

permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 2 p.m. through 7 p.m. on May 27, 2010, and if necessary due to inclement weather, from 2 p.m. through 7 p.m. on June 3, 2010.

Dated: March 25, 2010.

**Mark P. O'Malley,**

*Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.*

[FR Doc. 2010-8093 Filed 4-8-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2006-0988; FRL-9135-6]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution From Motor Vehicles

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving revisions to the Texas State Implementation Plan (SIP). We are approving revisions to Title 30 of the Texas Administrative Code (TAC), Chapter 114, which the State submitted on May 15, 2006, October 10, 2006, January 17, 2008, and February 28, 2008. These revisions establish the Rebate Grant Process and the Texas Clean School Bus Program, amend the Texas Emissions Reduction Plan (TERP), and amend the Locally Enforced Motor Vehicle Idling Limitations. The EPA is approving these revisions pursuant to section 110 of the Clean Air Act (CAA).

**DATES:** This direct final rule will be effective June 8, 2010 without further notice unless EPA receives relevant adverse comments by May 10, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-

OAR-2006-0988, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Please follow the online instructions for submitting comments.
- *EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6comment.htm>. Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket No. EPA-R06-OAR-2006-0988. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> 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 fee of 15 cents per page 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 during official business hours, by appointment, at the Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dayana Medina, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7241; fax number 214-665-7263; e-mail address [medina.dayana@epa.gov](mailto:medina.dayana@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" means EPA.

#### Outline

- I. What Action Is EPA Taking?
- II. Background
- III. What Did the State Submit?
  - A. The Rebate Grant Process
  - B. Texas Clean School Bus Program
  - C. The Texas Emissions Reduction Plan (TERP)
  - D. Locally Enforced Motor Vehicle Idling Limitations
- IV. Final Action

## V. Statutory and Executive Order Reviews

### I. What Action Is EPA Taking?

Today we are approving revisions to the Texas SIP that amend 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles. These revisions consist of the new Rebate Grant Process and the new Texas Clean School Bus Program, and additional revisions to the TERP and Locally Enforced Motor Vehicle Idling Limitations, as submitted to EPA by the TCEQ on May 15, 2006, October 10, 2006, January 17, 2008, and February 28, 2008. Some of the revisions we are approving in this rulemaking are administrative in nature—they identify an acronym and renumber a sequence of paragraphs. A majority of the revisions, however, are substantive in nature. We are approving these revisions in accordance with section 110 of the CAA.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revisions if relevant adverse comments are received. This rule will be effective on June 8, 2010 without further notice unless we receive relevant adverse comments by May 10, 2010. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### II. Background

Section 110 of the CAA requires States to develop air pollution regulations and control strategies to ensure that air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses

developed by the State, to ensure that air quality in the State meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing State regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each State must submit regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP.

The Texas SIP includes a variety of control strategies, including the TERP, a program that provides funding for owners and operators to reduce emissions from heavy-duty diesel equipment used in areas that are not meeting the NAAQS for ozone.<sup>1</sup> On October 10, 2006, the TCEQ submitted SIP revisions to EPA to revise the existing TERP program by establishing the Rebate Grant Process and the Texas Clean School Bus Program. The Rebate Grant Process will provide fast and simple access to rebate grants under the TERP. The Texas Clean School Bus Program also revises the TERP to fund efforts by school districts to improve the health of children by reducing emissions of diesel exhaust from school buses.

On January 17, 2008, the State submitted SIP revisions that further amend the TERP. These revisions authorize the TCEQ to allow travel on highways and roadways designated by the TCEQ to count toward the requirement that grant-funded vehicles operate at least 75 percent of the annual miles in the eligible counties; lower the cost-effectiveness criteria from \$13,000 per ton of NO<sub>x</sub> reduced to \$15,000 per ton of NO<sub>x</sub> reduced; and remove the option that vehicles, equipment, and engines replaced under the program may be removed from the State in lieu of being recycled or scrapped.

