

particular applicability; rules relating to agency management of personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 31, 1998. 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, Particulate matter, Incorporation by reference, Intergovernmental relations.

Dated: June 11, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations 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 *35 et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(123) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(123) On July 9, 1997, Indiana submitted a site specific SIP revision request for the University of Notre Dame in Saint Joseph County, Indiana. The submitted revision amends 326 IAC 6-1-18, and provides for revised particulate matter and heat input limitations on the five boilers at Notre Dame's power plant.

(i) *Incorporation by reference.* Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6:

Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 18: St. Joseph County. Added at 20 In. Reg. 2299. Effective May 22, 1997.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX98-1-7386; FRL-6117-3]

Approval and Promulgation of Air Quality State Implementation Plans, Texas; Recodification of, and Revisions to the State Implementation Plan; Chapter 114

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving in this action the recodification of and revision to the Texas State Implementation Plan (SIP) for Chapter 114, "Control of Air Pollution from Motor Vehicles." This revision was submitted by the Governor on November 20, 1997, to reformat and renumber existing state Chapter 114 sections into seven new subchapters (A through G) without substantial technical changes and to remove original paragraph 114.1(e), concerning leaded gasoline dispensing labeling requirements.

DATES: This action is effective on August 31, 1998 without further notice unless the agency receives relevant adverse comments by July 31, 1998. If adverse comment is received, EPA 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: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Copies of the documents about this action are available for public inspection during normal business hours at the above and following location. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.
Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711-3087.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7354 or via e-mail at scoggins.paul@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region 6 address.

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 1997, the Governor of Texas formally submitted a recodification of, and revisions to, the Texas SIP for Regulation IV, 30 TAC Chapter 114, "Control of Air Pollution from Mobile Vehicles." These changes were submitted to reformat and renumber existing state Chapter 114 sections into seven new subchapters (A through G) without substantial technical changes and to remove original paragraph 114.1(e), concerning leaded gasoline dispensing labeling requirements.

II. Texas Chapter 114 Format Revisions

Chapter 114 includes the rules and regulations providing for the protection of environment from mobile vehicles which were divided into sections. The resulting new format divides the existing sections into subchapters (A through G) and renumbers the original sections within the new subchapters. The following Chapter 114 subchapters and sections have been adopted by the commission.

SUBCHAPTER A: DEFINITIONS

- 114.1 Definitions.
- 114.2 Inspection and Maintenance (I/M) Definitions.
- 114.3 Low Emission Fleet Vehicle Definitions.
- 114.4 Vehicle Retirement and Mobile Emission Reduction Credit Definitions.
- 114.5 Transportation Planning Definitions.

SUBCHAPTER B: MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

- 114.20 Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.
- 114.21 Exclusions and Exemptions.

SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE

- 114.50 Vehicle Emissions Inspection Requirements.
- 114.51 Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.
- 114.52 Waivers and Extensions for Inspection Requirements.
- 114.53 Inspection and Maintenance Fees.

SUBCHAPTER D: OXYGEN REQUIREMENTS FOR GASOLINE

- 114.110 Oxygenated Fuels.

SUBCHAPTER E: LOW EMISSION FLEET VEHICLE REQUIREMENTS

- 114.150 Requirements for Mass Transit Authorities.
- 114.151 Requirements for Local Governments and Private Persons.
- 114.152 Use of Certain Vehicles for Compliance.
- 114.153 Exceptions.
- 114.154 Exceptions for Certain Mass Transit Authorities.
- 114.155 Reporting.
- 114.156 Recordkeeping.
- 114.157 Program Compliance Credits.

SUBCHAPTER F: VEHICLE RETIREMENT AND MOBILE EMISSION REDUCTION CREDITS; VEHICLE RETIREMENT

- 114.200 Accelerated Vehicle Retirement Program.

Mobile Emission Credits

- 114.201 Mobile Emission Reduction Credit Program.
- 114.202 The Texas Mobile Emission Reduction Credit Fund.

SUBCHAPTER G: TRANSPORTATION PLANNING

- 114.250 Memorandum of Understanding with the Texas Department of Transportation.
- 114.260 Transportation Conformity.
- 114.270 Transportation Control Measures.

The following original sections were repealed by the commission.

- 114.1 Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.
- 114.3 Vehicle Emissions Inspection Requirements.
- 114.4 Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.
- 114.5 Exclusions and Exemptions.
- 114.6 Waivers and Extensions for Inspection Requirements.
- 114.7 Inspection and Maintenance Fees.
- 114.13 Oxygenated Fuels.
- 114.23 Transportation Control Measures.
- 114.25 Memorandum of Understanding with the Texas Department of Transportation.
- 114.27 Transportation Conformity.
- 114.29 Accelerated Vehicle Retirement Program.
- 114.30 Definitions.
- 114.31 Requirements for Mass Transit Authorities.
- 114.32 Requirements for Local Governments and Private Persons.
- 114.33 Use of Certain Vehicles for Compliance.
- 114.34 Exceptions.
- 114.35 Exceptions for Certain Mass Transit Authorities.
- 114.36 Reporting.
- 114.37 Recordkeeping.
- 114.38 Program Compliance Credits.
- 114.39 Mobile Emission Reduction Credit Program.
- 114.40 The Texas Mobile Emission Reduction Credit Fund.

