



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2017-0054; FRL-9960-15-Region 6]

#### **Approval and Promulgation of Implementation Plans; Texas; Clean Air Act Requirements for Vehicle Inspection and Maintenance, Nonattainment New Source Review and Emission Statements**

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Texas for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The SIP revision being approved describes how CAA requirements for vehicle inspection and maintenance (I/M), nonattainment new source review (NNSR) and emission statements are met in the Houston-Galveston-Brazoria ozone nonattainment area (HGB area) for the 2008 ozone NAAQS. EPA is also making a ministerial correction to the Code of Federal Regulations (CFR) to accurately reflect approved SIP revisions that pertain to Texas I/M provisions.

**DATES:** This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the EPA receives relevant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2017-0054, at <http://www.regulations.gov> or via email to [young.carl@epa.gov](mailto:young.carl@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Carl Young, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. 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 at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Carl Young, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Young or Mr. Bill Deese at 214-665-7253.

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

## **I. Background**

In 2008 we revised the 8-hour ozone primary and secondary NAAQS to a level of 0.075 parts per million (ppm) to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008). The HGB area was classified as a “Marginal” ozone nonattainment area for the 2008 8-hour ozone NAAQS and initially given an attainment date of no later than December 31, 2015 (77 FR 30088 and 77 FR 30160, May 21, 2012). The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

On December 23, 2014, the D.C. Circuit Court issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464-69 (D.C. Cir. 2014). Consistent with the court’s decision we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS, and set the attainment deadline for all 2008 ozone Marginal nonattainment areas, including the HGB area as July 20, 2015 (80 FR 12264, March 6, 2015). The HGB area qualified for a 1-year extension of the attainment deadline and we revised the attainment deadline to July 20, 2016 (81 FR 26697, May 4, 2016). As the HGB area did not meet the revised attainment deadline of July 20, 2016, we reclassified the area to “Moderate” and set a due date for a revised SIP of January 1, 2017 (81 FR 90207, December 14, 2016).

On December 29, 2016, Texas submitted a SIP revision for the HGB area. The SIP revision included a description of how CAA requirements for I/M, NNSR, and Emission Statements from stationary point sources are met in the HGB area for the 2008 ozone NAAQS,

using already-existing measures previously approved by EPA. A copy of the SIP revision is available on line at *www.regulations.gov*, Docket number EPA-R06-OAR-2017-0054. In the SIP revision submittal, Texas noted that: (1) the I/M program SIP revision approved by EPA on November 14, 2001 (66 FR 57261) meets the CAA requirements for ozone nonattainment areas classified as Serious or above; (2) the NNSR program SIP revision was initially approved by EPA in 1995 (60 FR 49781, September 27, 1995) and that emissions thresholds and pollutant offset requirements are based on nonattainment classifications; and (3) the SIP revision pertaining to emissions inventory requirements approved by EPA on August 26, 1994 (59 FR 44036) meets the CAA requirement for emission statements. The codification of the Texas SIP approved by EPA can be found at 40 CFR 52.2270(c).

In addition, in a separate (but related) matter, in reviewing the Texas SIP, we found that our July 25, 2014, final rule approved revisions to the Texas I/M provisions but our amendments to the CFR failed to include the explanation that 30 TAC Section 114.50(b)(2) is not part of the Texas SIP (79 FR 43264). In a 2001 final rule, we did not approve 30 TAC Section 114.50(b)(2) as part of the Texas SIP as (1) it placed an additional reporting burden upon commanders at Federal facilities regarding affected Federal vehicles that is not imposed upon any other affected non-federal vehicle and (2) additional reporting requirement is not an essential element for an approvable I/M program, since affected Federal vehicles are also subject to the same reporting requirements as other affected non-federal vehicles. *See* 66 FR 57261, 57262 (November 14, 2001).

## **II. The EPA's Evaluation**

### *A. CAA Requirements for I/M in the HGB Area*

I/M refers to the inspection and maintenance programs for in-use vehicles required under the CAA. The applicable requirements for ozone nonattainment areas that are required to adopt I/M programs are described in CAA sections 182(a)(2)(B), 182(b)(4), 182(c)(3), and 184(b)(1)(A) and further defined in 40 CFR 51.350 (“Applicability”) of the I/M rule (40 CFR part 51, subpart S). Under these cumulative requirements, Moderate ozone nonattainment areas in urbanized areas with 1990 Census populations of 200,000 or more are required to adopt basic I/M programs, while Serious and higher classified ozone nonattainment areas outside of the northeast Ozone Transport Region with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs (40 CFR 51.350(a)(2) and (4)).

