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

Name of SIP provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comment
* *	*	*	*	* *
Memorandum of Agreement between TNRCC and Houston Airport System.	Houston/Galveston Area Ozone Nonattainment Area.	10/18/2000	[Insert 11/14/2001 Federal Register Cite.]	HGA, Texas 1-hour ozone standard attainment demonstrations.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–133–1–7493; FRL–7092–8]

Approval and Promulgation of Implementation Plans; Texas; Lawn Service Equipment Operating Restrictions; and Requirements for Motor Vehicle Idling for the Houston/Galveston (HG) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan. This approval covers two separate actions. We are approving: a rule that implements an operating-use restriction program requiring that the handheld and non-handheld spark-ignition engines, rated at 25 hp and below, be restricted from use by commercial operators between the hours of 6 a.m. and noon, April 1 through October 31, in the counties Brazoria, Fort Bend, Galveston, Harris, and Montgomery; and, a rule to implement idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles in the HG area counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The EPA is approving these revisions to the Texas SIP to regulate emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) in accordance with the requirements of the Federal Clean Air Act (the Act). These new rules will contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone standard in the HG ozone nonattainment area. For details on the SIP submittals and the EPA analysis of the submittals, refer to the June 11, 2001 proposed rule, and the associated Technical Support Document (TSD).

DATES: This final rule is effective on December 14, 2001.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; and, the Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

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SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA.

What Action Are We Taking Today?

On December 20, 2000, the Governor of Texas submitted to EPA these two rule revisions (an operating-use restriction program for handheld and non-handheld spark-ignition engines, rated at 25 hp and below, used by commercial operators; and, idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles) to the 30 TAC, Chapter 114, ''Control of Air Pollution From Motor Vehicles,'' as a revision to the SIP.

These new rules will contribute to attainment of the ozone standard in the HG area. The EPA is approving these revisions to the Texas SIP to regulate emissions of NO_X and VOCs in accordance with the requirements of the Federal Clean Air Act (the Act). For more information on the SIP revision, please refer to our TSD and the State's December 20, 2000 SIP revision.

What Are the Clean Air Act Requirements?

Section 172 of the Act provides the general requirements for nonattainment plans. Section 172(c)(6) and section 110 require SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Today's SIP revision involves approval of one of a collection of controls adopted by the State to achieve the ozone standard in the HG nonattainment area as required under section 172. EPA approval of this SIP revision is governed by section 110 of the Act.

Why Is EPA Taking This Action?

We are taking this action because the State submitted an adequate demonstration to show the necessity for these requirements to achieve the NAAQS in the HG ozone nonattainment area.

What Are the Requirements of the December 20, 2000, Texas SIP Revision for the Operation of Lawn Service Equipment That We Are Approving Today?

The purpose of this rule is to implement an operating-use restriction program requiring that the handheld and non-handheld spark-ignition engines, rated at 25 hp and below, be restricted from use by commercial operators between the hours of 6:00 a.m. and noon, April 1 through October 31. Spark-ignition lawn and garden service handheld equipment includes, but is not limited to, trimmers, edgers, chain saws, leaf blowers/vacuums, and shredders. Spark-ignition lawn and garden service non-handheld lawn and garden equipment covered by the rules includes such devices as walk-behind lawnmowers, lawn tractors, tillers, and small generators. The engines are both two cycle and four cycle engines, generally unable to use automotive technology, such as closed-loop engine control and three-way catalysts, to reduce emissions.

As a result of this restriction, production of ozone precursors will be stalled until later in the day when optimum ozone formation conditions no longer exist, ultimately reducing the peak level of ozone produced. It is estimated that this measure will achieve a minimum of 0.23 tons per day (tpd)

delay of NO_X until after noon. There will also be a 12.4 tpd delay in VOC emissions until after noon. Because the emission of NO_X and VOC, both precursors to the formation of ozone, will be delayed until after noon, this delay will lead to a reduction in ozone that is equivalent to that which would result from approximately 4.6 tpd of NO_X reduction.

The Texas regulation allows operators to submit an alternate emissions reduction plan by May 31, 2003. The alternate plan would allow operation during the restricted hours, provided the plan achieves reductions of NO_X and VOCs that would result in ozone benefits equivalent to the underlying regulation.

