



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2018-0811; FRL-9994-06-Region 6]

#### Air Plan Approval; Texas; Control of Air Pollution from Motor Vehicles

**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 revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality. The revisions remove rules from the Texas SIP that address vehicle anti-tampering requirements and the Low Income Repair Assistance Program for certain participating counties.

**DATES:** This rule is effective on [INSERT DATE 90 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-2018-0811, at <https://www.regulations.gov> or via email to [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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 Carrie Paige, 214-665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.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 the EPA Region 6 Office, 1201 Elm Street, Suite 500, 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:** Ms. Carrie Paige, EPA Region 6 Office, Infrastructure & Ozone Section, (mail code AR-SI), 1201 Elm Street, Suite 500, Dallas, Texas 75270, 214-665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Paige or Mr. Bill Deese at 214-665-7253.

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

## **I. Background**

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA’s National Ambient Air Quality Standards

(NAAQS). These ambient standards are established under CAA section 109 and they currently address six criteria pollutants: carbon monoxide (CO), nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each state is responsible for developing a SIP which provides for the implementation, maintenance, and enforcement of the NAAQS. The SIP must be submitted to EPA for approval and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

On November 20, 2018, the Texas Commission on Environmental Quality (TCEQ or State) submitted to EPA revisions to the Texas SIP. The submitted revisions address removal of two rules within Title 30 of the Texas Administrative Code (denoted 30 TAC), Chapter 114 (Control of Air Pollution from Motor Vehicles): 1) Subchapter B - Motor Vehicle Anti-Tampering Requirements; and 2) Subchapter C, Division 3, Section 114.86 – Low Income Repair Assistance Program (LIRAP) for Participating Early Action Compact (EAC) Counties.

The criteria used to evaluate these SIP revisions are found primarily in CAA section 110. Section 110(l) of the Act requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing and requires that EPA not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

## **II. EPA's Evaluation of the Revisions**

### *A. Revisions to 30 TAC Section 114, Subchapter B*

In the revision submitted on November 20, 2018, the State removes Subchapter B (Motor Vehicle Anti-Tampering Requirements) from the SIP in its entirety. The section 114 requirements would remain in place in the State regulation. The anti-tampering measures restrict removal or modification of motor vehicle emission control equipment. The first anti-tampering

rules in the Texas SIP were adopted by the State and submitted to EPA in 1985 (see 54 FR 6286, February 9, 1989). Subsequent revisions to the State's anti-tampering rules were submitted to EPA in 1988, 1989, and 1993, and these revisions were disapproved on February 10, 1998 (63 FR 6651). The State submitted revisions to EPA in 1997 that recodified and renumbered the anti-tampering rules in Chapter 114 to new Subchapter B, which EPA approved into the Texas SIP on July 1, 1998 (63 FR 35839).<sup>1</sup> Between 1994 and 2015, the State submitted four other revisions to the anti-tampering rules that EPA did not act on and those revisions have been withdrawn from our consideration at the State's request.<sup>2</sup>

The anti-tampering measures at 30 TAC 114, Subchapter B are not required under the CAA and did not supersede or otherwise modify requirements for pollution control devices on motor vehicles. The CAA addresses tampering prohibition for emission control equipment for motor vehicles and motor vehicle engines at section 203(a)(3) and prohibits tampering with any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with motor vehicle emission standards. 42 U.S.C. 7522(a)(3).<sup>3</sup> In addition, the anti-tampering rules in the Texas SIP were not relied upon as a source of emissions reductions in any State Air Quality Plan and thus, did not contribute toward rate of progress, attainment, or maintenance of the NAAQS in Texas (see 54 FR 6286 and 63 FR 35839). Removal of Subchapter B from the Texas SIP does not cause a loss in emissions reductions because more stringent anti-tampering rules are in place and enforceable at the federal level. 42 U.S.C. 7522(a)(3).

#### *B. Revisions to 30 TAC Chapter 114, Subchapter C, Section 114.86*

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<sup>1</sup> Despite our approval action here, 30 TAC 114 Subchapter B (Motor Vehicle Anti-Tampering Requirements) is not visible in Table (c) "EPA Approved Regulations in the Texas SIP" at 40 CFR 52.2270. We believe this was an accidental omission that wasn't noticed until now.

<sup>2</sup> See our letter to the TCEQ, dated April 10, 2019, in the docket for this rulemaking.

<sup>3</sup> The Interim Tampering Enforcement Policy ("Memo 1A"), dated June 25, 1974, provides guidance on what constitutes a violation of CAA section 203(a)(3). Memo 1A is provided in the docket for this rulemaking and posted at <https://www.epa.gov/enforcement/interim-tampering-enforcement-policy-memo-1a-june-25-1974>.