On May 15, 2006, the State submitted SIP revisions addressing Locally Enforced Motor Vehicle Idling Limitations. The EPA first approved revisions to the Texas SIP that incorporated Locally Enforced Motor Vehicle Idling Limitations on April 11, 2005 (70 FR 18308), for use as a control strategy to reduce ground-level ozone. The current motor vehicle idling rules limit the idling time for certain motor vehicles. The SIP revisions submitted

on May 15, 2006, prohibit idling of a vehicle within a school zone or within 1,000 feet of a public school during operating hours; modify the exemption that applies to motor vehicles with a gross vehicle weight rating of 14,000 pounds or less; clarify the intent of the rule; and add exemptions to allow idling the primary propulsion engine of a vehicle to provide air conditioning while using the vehicle to perform an essential function related to roadway construction or maintenance, and when powering an air conditioner in the vehicle's sleeper berth for a government-mandated rest period.

On February 28, 2008, the State submitted revisions to the SIP that further amend Locally Enforced Motor Vehicle Idling Limitations. The February 28, 2008 SIP revisions modify the exemption that applies to motor vehicles with a gross vehicle weight rating of 14,000 pounds or less; extend the expiration date of two subsections to September 1, 2009; prohibit idling within 1,000 feet of hospitals and residential areas; and restrict idling of vehicles with sleeper berths when there is a vehicle heating and air conditioning hook-up facility located within two miles. Currently, there are no Federal regulations governing idling time for motor vehicles.

More detail on each of these revisions is included below and in the Technical Support Document (TSD). The TSD is provided in the docket for this rulemaking.<sup>2</sup>

We note one more SIP revision, submitted by the State on October 4, 2001, which is not included in the TSD for this rulemaking. The State submitted revisions to the SIP on October 4, 2001, that included the repeal of 30 TAC 114.507 (*Exemptions*). Section 114.507 prohibited a motor vehicle with a gross vehicle weight rating greater than 14,000 pounds from idling more than five consecutive minutes in the Houston-Galveston-Brazoria area, from April 1 through October 31 of each calendar year. EPA did not take action on this portion of the revision, but on September 6, 2006, EPA approved a revision to the Texas SIP that removed from the SIP "Division 1: Motor Vehicle Idling Limitations," which included section 114.507 (*see* 71 FR 52670). Therefore, that portion of the State's October 4, 2001 submittal that pertains to section 114.507 will not be acted on by EPA because it is superseded by the September 6, 2006 rulemaking.

<sup>1</sup> Although the TERP has several different components, the part of the plan that EPA approved into the Texas SIP is the Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. *See* 70 FR 48647 (August 19, 2005).

<sup>2</sup> The docket for this rulemaking, which includes a TSD, is available at <http://www.regulations.gov>. The docket number is EPA-R06-OAR-2006-0988.

### III. What Did the State Submit?

#### A. The Rebate Grant Process

The Rebate Grant Process is new within 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter K, Mobile Source Incentive Programs; Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. The rule was adopted by the State on September 20, 2006, and submitted to EPA for approval into the SIP on October 10, 2006. The Rebate Grant Process is codified at 30 TAC 114.624 and will provide for fast and simple access to TERP funds, using a streamlined process to award standardized rebates for designated project types. The State may award rebate grants for a specific region or statewide, limit or expand the project types to further the goals of the program, and designate another entity to administer the grants. The EPA is approving this revision to the SIP because it is consistent with section 110(1) of the CAA. The EPA notes, however, that in the DFW and Houston SIPs, certain commitments have been approved into the SIP for reducing NO<sub>x</sub> as necessary for the areas to reach attainment.<sup>3</sup> Texas must continue to insure that these commitments are met.

#### B. Texas Clean School Bus Program

The Texas Clean School Bus Program is a new division in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter K, Mobile Source Incentive Programs; Division 4, Texas Clean School Bus Program. The rule was adopted by the State on September 20, 2006, and submitted to EPA for approval into the SIP on October 10, 2006.