The regulation exempts from the restriction use at a domestic residence by the owner of, or a resident at, that domestic residence, use by a non-commercial operator, or any equipment used exclusively for emergency operations to protect human health and safety or the environment, including equipment being used in the repair of facilities, devices, systems, or infrastructure that have failed, or are in danger of failing, in order to prevent immediate harm to public health, safety, or the environment.

The affected area includes the following counties within the HG nonattainment area: Brazoria, Fort Bend, Galveston, Harris, and Montgomery. The restrictions applicable to this Texas regulation will take effect April 1, 2005.

What Are the Requirements of the December 20, 2000, Texas SIP Revision for Restricting Motor Vehicle Idling?

The purpose of this rule is to establish idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles in the HG area. The rule defines heavy-duty motor vehicles as those motor vehicles that have a gross vehicle weight rating (GVWR) of greater than 14,000 pounds. To comply with the motor vehicle idling regulations, no person in the affected counties may cause, suffer, allow, or permit the primary propulsion engine of a heavy-duty motor vehicle to idle for more than five consecutive minutes when the vehicle is not in motion during the time period April 1 through October 31.

These idling limits will lower NO_X emissions and other pollutants from fuel combustion. Because NO_X is a precursor to ground-level ozone formation, reduced emissions of NO_X will result in ground-level ozone reductions. It is estimated that this measure will achieve a minimum of 0.48 tpd of NO_X equivalent reductions.

The Texas regulation allows the following exemptions: covered vehicles that are forced to remain motionless because of traffic conditions over which the operator has no control; vehicles being used as an emergency or law enforcement motor vehicle; when the engine of a covered motor vehicle is being operated for maintenance or diagnostic purposes; when the engine of a covered motor vehicle is being operated solely to defrost a windshield; when the covered vehicle is being operated to provide a power source necessary for mechanical operation other than propulsion, passenger compartment heating, or air conditioning; where the primary propulsion engine of a covered vehicle is being operated to supply heat or air conditioning necessary for passenger comfort/safety in those vehicles intended for commercial passenger transportation or school buses, in which case idling up to a maximum of 30 minutes is allowed; where the primary propulsion engine of a covered vehicle is being used for transit operations, in which case idling up to a maximum of 30 minutes is allowed; and where the primary propulsion engine of a vehicle is being used in airport ground support equipment. The exemption for ground service equipment is intended to cover all equipment that is used to service aircraft during passenger and/or cargo loading and unloading, maintenance, and other ground-based operations.

The affected area includes the following counties within the HG nonattainment area: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The restrictions applicable to this Texas regulation took effect April 1, 2001. This control strategy is a necessary measure to consider for contributing to a successful attainment demonstration with the NAAQS for ozone.

The TNRCC has proposed revisions to the idling restriction rule. The changes clarify that the operator of a rented or leased vehicle is responsible for compliance with the requirements in situations where the operator of a leased or rented vehicle is not employed by the owner of the vehicle. Our preliminary review indicates that the changes do not weaken the rule, but merely clarify enforcement provisions. Should a SIP revision be submitted incorporating these changes, the EPA may publish a revision to this rule.

What Comments Did EPA Receive in Response to the June 11, 2001, Proposed Approval of These Rules?

A. Comments Received in Response to the Lawn Service Operating Restrictions Rule

Five sets of comments were received on this portion of the June 11, 2001 (66 FR 31197), proposed approval. Comments were received from the Engine Manufacturer's Association (EMA), the Toro Company (Toro), the Business Coalition for Clean Air (BCCA), the Outdoor Power Equipment Institute (OPEI), and Jeri Yenne on behalf of Brazoria, Fort Bend and Montgomery counties in Texas (Counties). Each of these comments were in opposition to the operating-use restriction.

Comment 1: EMA, BCCA, OPEI and Toro each comment that the operating-use restriction is a requirement relating to the control of emissions from non-road engines and thus preempted under section 209(e) of the Clean Air Act. These commenters point to a recent holding from the U.S. District Court for the Western District which overturned a State use-restriction on heavy-duty engines *(Engine Manufacturers Association* v. *Huston,* No. 316–SS (June 13, 2001)).

