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[FR Doc. 05–20005 Filed 10–5–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0020; FRL–7982–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Texas Low-Emission Diesel Fuel Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Texas making changes to the Texas Low-Emission Diesel (TXLED) Fuel program. With one exception, the changes are either administrative in nature, clarify existing provisions, add more specific reporting and recordkeeping requirements, or update references. These changes meet section 110(l) of the Federal Clean Air Act (the Act) because they improve the quality of the SIP and make it more enforceable.

The more substantive change is the repeal of the state sulfur standard. This repeal being approved does not change the ultimate requirements regarding the reductions to be achieved because Texas did not rely upon the sulfur standard when EPA originally approved the program as part of the Houston ozone attainment demonstration SIP. Also, there are no sulfur dioxide (SO_2) or particulate matter (PM) nonattainment areas in the affected area and no monitored violations. As a result, in accordance with section 110(l) of the Act, this removal will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), Rate of Progress, reasonable further progress or any other applicable requirement of the Act. Under section 553(d)(1) of the Administrative Procedure Act, EPA is making this action effective upon publication because it relieves a restriction.

DATES: This rule is effective on October 6, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06–OAR–2005–TX–0020. All documents in the docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*, once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quailty, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number 214–665–7263; e-mail address *rennie.sandra@epa.gov.*

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

Outline

I. What Action Is EPA Taking?

Today we are approving revisions to the TXLED rule submitted to EPA for approval as a SIP revision on March 23, 2005, except two portions on which we are taking no action and one portion for which we already took action on April 6, 2005. The Executive Director of the TCEQ submitted a letter to EPA on July 5, 2005, requesting that we not act on certain portions of the rule revision as it was submitted on March 23, 2005. We are approving revisions of those aspects of the rule on which the TCEQ has not requested that EPA postpone action.

II. What Is the Background for This Action?

We approved the original TXLED rule on November 14, 2001, (66 FR 57196) as part of the Houston-Galveston Attainment Demonstration SIP. On December 15, 2004, the Texas Commission on Environmental Quality (TCEQ) Commissioners proposed to revise the TXLED rule and adopted the rule changes on March 9, 2005. The TCEQ submitted the TXLED rule changes on March 23, 2005 to EPA for approval into the SIP. We approved the compliance date rule changes, 30 TAC 114. 319, of the March 23, 2005 SIP revision for TXLED on April 6, 2005 (70 FR 17321). This was done under parallel processing at the request of the State. The compliance date was changed from April 1, 2005, to a phased schedule of implementation starting October 1, 2005, until January 1, 2006. On August 10, 2005 (70 FR 46448), we proposed approval of the remaining portions of the March 23, 2005, SIP revision submittal—30 TAC 114.6 and 114.312, 114.314–114.316, 114.318, and 114.319—except Approved Test Methods in section 114.315(b) and Alternative V in section 114.315(c)(4)(C)(ii)(V). The State requested that we take no action on these two portions of the SIP revision submittal. Please see the proposal notice and its associated Technical Support Document for more information.

Changes to the rule are to definitions, low emission diesel standards, registration of producers and importers, approved test methods, monitoring, reporting and recordkeeping requirements, testing and approval requirements for alternative fuel formulation, and alternative emission reduction plans. Except the removal of the sulfur standard, the rule changes either are administrative in nature, clarify existing provisions, update existing references, add more stringent reporting and recordkeeping requirements, or improve the new diesel formulation testing requirements. These types of changes improve the existing SIP and make it more enforceable.

The sulfur standard was removed because the federal ultra-low sulfur diesel standards are now promulgated and will reduce sulfur in on-highway diesel in 2006 and in non-road equipment starting in 2007. Reducing

sulfur emissions does not directly reduce NO_X and VOC emissions that are precursors to ozone formation. Consequently, there will be no increase in ozone concentration levels in the eastern and central parts of Texas from the period of the previous state sulfur standard to the federal sulfur standard. Moreover, none of the ozone attainment demonstration SIPs relied upon the sulfur emission reductions from the TXLED program.