There are five new sections within Division 4. Section 114.640 (*Definitions*) identifies and defines the terms used in the Texas Clean School Bus Program: (1). *Diesel exhaust*, (2). *Incremental Cost*, (3). *Qualifying fuel*, (4). *Repower*, and (5). *Retrofit*. Section 114.642 (*Applicability*) establishes program eligibility for school districts and charter schools statewide; the program is not limited to nonattainment areas. This section also allows regional planning organizations, such as Councils of Government and private non-profit organizations, to apply for and receive grants to improve the program. Section 114.644 (*Clean School Bus Program Requirements*) establishes

the basic program requirements for the Clean School Bus Program, including: the types of projects eligible for a Clean School Bus grant; allowance for the TCEQ to limit and/or prioritize funding in a particular funding period to certain areas of the State; allowance for the TCEQ to establish other criteria in a particular funding period, including reductions in diesel exhaust emissions to be achieved and additional pollutants to be addressed; the minimum use and useful life of a project under the grant program; a requirement that for a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State; strict adherence to the application form; allowance of the use of grant funds to pay incremental costs associated with the project and prohibition against using the grant for administrative expenses; prohibition against use of grant funds to meet Federal or State legal requirements and for credit under any State or Federal emissions reductions credit averaging, banking, or trading program;<sup>4</sup> and allowance for the TCEQ to require that the grant recipient return some or all of the grant funds if they fail to meet the terms of a project grant or conditions of the Texas Clean School Bus Program. Section 114.646 (*Monitoring, Recordkeeping, and Reporting Requirements*) requires grant recipients to adhere to the reporting requirements of their grant. Reports must occur at least annually. Section 114.648 (*Implementation Schedule*) establishes that the Texas Clean School Bus Program will expire on August 31, 2013.

Although the rules found in new Division 4 establish the needed framework for a clean school bus program, the Texas Clean School Bus Program would be funded by TERP only if TCEQ is given the necessary appropriation authority by the Texas State legislature (Texas Constitution, Article VIII, Section 6) and TERP revenues reach levels required to fund the program (Texas Health and Safety Code, section 386.252). The Texas Clean School Bus Program remained unfunded during the 2006–2007 biennium because an appropriation was not made by the Texas State legislature. However, the program was funded during the 2008–

2009 biennium after the Texas State Legislature gave TCEQ the necessary appropriation authority (House Bill No. 1, 81st Legislature, Regular Session, General Appropriations Act).

In a letter dated May 16, 2006, EPA provided TCEQ with comments, stating that in order for the Texas Clean School Bus Program to be approvable into the SIP under the Economic Incentive Program (EIP), reductions created by the plan must be surplus, quantifiable, enforceable, and permanent, and should be made consistent with the principles of equity and environmental benefit.<sup>5</sup> In their submittal, TCEQ confirmed that the Texas Clean School Bus Program meets the requirements of a financial mechanism EIP under EPA's *Improving Air Quality with Economic Incentive Programs* guidance. Our analysis of this revision's consistency with EPA's EIP guidelines can be found in the TSD, which is provided in the docket for this rulemaking.

The EPA is approving the above revisions to the SIP, which establish the needed framework for the Texas Clean School Bus Program, because they are consistent with section 110(1) of the CAA and EPA's EIP guidance. However, EPA notes once again that in the DFW and Houston SIPs, certain commitments have been approved into the SIP for reducing NO<sub>x</sub> as necessary for the areas to reach attainment. Texas must continue to insure that these commitments are met.

#### C. The Texas Emissions Reduction Plan (TERP)

The TERP is found in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter K, Mobile Source Incentive Programs; Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. Revisions to the TERP were adopted by the State on September 20, 2006 and submitted to EPA for approval into the SIP on October 10, 2006. Subsequent revisions to the TERP were adopted by the State on December 5, 2007 and submitted to EPA for approval into the SIP on January 17, 2008. These are explained in detail below.

The October 10, 2006 submittal provides for clarification of the definition of "cost-effectiveness," as it applies to the TERP. The amendment to paragraph (1) in section 114.620 (*Definitions*) modifies the definition of "cost-effectiveness" to clarify how the cost-effectiveness of TERP grant applications will be determined. Cost-

<sup>3</sup>For specific commitments that have been established for reducing NO<sub>x</sub>, as necessary, for DFW and Houston to reach attainment, please see the DFW SIP approved on January 14, 2009 (74 FR 01903), and the Houston SIP approved on September 6, 2006 (71 FR 52670).