Response 1: We disagree that the regulation is preempted under Section 209(e) of the Act. Section 209(e) addresses state regulation of nonroad equipment. Section 209(e)(1) prohibits states from promulgating standards relating to the control of emissions from new construction and farm equipment which are smaller than 175 horsepower and new locomotives. Section 209(e)(2) does not expressly prohibit state regulation, but instead provides in section 209(e)(2)(A) that EPA shall authorize California to adopt and enforce standards and other requirements relating to the control of emissions for any nonroad engines other than those preempted under section 209(e)(1). The criteria for providing such an authorization are similar to those in section 209(b). Section 209(e)(2)(B) allows any state other than California to adopt and enforce emissions standards for nonroad equipment, and to take such others actions as are referred to in section 209(e)(2)(A), if such standards, implementation, and enforcement are identical to California's standards and two years of lead time is provided. Neither California nor other states are authorized to adopt or enforce emissions standards or other requirements for the farm, construction, and locomotive categories of non-road

equipment specified in 209(e)(1). See, *Engine Manufacturers Ass'n* v. *EPA,* 88 F. 3d 1075 (D.C. Cir. 1996) (*EMA*).

EPA is expressly required to issue regulations to implement section 209(e).

An emission standard under section 209(a) and (e) is a quantitative limit on emissions of a pollutant from an engine, vehicle or piece of equipment. The means for achieving such control are typically through modifying or changing the engine or equipment itself, as compared to controlling or regulating how the equipment is operated in-use. This is the central distinction between emissions standards, which are prohibited under section 209(e), and state limitations on in-use operation, which are allowed under section 209(d).

Pursuant to its express authority, EPA promulgated regulations implementing section 209(e) on December 30, 1997 (62 FR 67733). See 40 CFR part 85 subpart Q and 40 CFR part 89, appendix A to subpart A. This rule revised earlier regulations promulgated on July 20, 1994 (59 FR 36969) and on June 17, 1994 (59 FR 31306). EPA's regulations include an interpretive rule stating, in part, that ''EPA believes that states are not precluded under section 209 from regulating the use and operation of nonroad engines, such as regulations on hours of use, daily mass emission limits or sulfur limits on fuel.'' The regulations promulgated on December 30, 1997 were not challenged and are binding Federal law. The initial regulations were challenged in the Court of Appeals for the District of Columbia Circuit. *Engine Manufacturers Ass'n* v. *EPA,* 88 F. 3d 1075 (D.C. Cir. 1996) (*EMA*). The basic issue before the court was the scope of preemption under section 209(e). While all parties agreed that Congress implicitly intended to preempt state action under section 209(e)(2), the scope of this preemption was in dispute. The court held that preemption under section 209(e)(2) extended to both new and non-new nonroad equipment. The court then went on to address ''what sorts of regulations the states are preempted from adopting.'' *See, EMA,* 88 F. 3d at 1093. The court agreed with EPA that ''standards'' prohibited under 209(e) were quantitative limits on emissions as discussed in *Motor & Equipment Manufacturers Ass'n, Inc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (MEMA), cert. denied, 446 U.S. 952 (1980). It also agreed that EPA's interpretation of ''other requirements'' under section 209(e) was reasonable, limiting them to ''ancillary enforcement mechanisms such as certificates and inspections.'' Again, see *EMA,* 88 F. 3d at 1093. Finally, the Court agreed with EPA that states had the rights to impose the kind of use, operation or movement restrictions on nonroad equipment authorized under section 209(d).

We believe Congress explicitly excluded such use restrictions from the preemption of section 209 because, among other things, Congress believed states were best situated to regulate such use. ''It may be that, in some areas, certain conditions at certain times will require control of movement of vehicles. Other areas may require alternative methods of transportation * * * These are areas in which the States and local government can be most effective.'' S. Rep. No. 403, 90th Cong., 1st Sess. 34 (1967). Similar congressional intent was expressed when the nonroad provisions were adopted in 1990. *See EMA,* 88 F. 3d at 1094 n.58.

The EPA regulations on this issue are binding rules and have been upheld by the Court of Appeals for District of Columbia. We believe that the decision of the District Court in *EMA* v. *Huston,* in which EPA was not a party, was incorrect both in its failure to defer to the reasoned opinion of both EPA and the D.C. Court of Appeals and in its failure to dismiss the challenge to the Dallas use restriction as an inappropriate collateral attack on regulations that had already been upheld in an earlier appellate court case.

The hours-of-use restriction enacted by the state are exactly the type of restrictions on use permitted under section 209(d) and EPA regulations.