Vehicle Inspection and Maintenance (I/M) programs are required by the CAA for certain ozone and CO nonattainment areas, depending upon population and nonattainment classification or design value (see 40 CFR 51, subpart S). The I/M programs focus on reducing vehicle emissions, including nitrogen oxides and volatile organic compounds (precursors to ozone formation), through automobile inspections, which lead to repair and maintenance of such vehicles. The LIRAP is a voluntary program designed to enhance the Texas I/M program. Texas counties implementing the Texas I/M program are eligible to opt-in to the LIRAP. The LIRAP provides funds to assist eligible vehicle owners with emissions-related repairs, retrofits, or the option to retire the vehicle.<sup>4</sup> Vehicle owners in participating counties whose automobiles have failed a recent emissions test and who meet the low-income criteria may be eligible to receive LIRAP funds. The LIRAP also provides funds for local projects targeted at improving air quality in the counties implementing the LIRAP. The Federal I/M rules do not require States to implement a LIRAP type program. The LIRAP rules are found at 30 TAC 114 Subchapter C, Division 2 and are not part of the Texas SIP. It was not necessary to include this program in the Texas SIP because it is not required by the I/M rules and the State did not rely on reductions from the program in any of its air quality programs.

In 2004, Texas adopted rules in Chapter 114, Subchapter C, Division 3 for an I/M program that applies only in Early Action Compact (EAC) areas. Section 114.86 provides local officials in EAC areas the opportunity to opt into an EAC I/M LIRAP.<sup>5</sup> The EAC I/M program is distinct from the State's SIP-approved I/M program in Chapter 114, Subchapter C, Division 1, applicable

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<sup>4</sup> The LIRAP is funded through an additional remittance paid at the time of annual vehicle registration as part of the vehicle emissions inspection fee by vehicle owners in counties participating in the LIRAP.

<sup>5</sup> The EAC program was developed to allow communities an opportunity to reduce concentrations of ground level ozone sooner than required by the CAA. The program was designed for areas that approached or monitored exceedances of the 1997 8-hour ozone standard and were in attainment for the 1979 1-hour ozone standard. For more information on the EAC, please visit <https://archive.epa.gov/airquality/eac/web/html/basic.html>.

to nonattainment areas (*see* 70 FR 45542, August 8, 2005). Two Texas counties - Travis and Williamson – adopted the EAC I/M program (70 FR 45542).

There were no emission reduction credits requested or approved, however, for implementation of EAC I/M LIRAP for Travis and Williamson counties (*see* 70 FR 48640, August 19, 2005). In addition, the EAC I/M LIRAP is not a CAA requirement and was not relied upon in the SIP to demonstrate reasonable further progress, attainment, or maintenance. The State is simply removing the EAC I/M LIRAP from the SIP to be consistent with the LIRAP rules for nonattainment areas at 30 TAC 114 Subchapter C, Division 2, which, as discussed previously, are not in the Texas SIP.

The EAC I/M LIRAP rules in 30 TAC 114.86 were adopted as a voluntary enhancement to the EAC I/M program. Participation in the LIRAP, however, is at the discretion of each eligible county. Under the rules currently approved in the SIP, Travis and/or Williamson Counties may choose to participate in the EAC I/M LIRAP in any given year at the counties' discretion. Due to this uncertainty, the EAC I/M LIRAP was adopted into the SIP as a voluntary measure and with no quantified or relied upon emissions reductions. As a result, removal of these provisions from the SIP to be consistent with the I/M provisions in nonattainment counties is reasonable and will not contribute to nonattainment or interfere with maintenance.

### **III. Final Action**

Pursuant to the CAA, the EPA is approving revisions to the Texas SIP submitted by the TCEQ on November 20, 2018. The revisions remove 30 TAC 114, Subchapter B (the Motor Vehicle Anti-tampering Requirements) in its entirety; and the LIRAP for Participating EAC Counties at 30 TAC 114, Section 114.86 from the SIP. These rules both currently remain in place at the State level.

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 90 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. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP,

have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

## **V. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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).)

David Gray was designated the Acting Regional Administrator on May 28, 2019 through the order of succession outlined in Regional Order R6-1110.13, 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, Ozone, Volatile organic compounds.

Dated: May 28, 2019.

**David Gray,**  
*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**

**§ 52.2270 [Amended]**

2. In §52.2270 the table in paragraph (c) entitled “EPA Approved Regulations in the Texas SIP” is amended by removing the entry for “Section 114.86” under Chapter 114 (Reg 4) – Control of Air Pollution from Motor Vehicles.

[FR Doc. 2019-11760 Filed: 6/5/2019 8:45 am; Publication Date: 6/6/2019]