<sup>4</sup>Except as provided under Texas Health and Safety Code, section 386.056, which states that an owner or operator of a site located in the Houston-Galveston or Dallas-Fort Worth nonattainment area may, under certain circumstances, use emissions reductions generated by a program established under this chapter to offset the requirements of commission rules relating to control of air pollution from oxides of nitrogen.

<sup>5</sup>See EPA's *Improving Air Quality with Economic Incentive Programs* guidance, chapters 4 and 8 (January 2001).

effectiveness is defined as the total dollar amount expended divided by the total number of tons of NO<sub>x</sub> emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by TCEQ, taking into account the interest rate on bonds and interest earned by State funds. In addition, amendments to paragraphs (8) and (10) in section 114.620, replace the acronym "EPA" with "United States Environmental Protection Agency." The EPA is approving these amendments because they will improve TERP program effectiveness by ensuring that the cost-effectiveness of projects under the TERP is accurately calculated.

The revisions submitted on October 10, 2006 also address section 114.622 (*Incentive Program Requirements*). Revisions to subsection (d) in section 114.622 establish that the TCEQ may set lower cost-effectiveness limits as needed to ensure the best use of available funds, which will allow spending a larger amount of money per ton of NO<sub>x</sub> reduced. In addition to cost-effectiveness, the TCEQ may base project selection decisions on other measures when evaluating the effectiveness of projects in reducing NO<sub>x</sub> emissions in relation to the funds to be awarded. While many of the most cost-effective projects have already been completed, old, polluting equipment remains in use in nonattainment areas and this revision would increase the eligibility of a portion of that equipment for TERP funding. The EPA is approving this amendment because it will allow TERP to fund less cost-effective projects that nevertheless would reduce NO<sub>x</sub> emissions in nonattainment areas.

A portion of the October 10, 2006 revision to subsection (d) in section 114.622, which specifies that the cost-effectiveness of a proposed project under the TERP program must not exceed a cost-effectiveness of \$13,000 per ton of NO<sub>x</sub> emissions reduced, is superseded by a revision in the January 17, 2008 submittal, which further lowers the cost-effectiveness limits for projects to \$15,000 per ton of NO<sub>x</sub> emissions reduced. In addition, the amendment to subsection (c) of section 114.622, which requires that old equipment or engines that are part of a proposed project that includes a replacement of equipment or a repower be recycled, scrapped or otherwise permanently removed from the State, is superseded by the January 17, 2008 submittal, which requires grant recipients to recycle or scrap the old

equipment or engine, except in specific grants in which the applicant provides sufficient assurances that an old locomotive will not be returned to the State. The EPA is approving these revisions because they will improve TERP program effectiveness by increasing the pool of eligible applicants for TERP funds and by providing greater certainty that older, higher emitting equipment will be removed from service.

The January 17, 2008 submittal also revises subsection (b) of section 114.622 (*Incentive Program Requirements*), which authorizes the TCEQ to allow vehicles replaced or repowered under the TERP to travel on highways and roadways, or portions of a highway or roadway, designated by the TCEQ and located outside a nonattainment area or affected county to count towards the percentage-of-use requirement when determining eligibility for TERP grants. Previously, not less than 75 percent of the vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant were required to be projected to take place in a nonattainment area or affected county in Texas. The requirement that at least 75 percent of the vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of the State of Texas, or on highways and roadways designated by the TCEQ and located outside a nonattainment area or affected county, is only used to determine TERP program eligibility. According to the TERP guidelines, usage outside of the nonattainment areas or affected counties will not count towards the emissions reductions used to determine the cost-effectiveness of the project. The EPA is approving this revision to the SIP because it will result in more vehicles traveling in and around the nonattainment areas to be eligible for TERP grants.