Comment 2: Toro and the Counties commented that the use restriction does not meet the enforceability requirements of section 110(a)(2)(C). They point out that no additional manpower is provided for in the submittal to EPA and assert that there are no provisions regarding the consequences for failure to comply with the restrictions.

Response 2: The submittal containing these measures included evidence of legal authority to enforce them. Section 382.039 of the Texas Health and Safety Code provides authority for the State to promulgate and implement regulations to demonstrate attainment. This authority to implement necessarily includes the authority to enforce.

The State has addressed in the SIP documents that they will enforce the requirements after the rule compliance date and take appropriate action for noncompliance situations. They have indicated that the rules will be enforced by both their staff in the commission's regional offices, as well as local air pollution control programs. In Texas, local governments have the same power and are subject to the same restrictions as the commission under TCAA, § 382.015, Power to Enter Property, to inspect the air and to enter public or private property in its territorial jurisdiction to determine if the level of air contaminants in an area in its territorial jurisdiction meet levels set by the commission. Thus, the local governments which also may sign cooperative agreements with the commission to enforce the rules under TCAA, § 382.115, Cooperative Agreements, have the authority to enforce these rules as well. The authority of local governments to enforce air pollution requirements is specified in detail in TCAA, §§ 382.111–382.115, and local governments can institute civil actions in the same manner as the TNRCC pursuant to Texas Water Code (TWC), § 7.351. The TNRCC states they will work with local officials to ensure enforcement of the SIP and SIP rules. The TNRCC has existing relationships with pollution control authorities in the City of Houston, Harris County, and Galveston County for enforcement of other commission rules. The agency details that they will continue enforcement relationships with these entities and develop relationships with other local officials as needed to create any additional enforcement mechanisms required for carrying out the SIP and related SIP rules. The TNRCC states they will enforce this rule with existing personnel and does not anticipate any increase in enforcement costs. The State indicates there would be no civil penalties issued to a commercial operator, however, fines may be assessed via an administrative penalty, with the monies being collected and retained by the state.

40 CFR part 51, Appendix V, details the criteria for determining completeness of plan submissions. With respect to enforceability requirements, the State has met the applicable criteria listed in Section 2.0 of Appendix V, including: adoption in State code; evidence of legal authority; submitting copies of the regulation; evidence that the proper state procedural requirements were followed; giving public notice consistent with EPA procedures; certification of the public hearings; and, compilation of public comments and the State's responses thereto.

If the State is unable to enforce the program adequately, we would be in a position to issue a ''SIP call'' and require additional efforts or additional emission control measures to make up for the reductions lost by a failure to enforce the approved program.

Comment 3: The Counties, Toro and BCCA all express concern that the use

restriction increases the danger of heat related injuries. They assert that because operators currently work from 7:00 a.m until noon and then stop until later in the afternoon, the restriction will cause workers to be out during the mid-day hours, typically the hottest part of the day. Further, Toro asserts that citizens would be inconvenienced by changes in maintenance schedules at parks and golf courses.

Response 3: We do not necessarily agree that all workers will have to be exposed to the early afternoon heat because of the morning restrictions. True, the restrictions apply during the hottest time of the year. However, this is also the time of the year when there is more daylight. If the owner/operator does not opt for alternatives to the morning operating restrictions (discussed later in this response), instead of working during the mid-afternoon, the work can be later in the evening, when temperatures have begun to moderate and there is more shade and less direct sunlight. Another alternative is to take measures to mitigate the affects of the heat. According to OSHA there are various methods of preventing heat stroke and other adverse health effects without eliminating work during hot hours of the day. Supervisors can schedule frequent breaks and provide adequate amounts of water. Operators of lawn equipment would be expected to take all necessary measures to protect their health and safety and educate themselves about potential risks as it is presumed they do currently.

While there are ways to work around the restrictions or mitigate the potential adverse impacts, the same may not be said of the known adverse health impacts of elevated ozone levels. These impacts are not limited to those in the field of commercial landscaping, but apply across the board to everyone. These health affects are even more pronounced in those particularly unable to avail themselves of potential mitigating measures, the elderly and very young. Likewise, the inconvenience for those wishing to play golf on a freshly manicured course or not be subject to the noise of the equipment while a park is being mowed is extremely trivial when compared to the benefits of reduced ground level ozone. As a result, we do not feel that these concerns justify disapproval of the submittal. The rule does not ban lawn maintenance activities altogether, but simply shifts the time period during which activities with certain types of equipment may be conducted.