Reducing sulfur emissions does reduce sulfur dioxides and particulate matter emissions but there are no SO_2 and PM nonattainment areas in the eastern and central parts of Texas. There also are no monitored violations of these three standards in the affected areas and no upward trends. Moreover, there is only a three-month difference for implementation of the on-road sulfur standard. The attainment areas are in attainment of these standards before the new Federal sulfur standard dates.

III. What Comments Were Received During the Public Comment Period, August 10, 2005, to September 9, 2005?

Comments were received from Exxon-Mobil Refining and Supply Company and from Oryxe Energy International, Inc.

Exxon-Mobil commented in support of the approval of the rule. We appreciate the support.

Oryxe Energy had the following comments:

1. Testing of Alternative Diesel Fuel Formulations

1.1 Comment: Oryxe believes that the use of the most up-to-date ASTM or EPA methods is not itself sufficient to ensure the integrity of the program for the protection of the consumer and assurance of achieving clean air goals. Test protocols and laboratories used to run the tests on alternative diesel fuel formulations must be assured of the highest order in order [for the test results] to qualify for SIP credit. Alternately, the same assurance could be accomplished by EPA recognition of laboratory capabilities, or oversight by another appropriate governmental entity.

1.1 Response: We agree in principle that the use of ASTM or EPA methods does not in itself provide all assurances with regard to data produced using them. We also agree that how a laboratory operates with regard to quality assurance and quality control procedures is of critical importance in generating data that can be viewed with confidence. In the context of this rule, as part of a replicable procedure, we believe that ASTM or EPA methods are trusted methods that will, with the proper application, produce data of high quality.

1.2 Comment: The commenter recommends that testing be done in a process open to public review and comment, and includes a list of testing elements they believe are most critical to effective review and comment. These elements include engine selection, fuel selection, additive information, emission testing laboratory selection, and emission testing protocol.

1.2 Response: See our response to 4.2 that addresses public review and comment.

Regarding the list, many of the specific points listed under the general categories are already covered in 30 TAC 114.315. The only general category not included in the TXLED rule is emissions testing laboratory selection. Using guidance provided by the State, a company should use good judgement in selecting a laboratory for testing. EPA does not formally recognize, certify, or qualify laboratories. Currently EPA may recognize data produced by some laboratories with more confidence than data from others because of our past experience with those laboratories. EPA, along with Texas, is asking for quality assurance/quality control (QA/QC) plans from laboratories with which we have little experience that are planning to test under 30 TAC 114.315. Good QA/QC plans will help ensure the validity of the data and preserve the integrity of the program.

1.3 Comment: Oryxe recommended language changes to the Texas Administrative Code at 30 TAC § 114.315 in five places.

1.3 Response: We did not propose changes to the Texas rule, therefore new language changes are not the subject of this rulemaking. Oryxe should contact Texas during rule development to voice its concerns regarding regulatory language. We cannot change the content of State regulations in our approval actions.

2. Monitoring Requirements

2.1 Comment: Oryxe suggests adding language at the end of 30 TAC § 114.316(e) to ensure that the benefits from Nox reductions are verified.

2.1 Response: We cannot change the content of State regulations in our approval actions. A process for verification of fuel additive technologies exists in EPA's Environmental Technology Verification (ETV) program in cooperation with the Voluntary Diesel Retrofit Program. With these programs in place, protocols and processes already exist for verifying a product's emission reduction capabilities, and there is no need for Texas to duplicate such a program at the expense of the State and Federal government. The ETV/VDRP process is more thorough than the comparative testing proposed by the commenter. The ETV/VDRP processes provide an even greater degree of assurance to the consumer and the general public.

3. Proposed Revisions to Alternate Emission Reduction Plans

3.1 Comment: The commenter supports the revision to the Alternate Emission Reduction Plans language at 30 TAC § 114.318.

3.1 Response: We appreciate the support.

4. EPA Approval of Alternative Diesel Fuel Formulations

4.1 Comment: Oryxe raises concerns about the removal of EPA from 30 TAC § 114.312(f). They assert that this removal would have no effect on EPA's continuing oversight of the TXLED program. The commenter acknowledges that this is not an approvable provision.

