**§ 52.220 Identification of plan.**

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(c) * * *

(185) * * *

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(A) * * *

(*9*) Rule 410.7, adopted May 6, 1991.

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(198) * * *

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(K) Santa Barbara County Air Pollution Control District.

(*1*) Rule 354, adopted June 28, 1994.

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(207) * * *

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(*2*) Rule 231, adopted September 27, 1994.

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(225) * * *

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(*3*) Rule 239, revised June 8, 1995.

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[TX–55–1–7335; FRL–5856–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Texas; Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Interim final rule.

**SUMMARY:** The EPA is granting conditional interim approval of a State Implementation Plan (SIP) revision submitted by Texas. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in the Houston/Galveston and El Paso areas and a basic I/M program in the Dallas/Fort Worth area. The effect of this action is to conditionally approve Texas's I/M program for an interim period to last 18 months, based upon the good faith estimate of the program's performance. This action is being taken under section 110 of the Clean Air Act (Act) and section 348 of the National Highway Systems Designation Act (NHSDA).

**DATES:** This interim final rule is effective on August 11, 1997.

**ADDRESSES:** Copies of the documents relevant to this action 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, Air Planning Section (6PD–L), 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. James F. Davis, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7584.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

On October 3, 1996 (61 FR 51651), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Texas. The NPR proposed conditional interim approval of Texas' I/M program, submitted to satisfy the applicable requirements of both the Act and the NHDSA. The formal SIP revision was submitted by Texas on March 14, 1996.

As described in that notice, the NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals. The NHSDA also directs EPA and the states to review the interim program results at the end of that 18-month period, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort, to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start up as soon as possible, which EPA believes should be on or before November 15, 1997, so that at least six months of operational program data can be collected to evaluate the interim programs. The EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program. If Texas fails to fully start its program according to this schedule, this conditional interim approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state. Unlike the other specified conditions of this rulemaking, which are explicit conditions under section 110(k)(4) of the Act and which will trigger an automatic disapproval should Texas fail to meet its commitments, the startdate provision will only trigger a disapproval upon EPA's notification to the State by letter that the startdate has been missed. This letter will not only notify Texas that this rulemaking action has been converted to a disapproval, but also that the sanctions clock associated with this disapproval has been triggered as a result of this failure. Because the startdate condition is not imposed pursuant to a commitment to correct a deficient SIP under section 110(k)(4), EPA does not believe it is necessary to have the SIP approval convert to a disapproval automatically if the startdate is missed. The EPA is imposing the startdate condition under its general SIP approval authority of section 110(k)(3), which does not require automatic conversion. It should be noted that the State of Texas has already started major elements of its program in all three program areas.

The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed such a program evaluation process which includes both short term qualitative and long term quantitative measures, and this process has been deemed acceptable to EPA. The core requirement for the long term quantitative measure is that a Mass Emission Transient Test be performed on 0.1 percent of the subject fleet, as required by the I/M Rule at 40 CFR 51.353 and 366.

Per the NHSDA requirements, this conditional interim rulemaking will expire on February 11, 1999. A full approval of Texas final I/M SIP revision (which will include Texas' 18-month program evaluation) is still necessary under section 110 and under sections 182, 184 or 187 of the Act. After EPA reviews Texas' submitted program evaluation and other required elements for final approval, final rulemaking on the Texas' I/M SIP revision will occur.

Specific requirements of the Texas I/M SIP and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

## II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the Federal comment period for the notice of proposed rulemaking, published in the October 3, 1996 **Federal Register**, and provides EPA's responses to those comments. On November 18, 1996, EPA granted a 60-day extension of the comment period which was requested by four parties. The extended comment period closed on January 3, 1997. Four sets of comments were received by the Region. The comments were from the Texas Natural Resource Conservation Commission (TNRCC), the Environmental Defense Fund (EDF), the Sierra Club (SC) and by the law firm Bickerstaff, Heath, Smiley, Pollan, Kever, & McDaniel, L.L.P (BHS). Copies of the original comment letters are available at EPA's Region 6 office at the address listed in the **ADDRESSES** section of this notice. The EPA has first grouped similar comments and summarized them, followed by EPA's response to specific comments. For clarity, in some cases EPA has provided background information within a comment on its requirements or its proposed action relevant to Texas' SIP, prior to summarizing the comment itself.