Finally, the regulations offer alternatives to the restriction of operation during the morning hours. The owner/operator of commercial landscape equipment may opt to submit a plan which provides for reductions of VOC and NO_X equivalent to those that would result from compliance with the restrictions. Such plans are to be submitted by May 31, 2003, and the State commits to take action on the plans by May 31, 2004. To support the alternative compliance methods, the TNRCC has developed guidance to assist commercial operators in developing a plan to achieve equivalent emission reductions of NO_X and VOC. Commercial operators would be able to submit a plan that uses these pre-approved actions or changes instead of developing a plan that would require case-specific approval by the executive director and the EPA. Reliance on the pre-approved measures will simplify the plan submittal process for commercial operators and will assist the executive director in the review and approval of each submittal. Commercial operators retain the option of developing their own plan which will be subject to executive director and EPA approval.

The State considered the difficulties this rule may impose on businesses and individuals, and thus is adopting it with an extended compliance schedule so that lawn and maintenance businesses may supplement their equipment with electric or manual powered units, re-arrange their working schedules, or develop an emissions control plan. It should be noted that the compliance schedule fits well with the indicated equipment replacement cycle of 2 to 4 years common in the industry. This schedule facilitates the transition to cleaner, electric, or manual equipment.

Comment 4: Toro, OPEI, the Counties and BCCA commented that this regulation will have a significant economic impact on the landscape service industry and that this economic impact exceeds the actual benefits derived from the restrictions.

Response 4: Actions such as the approval of a SIP revision which merely approve state law as meeting federal requirements and impose no additional requirements beyond those imposed by state law are not subject to economic impact analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Such consideration is up to the state under applicable state administrative procedure laws. Details on the State's assessments of financial impact can be found in the submitted SIP documents.

Comment 5: The Counties questioned how the individual enforcing the restriction will distinguish commercial from non commercial operators of the equipment. The Counties also stated that a ''kind gesture before noon would result in violation of the restriction'', and cited the following circumstances as causing a violation: The teenager who mows his neighbor's lawn; the church member who mows the church lawn or church property; the kind neighbor who trims his neighbor's trees, and the neighbor who tills the flower bed or garden spot for the someone next door.

Response 5: For this rule, a Commercial operator is defined as any person who receives payment or compensation in exchange for operating lawn and garden service equipment powered by spark-ignition engines of 25 hp or below where the payment or compensation is required to be reported as income by the United States Internal Revenue Code. Generally speaking, this is any person who earns more than $400 a year using the aforementioned equipment. The persons cited by the commenters as examples of those who would be violating the regulation do not fall under the category of a commercial operator, and as such would not be in violation of this rule.

The field methods to distinguish commercial from non commercial operators is the responsibility of the State and can be accomplished in a number of ways. The time period between now and the date of April 1, 2005, when the restrictions become effective, provides sufficient time for formulation of State procedures/requirements for such determination.

Comment 6: BCCA indicated that the commitment to implement innovative measures should be used in lieu of the restriction on hours of operation. BCCA contends that the ban could be eliminated and alternative measures could be pursued before or during the mid-course review to account for the NO_X reductions that the TNRCC currently allocates to the ban.

Response 6: We agree that the possibility exists that innovative measures may come about that would exceed the amounts needed to fill the gap. However, we do not agree that the State should withdraw reasonably available measures with the hope that sufficient reductions to offset these regulations will come to fruition. Lawn and garden equipment makes a significant contribution to the HG area ozone levels. This rule is significant in the HG area's plan to close the gap and demonstrate attainment. In addition, section 172(c)(1) of the Clean Air Act requires the SIP to provide for implementation of all reasonably available control measures (RACM) as expeditiously as practicable and for attainment of the NAAQS. This measure is reasonable, available, and will accelerate the attainment of the ozone

standard. Therefore, the restriction on hours of operation of commercial lawn equipment is required to remain a part of the attainment demonstration SIP.

Comment 7: Toro and the Counties questioned the validity of the modeling used to determine the benefits associated with the restriction on hours of operation. Toro believes that the emissions predicted by the State are purely speculative. OPEI commented that the emissions benefits in the submittal were greatly exaggerated and submitted a technical analysis from a technical consultant in support of their position. Further, OPEI commented that the baseline emissions inventory upon which the calculations were based was incorrect.