4.1 Response: EPA continues to have oversight of the TXLED alternative fuel formulation testing by the addition of EPA consultation in § 114.315(c)(6). This consultation can include the review of test protocols, quality assurance/quality control plans, as well as test data. EPA has been consulting with the State, test laboratories, and vendors regarding test protocols, QA/AC plans, and test data. As the commenter notes, Texas has agreed to remove this Executive Director discretion in a future rulemaking.

4.2 Comment: Oryxe suggests that removal of EPA approval makes it absolutely essential that testing under the alternative formulations process be open and subject to public notice and comment.

4.2 Response: EPA disagrees with this comment. The approved test method laid out in 30 TAC § 114.315 is a replicable procedure that was originally approved by EPA in November 2001 and now is revised after being subject to public notice and comment by the State. We believe that a replicable procedure can be subject to public notice and comment when it is being adopted and approved. The concept is to avoid treating each alternative fuel formulation and its testing process as a separate SIP revision by establishing a generic testing protocol that is subject to notice and comment, and approving that generic protocol. The State has the regulatory process establishing the test procedure. In advance of setting a test protocol for a new product, the State will consult

with EPA in case it is evident that slight deviations from the established test methods may be warranted due to the nature of the product being tested.

IV. Final Action

EPA is granting approval of the revisions to the TXLED rule as submitted March 23, 2005, with the following exceptions: (1) The compliance date changes that were already approved on April 6, 2005; (2) revisions to Approved Test Methods in §§ 114.315(b) and 114.315(c)(4)(C)(ii)(V) that the State specifically requested we not process at this time as specified above. None of the revisions being proposed for approval change the ultimate requirements regarding the reductions to be achieved. There will be no increase in ozone concentration levels because of approving the revisions. The affected 110 counties are in attainment of the SO2 and PM standards, are not monitoring exceedances, are not experiencing any upward trends, and are in attainment before the date for the federal sulfur standard. As a result and in accordance with section 110(l) of the Act, 42 U.S.C. section 7410(l), these revisions will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), Rate of Progress, reasonable further progress, or any other applicable requirement of the Clean Air Act.

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, section 553(d)(1) allows a rule to take effect earlier if it relieves a restriction. We are making this action effective upon publication because it relieves a restriction.

V. Statutory and Executive Order Reviews

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 December 5, 2005. 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 reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 28, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 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. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entries for Sections 114.6 under Chapter 114, Subchapter A, and 114.312, 114.314, 114.315, 114.316, and 114.318 under Chapter 114, Subchapter H, Division 2, to 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 approval/submittal date	EPA approval date	Explanation
* *	*	*	* *	*
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles Subchapter A—Definitions				
* *	*	*	* *	*
Section 114.6	Low Emission Fuel Definitions	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
* *	*	*	* *	*
Subchapter H—Low Emission Fuels				
* *	*	*	* *	*
Division 2—Low Emission Diesel				
Section 114.312	Low Emission Diesel Standards.	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
* *	*	*	* *	*
Section 114.314	Registration of Diesel Producers and Importers.	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
Section 114.315	Approved Test Methods	03/09/05	10/6/05. [Insert *FR* page number where document begins].	EPA took no action on Section 114.315(b) and section 114.315(c)(4) (C)(ii)(V).
Section 114.316	Monitoring, Recordkeeping, and Reporting Requirements.	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
* *	*	*	* *	*
Section 114.318	Alternative Emission Reduction Plan.	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
* *	*	*	* *	*

[FR Doc. 05–20108 Filed 10–5–05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2005–MA–0002; FRL–7981–5]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Massachusetts; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d) and 129 negative declaration submitted by the Massachusetts Department of Environmental Protection (MADEP) on August 23, 2005. This negative declaration adequately certifies that there are no existing hospital/medical/infectious waste incinerators (HMIWIs) located within the boundaries of the Commonwealth of Massachusetts. EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*e.g.*, HMIWIs). The Commonwealth of Massachusetts submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on December 5, 2005 without further notice unless EPA receives significant adverse comment by November 7, 2005. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–MA–0002 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-