Previously, we revoked (1) the 1979 1-hour ozone NAAQS (69 FR 23951, April 30, 2004 and 70 FR 44470, August 3, 2005) and (2) the 1997 8-hour ozone NAAQS (80 FR 12264, March 6, 2015). Because the HGB area was classified as Severe nonattainment for these revoked ozone NAAQS, an enhanced I/M program is required in the HGB area for anti-backsliding purposes (40 CFR 51.1100(o)). Ozone classifications can be found in CAA section 181 and 40 CFR 51.1103. The Severe classification is one classification higher than the Serious classification and two classifications higher than the Moderate classification.

The Texas SIP includes 30 TAC Section 114.2 (Inspection and Maintenance Definitions) and 30 TAC Section 114.50 (Vehicle Emissions Inspection Requirements) except for 30 TAC Section 114.50(b)(2) as discussed above. Under these provisions Brazoria, Fort Bend, Galveston, Harris and Montgomery Counties in the HGB area are included in the I/M program. Chambers, Liberty and Waller Counties are not included in the I/M program for the HGB area. The program requires that gasoline powered light-duty vehicles, and light and heavy-duty trucks between two and twenty-four years old, that are registered or required to be registered in the I/M program

area, including fleets, are subject to annual inspection and testing. Chambers, Liberty and Waller Counties are not required to be in the I/M program as they are not included in the urbanized area. *See* 70 FR 58119, 58132 (October 5, 2005) and 71 FR 52670 (September 6, 2006). Therefore, since the provisions in the Texas SIP already include the CAA I/M requirements for the HGB area, we are approving this portion of the SIP revision.

*B. CAA Requirements for NNSR in the HGB Area*

The applicable NNSR requirements for the various ozone nonattainment classifications are described in CAA section 182 and further defined in 40 CFR 51, Subpart I (Review of New Sources and Modifications). Under these requirements new major sources or major modifications at existing sources in an ozone nonattainment area must comply with the lowest achievable emission rate and obtain sufficient emission offsets. The emission offset ratio required for Moderate ozone nonattainment areas is 1.15 to 1 (CAA section 182(b)(5)).

The Texas SIP already includes 30 TAC Section 116.12 (Nonattainment and Prevention of Significant Deterioration Review Definitions) and 30 TAC Section 116.150 (New Major Source or Major Modification in Ozone Nonattainment Area). These provisions require new major sources or major modifications at existing sources in the HGB area comply with the lowest achievable emission rate and obtain emission offsets at the Moderate classification ratio of 1.15 to 1. Therefore, since the provisions in the Texas SIP already include the CAA NNSR requirements for ozone nonattainment areas classified as Moderate, we are approving this portion of the SIP revision.

*C. CAA Requirements for Emission Statements*

CAA section 182(a)(3)(B) calls for the SIP for all ozone nonattainment areas to require that the owner or operator of each stationary source of nitrogen oxides or volatile organic

compounds (ozone precursors) provide the State with an annual statement of emissions along with a certification that this information is accurate to the best knowledge of the individual certifying the statement.

The Texas SIP includes 30 TAC Section 101.10 (Emissions Inventory Requirements). The certification for emission statements is found at 30 TAC Section 101.10(d) (Certifying statement). Therefore, since the Texas SIP already includes the CAA emission statement requirement, we are approving this portion of the SIP revision.

### **III. Final Action**

We are approving a revision to the Texas SIP submitted on December 29, 2016, that describes how CAA requirements for vehicle I/M, NNSR and emission statements for large stationary point sources are met in the HGB area for the 2008 ozone NAAQS. We are also making a ministerial correction to the Code of Federal Regulations (CFR) to accurately reflect that 30 TAC Section 114.50(b)(2) is not part of the Texas SIP.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no 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 revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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 relevant adverse comment 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.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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 CAA; 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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).)

Samuel Coleman was designated the Acting Regional Administrator on April 14, 2017 through the order of succession outlined in Regional Order R6-1110.1, a copy of which is included in the docket for this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 14, 2017.

**Samuel Coleman,**  
*Acting Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart SS – Texas**

2. In §52.2270:

a. In paragraph (c) the table titled “EPA Approved Regulations in the Texas SIP” is amended by revising the entry for Section 114.50.

b. In paragraph (e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding an entry at the end for “Vehicle Inspection and Maintenance, Nonattainment New Source Review and Emission Statement Requirements for the 2008 Ozone NAAQS”.

The amendments reads as follows:

**§52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Section 114.50	Vehicle Emission Inspection Requirements	2/12/2014	10/7/2016, 81 FR 69679	Subsection 114.50(b)(2) is NOT part of the approved SIP.
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(e) \* \* \*

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

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* * * * *				
Vehicle Inspection and Maintenance, Nonattainment New Source Review and Emission Statement Requirements for the 2008 Ozone NAAQS	Houston-Galveston-Brazoria, TX	12/29/2016	<b>[Insert date of publication in the Federal Register],</b> <b>[Insert Federal Register citation]</b>	

[FR Doc. 2017-09474 Filed: 5/12/2017 8:45 am; Publication Date: 5/15/2017]