanctions first, then highway sanctions, is documented in our regulations at 40 CFR 52.31. If sanctions have been imposed, they will be lifted when we determine, after the opportunity for

public comment, that the deficiencies have been corrected. The imposition of sanctions may be stayed or deferred based on a proposed determination that the State will correct the implementation deficiencies (40 CFR 52.31(d)(4)).

Also, under the authority of section 93.120 of the Conformity Rule (62 FR 43813, August 15, 1997), if we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval without a protective finding of the budget. This means that no transportation plan, Transportation Improvement Plan (TIP), or project not in the first three years of the currently conforming plan and TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate. In addition, if the highway funding sanction is implemented, the conformity status of the plan and TIP will lapse on the date of implementation. No project level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

How Can Texas Correct This Deficiency?

The State has an opportunity in the 2003 78th Legislative Session to develop funding mechanisms that would provide sufficient funds for the TERP measures included in the currently approved SIP, which again account for approximately 16 tons per day of emission reductions. Alternatively, the State can revise the State Implementation Plan by either adopting new measures to replace the TERP in its entirety, or by adopting new measures sufficient to account for any loss in emission reductions associated with that portion of the TERP that is unfunded. Finding additional measures for the DFW area will be difficult because of the stringency of the existing plan. Such measures could include implementing fuels measures, or implementing stricter transportation controls, such as ''no drive'' days.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not mitigate environmental health or safety risks.

Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This 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, because it merely ensures that a State rule properly implements a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000). Thus, Executive Order 13175 does not apply to this rule.

Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because Federal SIP actions do not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such

grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to take action on a State rule submitted to comply with a statutory requirement. It does not establish any Federal mandate with which the State must comply.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly affect small governments.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 25, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–19438 Filed 7–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7232–5]

New York: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in the regulations entitled ''Approved State Hazardous Waste Management Programs'', New York's authorized hazardous waste program. EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that EPA will enforce under the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conversation and Recovery Act (RCRA). In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send written comments by September 3, 2002.

ADDRESSES: Send written comments to Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd Floor, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Michael Infurna at (212) 637–4177 and at the address listed in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: May 30, 2002.

William J. Muszynski,

Acting Regional Administrator, EPA Region 2.

[FR Doc. 02–18991 Filed 7–31–02; 8:45 am]

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