*Comment—Legal Authority of Texas I/M Plan*

The SC and BHS commented that the State program does not have adequate authority to implement the program. The law firm BHS commented that the State law (Senate Bill 178) the State is using to implement the program is unconstitutional. The law firm BHS commented that a written decision in favor of Texas is forthcoming and will be forwarded to EPA when issued, thus EPA should not be considering approving the State's program. The law firm BHS commented that even if Senate Bill 178 were constitutional it does not give the State authority to implement major portions of its program including, reregistration denial, enforcement of remote sensing, and test on resale provisions of the program. Thus, EPA cannot approve the program based on the NHSDA which requires that ''all'' authority be present for EPA to approve the program. It is argued that EPA's proposal does not address whether the State's submission meets the requirements of the NHSDA while other EPA actions on NHSDA submittals do. The law firm BHS contends the NHSDA only allows a brief window of 120 days for a submittal which is required to include all authority. Since this window has already passed, EPA cannot extend the deadline. The SC similarly noted that EPA cannot postpone the deadline by using a conditional approval following the Natural Resource Defense Council case of 1994.

*Response to Comment*

The EPA's proposal explicitly identified the lack of authority as a deficiency which required correction by the imposition of major conditions which if not fulfilled would convert the action to a disapproval. Thus, EPA agrees that the State submittal does not meet all of the requirements of the NHSDA and is deficient in this regard. We also stated that the SIP contained enabling legislation that would allow the State to implement ''most'' of its program and that the State could get the legislative authority in the next legislative session. To support the State's commitment on obtaining the additional required authority the SIP included a Governor's Executive Order stating the intention of the Governor to support the needed legislation in the 1997 legislative session. The Texas legislature meets only once every two years and therefore obtaining the additional legislation four months after passage of the NHSDA was impractical. Also, it is EPA's understanding that the Texas legislature has recently passed legislation during the 1997 session addressing legislative deficiencies in the SIP. The EPA will be evaluating the legislation over the next several months. The EPA is authorized to promulgate conditional approvals under the Clean Air Act and does not believe the action postpones the deadlines contained in the NHSDA. The NRDC case involved postponing of a deadline by the use of a ''committal SIP'' which did not include a substantive submittal of legislation, regulations, SIP narrative, etc. Due to the substantive nature of the Texas submittal EPA does not believe the submittal constitutes merely a ''committal SIP.''

Texas has submitted a substantive I/M SIP, and has adequate legal authority to adopt and implement that SIP. The SIP has several deficiencies, which Texas has committed to remedy. It will require the adoption of additional legislative authority to remedy the deficiencies. The EPA believes it is authorized to conditionally approve a substantive SIP submittal under the Act section 110(k)(4) in these circumstances, and that such approval is consistent with the holding of the court interpreting the Act section 110(k)(4), *NRDC* v. *EPA*, 22 F.3d 1125, 1134 (D.C. Cir. 1994). The EPA further believes that this action is consistent with the requirements of the NHSDA. The EPA believes that so long as a state submits a substantative I/M SIP with underlying statutory authority during the 120-day period specified in the NHSDA, EPA can conditionally approve that SIP even if it contains some deficiencies that require additional legislative authority to remedy. Such authority must be obtained before EPA can give full final approval to the I/M SIP.

Regarding the constitutionality of the State's authority, a Texas Court ruled that the two laws creating the Texas Motorists' Choice program, Texas Senate Bills 19 and 178, were in violation of both the Texas and Federal Constitution. The Court ruled that those laws were an unconstitutional ''taking'' and an unconstitutional interference with contract, *Tejas Testing Technologies I, et al,* v. *The State of Texas*, No. 95–1462 (126th Dist. Court, Travis County, Texas) (April 21, 1997).