The EPA is approving the above revisions to the TERP program into the SIP because they are consistent with section 110(1) of the CAA, they give the State additional flexibility to allocate TERP funds to achieve the air quality goals of the State, and the TERP continues to be consistent with EPA's EIP guidance.<sup>6</sup> EPA notes, however, that in the DFW and Houston SIPs, certain commitments have been approved into the SIP for reducing NO<sub>x</sub> as necessary

<sup>6</sup> For our analysis of the consistency of the TERP revisions with EPA's *Improving Air Quality with Economic Incentive Programs* guidance (January 2001), please see the TSD, which is located in the docket for this rulemaking.

for the areas to reach attainment. Texas must continue to insure that these commitments are met.

#### *D. Locally Enforced Motor Vehicle Idling Limitations*

The Locally Enforced Motor Vehicle Idling Limitations are found in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter J, Operational Controls for Motor Vehicles; Division 2, Locally Enforced Motor Vehicle Idling Limitations. This rule can be implemented within the jurisdiction of any local government in the State that has signed a Memorandum of Agreement (MOA) with the TCEQ. The local government that signs the MOA is delegated the authority to enforce the rule within its jurisdiction. Thus far, numerous cities and counties in the Austin and Dallas-Fort Worth areas have adopted these regulations.<sup>7</sup> Revisions to Division 2 were adopted by the State on April 26, 2006, and submitted to EPA for approval into the SIP on May 15, 2006. Subsequent revisions to Division 2 were adopted by the State on January 30, 2008, and submitted to EPA for approval into the SIP on February 28, 2008. These are explained in detail below.

The May 15, 2006 submittal revises section 114.512 (*Control Requirements for Motor Vehicle Idling*). The first amendment simply identifies the existing first paragraph as subsection (a). This paragraph states that no person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle is not in motion during the period of April 1 through October 31 of each calendar year. The EPA is approving this revision because it allows for existing section 114.512 to be organized into subsections.

The second revision to Section 114.512 adds new subsection (b), which states that no driver using the vehicle's sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation, an offense of which may be punishable by a fine not to exceed \$500. A portion of new subsection (b) in section 114.512 (submitted May 15, 2006), which establishes that this particular subsection expires on September 1, 2007, is superseded by a

<sup>7</sup> For a current list of areas implementing idling restrictions in North Texas, visit <http://www.nctcog.org/trans/air/programs/idling/index.asp>. For a current list of areas implementing idling restrictions in the Austin area, visit <http://www.tceq.state.tx.us/implementation/air/sip/vehicleidling.html>.

revision in the February 28, 2008 submittal, which extends the expiration date to September 1, 2009. The February 28, 2008 submittal also revises subsection (b) by adding language to prohibit idling by drivers using the vehicle's sleeper berth in residential areas<sup>8</sup> or within 1,000 feet of a hospital. The EPA is not taking action on the revisions to subsection (b) of section 114.512 that were submitted on May 15, 2006 and February 28, 2008, because the expiration date of September 1, 2009 has already passed, and subsection (b) is therefore no longer in effect.

The May 15, 2006 submittal also revises section 114.517 (*Exemptions*). The amendment to paragraph (1) in section 114.517 continues to exempt motor vehicles with a gross vehicle weight rating of 14,000 pounds or less, but if before September 1, 2007, only those that do not have a sleeper berth. This is superseded by the January 28, 2008 revision, which provides the following: Paragraph (1) specifies that the control requirements for motor vehicle idling do not apply to "a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and does not have a sleeper berth." New paragraph (2) indicates that after September 1, 2009, all motor vehicles with a gross vehicle weight rating of 14,000 pounds or less will be exempt from the provisions of section 114.512 (*Control Requirements for Motor Vehicle Idling*). This revision simply clarifies that control requirements for motor vehicle idling do not apply to any motor vehicle with a gross vehicle weight rating of 14,000 pounds or less. The Locally Enforced Motor Vehicle Idling Limitations approved into the Texas SIP on April 11, 2005 (70 FR 18308) applied only to heavy duty vehicles with a gross vehicle weight rating greater than 14,000 pounds, and were not intended to apply to any vehicle with a gross vehicle weight rating of 14,000 pounds or less, regardless of whether or not it has a sleeper berth. This revision to section 114.517 allows for consistency with the TX SIP revisions approved in 2005. The EPA is approving these revisions submitted on February 28, 2008 because they provide for clarification of the exemptions to the motor vehicle idling limits. EPA is not taking action on the May 15, 2006 revision to paragraph (1) in section 114.517, because it is superseded by the revisions submitted on February 28, 2008.