Response 7: In developing the SIP and related regulations the TNRCC worked extensively with the lawn and garden industry, consultants, and other affected industries in the HG area, in the development of emissions and equipment inventories reflecting accurate and HG area specific data. The latest version of the photochemical model recognized by the EPA for SIP modeling (the Comprehensive Air Model with Extensions (CAM_X)) was used for the modeling. The latest emissions inventories available, those provided with EPA's ''Non-Road Equipment and Vehicle Emission Study'' (NEVES, EPA–21A–2001, November 1991), were used by the State in developing the Lawn and Garden Equipment Operating Restriction rule. The TNRCC adjusted this inventory data for temporal factors on the basis of a local study performed in 1990 for the Houston Galveston area. For lawn and garden equipment this represents the best information available at the time. This inventory was then built up to the attainment year of 2007 by using urban planning data from the Houston/Galveston Area Council (HGAC—the area's urban planing organization), and the latest population database (1999) obtained from the State of Texas Comptroller of Public Accounts and the Texas State Data Center.

The draft EPA model known as the NONROAD model was not used for calculations of emissions, however limited use was made of the NONROAD model to develop the attainment-year inventory. Because NONROAD accounts for the several phases of federal requirements for small engines, TNRCC ran NONROAD for the base and attainment years, assuming zero growth in equipment population. The resulting emissions were then ratioed to provide reduction factors for each source category resulting from federal controls. Thus, the modeling performed by the State does include the Federal Phase II emission standards for small handheld and non-handheld engines recently adopted.

The use of urban planning projections from HGAC, the latest human population numbers as the basis for growth to the attainment year of 2007, and the inclusion of up to date engine emissions data, provides competent accuracy of emissions growth and the industries' contribution to ozone production.

The State simulated the shifting of commercial operators emissions to the afternoon while keeping the residential operators emissions in the morning hours to ensure proper accounting of the shift effect in the photochemical modeling. Commercial use profiles show full use occurring in the morning and afternoon hours, tapering off in the evening. However, residential use indicates a two peak profile with cutting peaks in the morning and the evening, with slow times occurring during mid-day. Because of these profiles, the modeled shift was more sensitive to commercial operators shifting of hours of operation, and an approximate 50% shift in emissions resulted.

Numerous emission control strategies were considered by the State in developing the modeling. Varying degrees of reductions from point sources, on-road and non-road mobile sources, and area sources were analyzed in multiple iterations of modeling, to test the effectiveness of different NO_X reductions. The attainment demonstration modeling and other analysis show that a significant amount of NO_X reductions is necessary from ozone control strategies in order for the HG nonattainment area to achieve the ozone NAAQS by 2007, including reductions from surrounding counties included in the HG consolidated metropolitan statistical area (CMSA). The State used state-of-the-art photochemical methodologies to develop this rule. However, the TNRCC and EPA continually seek to improve inventories and modeling, and while it may be true that there may be several methods of analysis and that better emissions inventories may yet be developed, it is also known that substantial reductions are necessary in the HG area. The reductions provided by this rule are significant and important in helping the HG area to attain by 2007. The State will be performing a mid-course review in May, 2004. At that time modifications to the SIP can be made, if applicable.

Comment 8: Toro commented that Texas should implement a voluntary emission reduction credit program in lieu of the operating restrictions. They point to the Texas Emission Reduction Program established by Texas Senate Bill 5.

Response 8: The ''Carl Moyer'' style program referred to by Toro was specifically authorized by Texas' 77th legislature. Senate Bill 5 not only provides statutory authority for emission reduction projects, but also provides a funding mechanism for such a program. However, that authority is limited and not available for the small combustion-ignition engines that are the subject of the operating restrictions, and, it is known that substantial reductions are necessary in the HG area to enable the HG area to attain by 2007. The reductions provided by this rule are significant and important in this respect. The State will be performing a mid-course review in May, 2004. At that time modifications to the SIP can be made, if applicable.

Comment 9: OPEI and BCCA contend that the restriction has a disproportionate impact on small and minority owned businesses.