The State has filed a Notice of Intent to Appeal the ruling. Texas Rules of Appellate Procedure, Rule 47 and associated case law seem to indicate that such a filing supersedes the finding of the lower court pending determination by the Court of Appeals. *See, Ammex Warehouse Co.* v. *Archer,* 381 S.W. 2d 478, 481 (Tex. 1964), *Porth* v. *Currie,* 613 S.W. 2d 534 (Tex. Civ. App., Austin 1981), and *Texas Workers' Compensation Commission* v. *Garcia,* 893 S.W. 2d 504, 517 (Texas 1995). However, EPA is not basing today's action on Senate Bill 19 and 178 because of the uncertainty regarding the constitutionality of those laws after the Court's ruling. In order to determine whether the program is supported by adequate legislative authority, EPA reviewed the statute submitted by Texas *excluding* the language added by Senate Bills 19 and 178. Based on that review, EPA has determined that Texas has sufficient authority to implement the program with the exception of remote sensing and registration denial (as discussed in the conditions for final interim approval).

Title 5 of the Texas Health and Safety Code, Section 382.037(a) (Vernon's 1995) authorizes the promulgation of rules to ''establish, implement and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the Federal Clean Air Act.'' This gives very broad authority to establish any type of vehicle inspection

program so long as that program is consistent with the Federal requirements.

Enforcement of the program is authorized by Title 5 of the Texas Health and Safety Code, Section 382.037(d), by a ''sticker-based'' program. As discussed elsewhere, a sticker-based program is not acceptable without an adequate demonstration that the State's pre-1990 Act mechanism was more effective than its registration denial system. Texas has not made such a demonstration, and either an adequate demonstration must be submitted or authority for registration denial must be submitted within one year to fulfill one of the conditions of this approval. It is EPA's understanding that the Texas Legislature has recently passed a law allowing for a registration denial program upon EPA's finding that the State has not made a adequate demonstration that sticker enforcement is more effective than registration denial. Section 382.037(n) authorizes audits to determine compliance, but was added by the laws determined unconstitutional and, therefore, was not considered by EPA. However, Sections 382.038(a) and 382.038(d) authorize the State to pass appropriate regulations to conduct compliance audits.

*Comment—Low Enhanced Performance Standard Issues*

The TNRCC commented that although the Dallas/Fort Worth area is only required to implement a basic I/M program the State submitted modeling showing that the program also meets the low enhanced performance standard. The SC and BHS commented that EPA cannot allow the use of a ''low enhanced'' I/M program for areas such as Houston/Galveston that need more effective I/M programs to meet air quality goals. The law firm BHS cites EPA's proposed disapproval of the State's original 15% Plan. They also note that EPA cannot approve the revised 15% Plan since it does not achieve the required reductions by 1996, and that EPA cannot extend the deadline of the original November 15, 1993, submittal date for a revision to the 15% Plan. The law firm BHS commented that the revised program does not even start up prior to the end of 1996, and notes the rising contribution of mobile sources to the air quality problem in the area.

*Response to Comment*

The EPA agrees with the TNRCC's comment that the State's modeling shows that the low enhanced performance standard is met in the Dallas/Fort Worth area. However, the Dallas/Fort Worth area is only required to implement a basic I/M program and all the elements of an enhanced I/M program are not being implemented in the Dallas/Fort Worth program. Therefore, EPA is approving the Dallas/Fort Worth program only as a basic I/M program.

The EPA disagrees with the comment that the State is not eligible for the low enhanced performance standard. While EPA proposed disapproval of the State's original 15% Plan, the EPA has already proposed an approval action on the State's revised 15% Plan. The Texas I/M NPR stated that EPA would not finalize an interim action on the I/M SIP unless an approval action was proposed on the 15% Plan which has now been done. The I/M flexibility rules define eligibility and only require that the State have an approved 15% Plan and not received disapprovals on the other Rate of Further Progress or attainment plans. Issues regarding the approval of the 15% Plan including late start up dates for I/M programs are addressed in the proposed approval of the State's revised 15% Plan. Those are issues relevant to approval of the 15% Plan and will not be further addressed in this notice on the I/M plan. In the case of Texas, the State has already started most of the major elements of its I/M Plan and no further reductions are possible by the end of 1996 since this date already is historical. Also, States may, and often do, make revisions to previously submitted SIPs as part of the SIP process. Section 110 of the Act allows for and contemplates revisions to SIPs.