The May 15, 2006, submittal also revises section 114.517, paragraphs (4) and (7). In paragraph (4), the phrase "not including" is replaced with "other than," such that the paragraph reads that one of the exemptions to the control requirements for motor vehicle idling is "the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, other than propulsion, and/or passenger compartment heating, or air conditioning." In paragraph (7), the phrase "comfort/safety" is replaced with "comfort and safety" and the word "those," referring to "vehicles," is removed because it is redundant. In addition, the phrase "or public" is added and the phrase "school buses" is removed, to clarify that the primary propulsion engine of all motor vehicles intended for commercial or public passenger transportation, or passenger transit operations, are allowed to idle up to a maximum of 30 minutes when being used to provide air conditioning or heating necessary for passenger comfort and safety. Furthermore, the exemption regarding the propulsion engine of motor vehicles used for passenger transit operations is removed from paragraph (8) and inserted into paragraph (7). Revised paragraph (7) now reads that the provisions of section 114.512 do not apply to "the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort and safety in vehicles intended for commercial or public passenger transportation, or passenger transit operations, in which case idling up to a maximum of 30 minutes is allowed." Language is added to paragraph (8), exempting the primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety while the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance, from the control requirements for motor vehicle idling. The new exemption found in paragraph (8) ensures that the control requirements for motor vehicle idling do not conflict with the Texas Department of Transportation guidelines for vehicle idling by employees. The revision to paragraph (8) will assist local jurisdictions in determining enforcement responsibilities. Text is edited in paragraphs (9) and (10) for clarification: the word "or" is removed from the end of paragraph (9) to indicate that it is no longer the next to last paragraph; in paragraph (10), the word "who" is replaced with "that" and a

period is replaced with a semi-colon and the word "or" is added to the end of paragraph (10), to indicate that it is no longer the final paragraph in section 114.517. The EPA is approving these revisions because they help to clarify procedures regarding idling restrictions.

The May 15, 2006 submittal also adds new paragraph (11), which exempts from the control requirements for motor vehicle idling, a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period. The February 28, 2008 submittal revises paragraph (11) by adding language that prohibits idling to power a heater or air conditioner while a driver is using the vehicle's sleeper berth if the vehicle is within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available. It should be noted that in a letter dated January 17, 2006, EPA provided TCEQ with comments, stating that the addition of exemption (11) would weaken the SIP rules approved by EPA in 2005. We added that we would not be able to approve this revision into the SIP unless TCEQ would provide substitute reductions or modeling to show that attainment can be met without the credits affected by these changes. TCEQ did not revise the rule or provide new substitute reductions or modeling in response to our comments. However, the February 28, 2008 submittal extends the expiration date of paragraph (11) to September 1, 2009, and it should be noted that the expiration date has passed and the exemption is no longer in effect. Therefore, the EPA is not taking action on the revisions to paragraph (11) that were submitted on May 15, 2006, and February 28, 2008.

The February 28, 2008 submittal also revises section 114.517 (*Exemptions*), by renumbering the paragraphs to account for new paragraph (2). The EPA is approving this revision to the SIP because it allows for clarity and consistency in the numbering of the paragraphs in section 114.517.

The EPA is approving the above revisions to the Locally Enforced Motor Vehicle Idling Limitations into the SIP because they are consistent with section 110(1) of the CAA, and because they allow for clarity and consistency of the exemptions and control requirements for motor vehicle idling.

#### IV. Final Action

The EPA is approving revisions to the Texas SIP submitted to EPA on May 15, 2006, October 10, 2006, January 17, 2008, and February 28, 2008, which

<sup>8</sup> As defined by Local Government Code, Section 244.001, which explains what areas are classified as residential areas.

apply to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles. These revisions establish the Rebate Grant Process and Texas Clean School Bus Program, and amend the TERP and Locally Enforced Motor Vehicle Idling Limitations. The revisions are consistent with section 110(1) of the Act.