Response 9: EPA disagrees with this contention. The rule will not have a disparate impact on persons based on income level, business size, race, color, or national origin. Any negative impacts of the rule are clearly borne equally by all commercial operators and their employees governed by the rule. Equally significant is the fact that the health benefits (including health related economic benefits) of this rule will be enjoyed by all, including those claimed to be adversely affected. Every citizen in the area, especially asthmatics, the very young, and the very old, are vulnerable to the effects of ground level ozone. The ultimate responsibility of this rule is to maintain and improve the air quality and public health in the HG area. This rule would do that by creating reductions in NO_X and VOC. These reductions are a necessary measure for successfully demonstrating attainment. The State was aware of the economic and other difficulties this rule will impose on businesses and individuals in the drafting of this rule. Consequently, the rule includes an extended compliance schedule so that lawn and maintenance businesses may supplement their equipment with electric or manual powered units or develop an emissions control plan.

B. Comments Received in Response to the Requirements for Motor Vehicle Idling Rule

Only one set of comments were received on this portion of the proposal. Those comments were submitted by Jeri Yenne on behalf of Brazoria, Fort Bend

and Montgomery counties in Texas (Counties).

Comment 1: The Counties assert that the exceptions provided effectively nullify the prohibition on idling and that because the exceptions are so broad there will be no emission reductions as a result of these requirements.

Response 1: We disagree with this comment. Under 30 TAC section 114.507 the restrictions clearly apply to all vehicles over 14,000 pounds, including long-haul trucks and buses, that operate in the counties specified. The exceptions are intended to account for reasonable circumstances, such as when the vehicle is not in motion due to traffic congestion. Those vehicles used for commercial passenger transportation and school buses may idle for the purpose of passenger comfort, but only up to thirty minutes. We do not believe extending the idling limitation from five minutes to 30 minutes or applying any of the other exemptions render the program a nullity.

Comment 2: The Counties commented that enforcement of these provisions was unlikely given the difficulty enforcing weight restrictions.

Response 2: We are unaware of any credible evidence indicating that the State would not be able to enforce the idling restrictions. The State has submitted information to demonstrate the legal authority to enforce this measure. If there is a failure to implement the program, EPA may issue a ''SIP call'' and require the State to either correct the program deficiencies or submit measures sufficient to offset all lost emission reductions.

The State is working on reaching agreements with the local governments for assistance in enforcing these regulations. The Texas Health and Safety Code provides for enforcement of State environmental regulations in sections 382.111 through 382.115. In addition, local governments may institute civil actions in the same manner as the TNRCC according to section 7.351 of the Texas Water Code.

Comment 3: The Counties assert that there is no scientific evidence to support the reductions claimed from idling restrictions.

Response 3: EPA disagrees with the comment. Statistics clearly indicate that vehicles over 14,000 GVMR are typically diesel. These vehicles have documented less stringent emission standard requirements than light duty vehicles. Studies indicate that these types of vehicles typically are allowed to idle for long periods of time. Targeting of these vehicles to restrict their idle time will reduce their emissions, including NO_X. Because NO_X is a precursor to ground-level ozone formation, reduced emissions of NO_X will result in ground-level ozone reductions. Texas used state-of-the-art photochemical methodologies to develop this rule. Emissions data for covered vehicles were adjusted for lower idle times in accordance with the restriction (estimated hours of operation that would be reduced due to the restrictions), and this data was used as modeling input. Modeling assessing the benefits of this NO_X emission reduction strategy demonstrated that emission reductions could be achieved by limiting the idling time of heavy-duty motor vehicles. The modeling showed that by the year 2007, the idling limits will reduce NO_X emissions in the affected area by 0.48 tons per day (tpd). The TNRCC further estimates a daily cost savings benefit of this rule at approximately $51,900 per ton of NO_X reduced. This figure was calculated from the estimated NO_X reductions from this strategy of 0.48 tpd, the estimated reduction in fuel consumption per hour, and the current price per gallon of fuel sold in the affected area.

Substantial reductions are necessary in the HG area. The reductions provided by this rule are significant and important in helping the HG area to attain by 2007. This rule is one element of an air pollution control strategy in the eight-counties HG ozone nonattainment area to reduce NO_X necessary for the counties to be able to demonstrate attainment with the ozone NAAQS. The State will be performing a mid-course review in May, 2004. At that time modifications to the SIP can be made, if applicable. Should the restrictions not provide the reductions anticipated, Texas will be required to submit additional measures to ensure attainment of the ozone NAAQS by 2007.