The EPA agrees that mobile source pollution is a continuing and significant source of pollution in the I/M nonattainment areas. The EPA also believes that it may be necessary to expand the geographic coverage or to improve effectiveness of the State's I/M Program in the future. Additional emission reductions may be required in the Texas nonattainment areas due to a continuing nonattainment status, or that the reductions claimed as a ''good faith estimate'' are not achieved in practice.

*Comment—Geographic Coverage Requirements*

The SC and BHS commented that the Beaumont/Port Arthur area should be in the I/M program. The SC commented that the redesignation was not completed and the area is an influence on the air quality of the Houston/Galveston area. The law firm BHS commented that the 1990 urbanized area population for Beaumont/Port Arthur is 232,434 and exceeds EPA's cutoff of 200,000.

The SC, BHS, and EDF commented that the Texas I/M program does not adequately cover the entire urbanized area for Dallas/Fort Worth and Houston/Galveston. The SC commented that remote sensing is not complete coverage and incompletely evaluated for effectiveness. The law firm BHS commented that exclusion of some of the urban population is allowed if an equal number of residents is included and the State used vehicles not residents in their analysis. The law firm BHS noted the uncertain feasibility and effectiveness of remote sensing and the delay in the State's data collecting phase of its remote sensing plan. The law firm BHS also commented on the lack of enforcement authority for remote sensing in the State's plan. The EDF commented that the exclusion of the rapidly growing counties of Collin and Denton County will result in dirtier air for the Region. The EDF commented that this exclusion will result in the failure to inspect 147,000 commuting vehicles and an additional 304,000 noncommuting vehicles.

*Response to Comment*

The Beaumont/Port Arthur area was reclassified from a serious to moderate ozone nonattainment area on April 2, 1996 (61 FR 14496). While the Beaumont/Port Arthur area is one moderate ozone nonattainment area it is composed of at least two separate urbanized areas each with a 1990 urbanized area population of under 200,000. According to the report entitled ''1990 Census of Population and Housing: Population and Housing Unit Counts: Texas'' issued in March 1993 by the U.S. Bureau of the Census, the 1990 population of the Beaumont urbanized area is 122,841. The 1990 population of the urbanized area population for Port Arthur is 109,560. The I/M flexibility rule only requires that for moderate ozone nonattainment areas outside the ozone transport region, basic I/M programs be implemented in any 1990 Census-defined urbanized area of 200,000 or more (40 CFR 51.350(a)(4)). Since the Beaumont/Port Arthur area is a moderate area and contains no 1990 urbanized areas of over 200,000, EPA does not require that I/M be implemented in the Beaumont/Port Arthur nonattainment area.

The EPA agrees that the State's exclusion of counties in both the Houston/Galveston area and the Dallas/Fort Worth area results in a less effective I/M program which hinders each of the areas reaching attainment of the National Ambient Area Quality Standard for ozone. Specifically, the exclusion of heavily populated portions

of the nonattainment areas, such as portions of Collin and Denton Counties, from the regular testing I/M program in the Dallas/Fort Worth area in our view is hindering the State from reaching attainment of air quality standards. However, in the proposed **Federal Register** notice (FRN), EPA made allowance for the State's use of remote sensing to make up deficiencies in the State's area of coverage plans. Nevertheless, recognizing the uncertainty of the remote sensing program, EPA included a provision in the proposed FRN that for permanent I/M SIP approval, the remote sensing program must be demonstrated to be effective in identifying and obtaining repairs on vehicles with high levels of emissions, or the Texas I/M core program must be expanded to include the entire urbanized area for both Dallas/Fort Worth and Houston. Also, since I/M programs are designed to reduce emissions from vehicles, and populations or persons do not directly equate to vehicle population, EPA also allowed for an interpretation of its I/M rule which would apply a ratio to the population shortfall to determine the minimum number of vehicles required to be tested by the State from commuting vehicles outside the I/M core program areas.

The EPA's proposal also identified the lack of authority for enforcement of remote sensing as a deficiency which required correction by the imposition of major conditions which if not fulfilled would convert the action to a disapproval. We also stated that the State could get the legislative authority in the next legislative session. To support the State's commitment the SIP included a Governor's Executive Order stating the intention of the Governor to support the needed legislation in the 1997 legislative session. It is EPA's understanding that the Texas legislature recently passed legislation for enforcement of a remote sensing program.