III. Analysis of State Submittal

Subchapter A, Sections 114.1–114.5, which cover mobile source program definitions, contain the definitions for the entire chapter. New Section 114.1 definitions were taken from original Section 114.30, “Definitions” of the Texas Clean Fuel Fleet program and from original Section 114.3(a) “Definitions” of the Vehicle Emissions Inspection Requirements. New Section 114.2 definitions were taken from original Section 114.3 of remaining definitions numbered (1)–(5), (8)–(13), (15), (16) and the commission added a new definition, “Two-speed idle I/M test.” New Section 114.3 definitions were taken from original Section 114.30 of remaining definitions with a Section name change from “Clean Fuel Fleet Vehicle” program definitions to “Low Emission Fleet Vehicle Definitions.” New Section 114.4 definitions were taken from original Section 114.29 and new Section 114.5 definitions were taken from original Section 114.23.

Subchapter B, Sections 114.20 and 114.21 contain the requirements for the vehicle antitampering program. New Section 114.20 was created from original Section 114.1, and new Section 114.21 was created from original Section 114.5. Original Section 114.1(e) containing the leaded gasoline dispensing labeling requirement, was removed from new Section 114.20. The reference to paragraph (f) in original Section 114.5(a)(2) was removed from new Section 114.21(a)(2).

Subchapter C, Sections 114.50–114.53, contain the requirements for the vehicle inspection and maintenance program. New Sections 114.50, 114.51, 114.52, and 114.53 were created from original Sections 114.3, 114.4, 114.6, and 114.7 respectively.

Subchapter D, Section 114.100 contains the requirements for the oxygenated fuels program and was created from original section 114.13.

Subchapter E, Sections 114.150–114.157, contain the requirements for the low emission fleet vehicle program. New Sections 114.150, 114.151, 114.152, 114.153, 114.154, 114.155, 114.156, and 114.157 were created from original Sections 114.31, 114.32, 114.33, 114.34, 114.35, 114.36, 114.37, and 114.38, respectively.

Subchapter F, Sections 114.200–114.202, contain the requirements for the vehicle retirement and mobile emission reduction credits program. New Sections 114.200, 114.201, and 114.202 were created from original Sections 114.29, 114.39, and 114.40, respectively.

Subchapter G, Sections 114.250, 114.260, and 114.270, contain the requirements for the transportation planning program. New Section 114.250 was created from original Section 114.25. New Section 114.260 was created from original section 114.27. The last sentence of paragraph 114.260(b) was changed from “Affected nonattainment or maintenance areas include El Paso, Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and Victoria.” to “The affected nonattainment and maintenance areas are listed in section 101.1 of the title (relating to Definitions).” In new Section 114.260, paragraph (d)(2)(A)(x), the word “pursuant” was changed to “under.” Section 114.270 was created from the original Section 114.23 and the following was added to paragraph (b), to the end of subsection (1); “* * * as defined in Section 101.1 of this title (relating to Definitions) and to the end of subsections (2), (3), and (4), “* * * as defined in Section 101.1 of this title.”

In addition, the following administrative change has been made to all rules and regulations in which they appear:

1. “TNRCC” to “commission”.

IV. Final Action

The EPA is approving the recodification of and revision to the Texas SIP for Regulation IV, 30 TAC Chapter 114. Except as noted in the following paragraph, this action reflects a recodification, not actual approval of underlying requirements. The original Section numbers have been renumbered and reformatted into specific subchapters without changes to the underlying requirements or contents, except where noted in the following paragraph. Previous approval or disapproval of Chapter 114 Sections and contents remain unchanged.

In addition, a new definition—“Two-speed idle I/M test”—and the removal of original paragraph 114.1(e), leaded gasoline dispensing labeling requirements, are approved. Minor editorial changes as noted above in the part III, Analysis of State Submittal, are also approved.

The EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is proposing to approve the SIP revision should relevant adverse comments be filed. This rule will be effective on August 31, 1998 without further notice unless the Agency receives adverse comments by July 31, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule and inform the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 31, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order (E.O.) 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review. In addition, this regulatory action is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The EPA's approval of the State request under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State

action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804 (2).

E. Petitions for Judicial Review

Under section 307(b) (1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 31, 1998. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 9, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(111) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(111) Recodified and revised Regulation IV, 30 TAC Chapter 114 "Control of Air Pollution From Motor Vehicles" regulations of Texas submitted by the Governor on November 20, 1997, to reformat original Chapter 114 sections into seven new subchapters (A through G) and to remove original section 114.1(e), concerning leaded gasoline dispensing labeling requirements.

(i) Incorporation by reference.

(A) Commission Order 97-0713-RUL, adopted by the commission on November 5, 1997.

(B) SIP narrative entitled "Revisions to 30 TAC Chapter 114 and to the State Implementation Plan (Reformatting of the Chapter)" adopted by the commission on November 5, 1997, addressing: adoption of new Sections 114.1-114.5, 114.20, 114.21, 114.50-114.53, 114.100, 114.150-114.157, 114.200-114.202, 114.250, 114.260, 114.270, and repeal of original sections 114.1, 114.3-114.7, 114.13, 114.23, 114.25, 114.27, 114.29-114.40.

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