**V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 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 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. 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 June 8, 2010. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this action 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, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: March 24, 2010.

**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 under Chapter 114 (Reg 4) as follows:

- a. Under Subchapter J, Division 2, by revising the entries for sections 114.512 and 114.517;
- b. Under Subchapter K, Division 3, by revising the entries for sections 114.620 and 114.622, and adding a new entry for section 114.624;
- c. Under Subchapter K, immediately following section 114.629, by adding a new centered heading "Division 4: Texas Clean School Bus Program," followed by new entries for sections 114.640, 114.642, 114.644, 114.646 and 114.648.

The revisions and additions read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/Subject	State approval/ Submission date	EPA approval date	Explanation
*	*	*	*	*

**Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles**

## EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
*	*	*	*	*
<b>Subchapter J—Operational Controls for Motor Vehicles</b>				
<b>Division 2: Locally Enforced Motor Vehicle Idling Limitations</b>				
*	*	*	*	*
Section 114.512 .....	Control Requirements for Motor Vehicle Idling.	1/30/2008	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	Not in SIP: 114.512(b).
Section 114.517 .....	Exemptions .....	1/30/2008	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	Not in SIP: 114.517(12).
<b>Subchapter K—Mobile Source Incentive Programs</b>				
<b>Division 3: Diesel Emission Reduction Incentive Program for On-road and Non-road Vehicles</b>				
Section 114.620 .....	Definitions .....	9/20/2006	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*
Section 114.622 .....	Incentive Program Requirements .....	12/5/2007	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*
Section 114.624 .....	Rebate Grant Process .....	9/20/2006	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*
<b>Division 4: Texas Clean School Bus Program</b>				
Section 114.640 .....	Definitions .....	9/20/2006	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	
Section 114.642 .....	Applicability .....	9/20/2006	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	
Section 114.644 .....	Clean School Bus Program Requirements.	9/20/2006	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	
Section 114.646 .....	Monitoring, Recordkeeping, and Reporting Requirements.	9/20/2006	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	
Section 114.648 .....	Implementation Schedule .....	9/20/2006	4/9/2010 ..... [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-8005 Filed 4-8-10; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2010-0045; FRL-9124-5]

**Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from operations associated with graphic arts coating, can coating, degreasing, and wood products coating. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on June 8, 2010 without further notice, unless EPA receives adverse comments by May 10, 2010. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number [EPA-R09-OAR-2010-0045], by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.
2. E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard

copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, (415) 947-4126, [law.nicole@epa.gov](mailto:law.nicole@epa.gov).

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

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**I. The State’s Submittal**

*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SMAQMD .....	450	Graphic Arts .....	10/23/08	04/29/09
SMAQMD .....	452	Can Coating .....	09/25/08	09/15/09
SMAQMD .....	454	Degreasing Operations .....	09/25/08	09/15/09
SMAQMD .....	463	Wood Products Coatings .....	09/25/08	09/15/09

On July 20, 2009 and on January 21, 2010, EPA determined that the submittal for SMAQMD Rule 450 and SMAQMD Rules 452, 454, and 463, met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of These Rules?*

There are no previous versions of Rule 463 in the SIP, although SMAQMD adopted earlier versions of this rule on September 5, 1996 and December 5,

1996, and CARB submitted them to us on May 18, 1998. We approved earlier versions of Rule 450 into the SIP on November 13, 1998 (63 FR 63410), Rule 452 into the SIP on November 9, 1998 (63 FR 60214), and Rule 454 into the SIP on April 2, 1999 (64 FR 15922). The SMAQMD adopted revisions to the SIP-approved versions of Rule 450 and Rule 454 on October 23, 2008 and September 25, 2008 and CARB submitted them to us on April 29, 2009 and September 15, 2009. While we can act on only the most recently submitted version, we have

reviewed materials provided with previous submittals.

*C. What Is the Purpose of the Submitted Rules or Rule Revisions?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. The revised Rules 450, 452, and 463 strengthen VOC limits on graphic arts materials, can coatings, and wood coatings. Rule 454 limits VOC