*Comment—Enforcement of Texas I/M Program*

The TNRCC commented that the Texas Motorist Choice inspection program is a sticker-based enforcement program with computer matching enhancements. The State commented that it believes that it has demonstrated that sticker-based enforcement is more effective than registration denial. The State included a sticker survey from the I/M areas which indicated that most vehicles (95 percent) had stickers showing appropriate dates of compliance. The SIP also states that unregistered vehicles range from 2 to 15 percent. The SC commented that the lack of registration denial is a major inadequacy. The SC also commented that the State's program to deter fraud and assure accuracy is not adequate. The law firm BHS also commented that the State does not have an effective enforcement system and does not have authority for registration denial and had questions about exactly how the State's plan would work. The law firm BHS argued that a sticker based program without a demonstration of greater effectiveness with a vague undefined threat of reregistration denial does not meet the requirements of the Act. Also, BHS cited the EPA proposed disapproval for the District of Columbia for its lack of similar but more comprehensive deficiencies in its enforcement program. The District of Columbia program also did not have authority for registration denial, and no penalty schedule accompanying the SIP.

*Response to Comment*

The EPA's proposed approval was based upon the State commitment in the SIP and specifically the commitment in the Governor's Executive Order which specified the State's intention to support legislation for the authority to enforce the program with reregistration denial. The Clean Air Act and Federal I/M regulations specify that registration denial must be the enforcement mechanism for a state unless an alternative enforcement mechanism of a pre-1990 Act program is demonstrated to be more effective. The demonstration is further specified in the Federal I/M rule (40 CFR 51.361(b)). The State's demonstration fails in relation to these requirements in two general areas, the failure to tie stickers issued to tests given and more accurate and substantiated data on the number of vehicles in compliance with the registration requirements. The demonstration was also deficient since it is required to be comprehensive, which the State's current demonstration was not.

The EPA agrees that the lack of authority for enforcement through registration denial is a major deficiency in the plan. The EPA's proposal also identified the lack of authority for registration denial as a deficiency which required correction by the imposition of a major condition which if not fulfilled would convert the action to a disapproval. We also stated that the State could get the legislative authority in the 1997 legislative session. To support the State's commitment the SIP included a Governor's Executive Order stating the intention of the Governor to support the needed legislation in the 1997 legislative session. It is EPA's understanding that the Texas Legislature has recently passed a law allowing for a registration denial program upon EPA's finding that the State has not made a adequate demonstration that sticker enforcement is more effective than registration denial. The State's quality control and consumer protection portions of the I/M plan were consistent with the I/M rule (§§ 51.360 and 51.368(b)). Regarding the District of Columbia's proposed disapproval notice for enforcement deficiencies similar to the Texas program, EPA was required to propose disapproval on this issue because it did not have a commitment from the State to correct the deficiencies in the District's plan. In the case of Texas, EPA had the commitment in the Governor's Executive Order and the SIP narrative to correct the major deficiencies and thus was able to propose conditional interim approval of the plan.

*Comment—Waivers in the Texas I/M Modeling*

The TNRCC commented that, since the low income time extension is not a waiver, it should not be required to be included in the projected waiver rate.

*Response to Comment*

The EPA concurs with the State comment that the low income time extension is not legally a waiver. However, the numbers of time extensions granted by the State may impact the air quality benefits of the program and should therefore be accounted for in the State's modeling estimates if significant. If low income time extensions are granted after a vehicle fails the emissions test, the emissions characteristics of the vehicle for the purposes of emissions modeling are identical to a vehicle that has received a waiver. If such time extensions were granted prior to an initial test they should be accounted for in the compliance rate estimates if significant.