EPA Action

We are approving two rules: Lawn Service Equipment Operating Restrictions; and, Requirements for Motor Vehicle Idling for the HG Ozone Nonattainment Area.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2002. 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, Intergovernmental relations, Motor vehicle pollution, Volatile organic compounds, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

Gregg A. Cooke,

Acting 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 for Part 52 continues to read as follows:

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

Subpart SS—Texas

2. In § 52.2270, the table in paragraph (c) is amended by adding to the ending of the section ''Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles'' new headings with entries for ''Subchapter I—Non-Road Engines'' and ''Subchapter J—Operational Controls for Motor Vehicles'', to read 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
* *	*	*	* *	*
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
* *	*	*	* *	*
Subchapter I—Non-Road Engines Division 6: Lawn Service Equipment Operating Restrictions				
Section 114.452	Control Requirements	12/20/00	[Insert 11–14–01 Federal Register cite]	
Section 114.459	Affected Counties and Compliance Dates.	12/20/00	[Insert 11–14–01 Federal Register cite]	
Subchapter J—Operational Controls for Motor Vehicles Division 1: Motor Vehicle Idling Limitations				
Section 114.500	Definitions	12/20/00	[Insert 11–14–01 Federal Register cite]	
Section 114.502	Control Requirements for Motor Vehicles.	12/20/00	[Insert 11–14–01 Federal Register cite]	
Section 114.507	Exemptions	12/20/00	[Insert 11–14–01 Federal Register cite]	
Section 114.509	Affected Counties and Compliance Dates.	12/20/00	[Insert 11–14–01 Federal Register cite]	

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[FR Doc. 01–27583 Filed 11–13–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–134–8–7532; FRL–7092–7]

Approval and Promulgation of Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides From Stationary Sources in the Houston/ Galveston Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP). This rulemaking covers five separate actions. First, we are approving revisions to the Texas Nitrogen Oxides (NO_X) rules for point sources of NO_X in the Houston/ Galveston (H/GA) ozone nonattainment area of Texas as submitted to us by the State on December 22, 2000. These new limits for point sources of NO_X in the H/GA will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the H/GA 1-hour ozone nonattainment area. Second, we are approving an exclusion, from the federally-approved SIP, of carbon monoxide (CO) and ammonia emission limits ancillary to the NO_X standards for post combustion controls found in Title 30 of the Texas Administrative Code (TAC), Chapter 117. Third, we are approving, by parallel processing, revisions to the Texas NO_X rules for stationary diesel engines or stationary dual-fuel engines in the H/GA 1-hour ozone nonattainment area. Fourth, we are approving, through parallel processing, revisions made to the Texas SIP concerning compliance schedules for utility electric generation and Industrial, Commercial, and Institutional (ICI) sources in the H/GA area. Fifth, we are approving, through parallel processing, revisions made to the Texas SIP concerning lean-burn and rich-burn engines. The EPA is approving the SIP revisions described as actions number one, two, three, four, and five to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: This rule will be effective on December 14, 2001.

ADDRESSES: Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the following locations. 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, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and Shar.Alan@epa.gov.

SUPPLEMENTARY INFORMATION:

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Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

1. What Actions Are We Taking in This Document?

On December 22, 2000, George W. Bush, then Governor of Texas, submitted rule revisions to 30 TAC, Chapter 117, ''Control of Air Pollution From Nitrogen Compounds,'' as a revision to the SIP for point sources in the H/GA. The December 22, 2000, submittal required an 89 percent reduction in emissions of NO_X from point sources in the H/GA area.

As part of a negotiated settlement in the case of *BCCA Appeal Group* v. *Texas Natural Resource Conservation Commission,* No. GN1–00210 (250th Dist. Ct. Travis County)(complaint filed on January 19, 2001) reached on May 18, 2001, TNRCC issued a proposal to revise 30 TAC, Chapter 117 on May 30, 2001. On June 15, 2001, Texas Governor Rick Perry submitted a request letter to us asking to process the May 30, 2001, proposed rule revisions to 30 TAC, Chapter 117, as a revision to the SIP from point sources in the H/GA, through parallel processing.

On July 12, 2001 (66 FR 36532), we published a notice of proposed approval of the December 22, 2000 rules for point sources of NO_X in the H/GA. We also proposed to approve, through parallel processing, revisions to the NO_X rules for H/GA concerning (a) stationary diesel engines or stationary dual-fuel engines, (b) compliance schedules for utility electric generation and ICI sources and (c) lean-burn and rich burn engines. We noted, but did not propose