*Comment—Texas Good Faith Credit Estimates*

The EDF commented that while the NHSDA removes EPA's 50 percent credit discount for test-and-repair programs, it does not grant presumptive equivalency between test-and-repair and test-only programs. The SC also commented that the decentralized program fails to demonstrate equivalency with the centralized program. The EDF commented that TNRCC's claim of 100 percent effectiveness is not consistent with other states implementing decentralized

programs and are not based on ''good faith estimates'' with a basis in fact, but rather unsubstantiated assumptions. Additional features to the program such as the electronically connected testing system may increase effectiveness but do not substantiate the State's claim. The law firm BHS similarly also commented that the State's credit estimates are not made in good faith. The law firm BHS commented that the estimates must have a ''basis in fact'' and cites EPA's position contained in the I/M flexibility amendments that all the data gathered from previously running I/M programs justify EPA's previously imposed 50 percent credit discount for test-and-repair programs. The law firm BHS also notes EPA's December 12, 1995, guidance on the NHSDA, which suggested that good faith estimates could be based upon innovative program designs where no data, per se, exists but where the State can make a reasonable argument that the level of enforcement and oversight, and the innovative features included in the program to prevent or eliminate improper testing will together achieve the claimed reductions. In its guidance, EPA stated examples of such innovative designs and BHS commented that the State's program did not include any of these examples.

*Response to Comment*

The EPA agrees that the NHSDA does not grant presumptive equivalency between test-only and test-and-repair programs, but rather it calls upon the State to make a ''good faith estimate'' which has a basis in fact of its program's effectiveness. The EPA is required by the NHSDA to allow for such an estimate on an interim basis. The NHSDA further specifies that EPA shall grant final approval to a program if data collected from the operation of the program demonstrates the credits are appropriate and the revision is otherwise in compliance with the Act. The EPA agrees that a claim of 100 percent credit for the test-and-repair network may be difficult to justify in the State's program demonstration for final full approval. However, EPA believes it is appropriate under the NHSDA to grant interim approval to the credit based on the State's good faith estimate until the data collected from the program is analyzed by the State and EPA.

In the State's response to comment from its public comment period on this issue, the State cited the electronic data link, the use of remote sensing technology, the test-on-resale component of the program, recognized repair technicians, and the testing of heavy duty vehicles as measures to be implemented which would help to improve the effectiveness of the program. The EPA believes that of these items the electronic data link, use of remote sensing technology, and the recognized repair technician program offer the greatest potential of substantially improving the program's effectiveness with regard to network design. The EPA believes that credit obtained from these enhanced features provides a basis in fact for the interim credit claimed under the NHSDA. Thus, EPA will allow for the State's estimates to be used on an interim basis. Permanent SIP approval of the credit claim however, will be subject to the data collected during the program demonstration.

*Comment—Contingency Measures*

The EDF commented that contingency measures should be identified and immediately implemented in the likely event that the TNRCC will not achieve the emission reductions claimed.

*Response to Comment*

The 15% Plan contains contingency measures equal to at least 3 percent reductions for each area required to submit a 15% SIP. If the State's reduction estimates are not achievable by Texas, the State would have to implement contingency measures in the event that a shortfall exists in the State's 15% Plan. In addition, if the State's I/M plan achieves less than the reductions required to meet the appropriate I/M performance standards corrections to the State's I/M plan would be required by EPA. Neither the Act nor the NHSDA require contingency measures to support interim approval of an I/M program. If credit is not demonstrated through the program evaluation, additional control strategies or I/M program enhancements have to be adopted to support final full approval.

*Comment—Compliance Rate of Texas I/M Program*

The EDF commented that a 96 percent compliance rate will be difficult to achieve. The EDF cites an estimate by Texas Department of Transportation that as many as 15 percent of the vehicles may fail to meet registration requirements and thus effectiveness of the Texas program is overstated.

*Response to Comment*

The EPA agrees that a 96 percent compliance rate may overstate the State's actual I/M effectiveness. However, the State's estimates on vehicles not meeting registration requirements is given in the SIP as between 2 and 15 percent. Also, the State's SIP includes provisions to help improve the current compliance rate such as the real time data link of all test stations, remote sensing to catch vehicles with high emissions, and computer matching of testing and registration data bases to supplement an improved sticker enforcement program. These enhancements hold the potential to make the State's enforcement mechanism comparable to traditional registration denial. The EPA assumes that a well-run registration denial based program will achieve a compliance rate of 96 percent based upon prior experience with such programs. For SIP purposes, states are required to commit to a compliance rate which will be used in their modeling. States must also commit to corrective actions should the actual compliance rate fall below the modeled level.

*Comment—Adequate Oversight of Texas I/M Program*

The law firm BHS commented that the State's SIP does not provide adequate oversight to protect against improper testing which is cited as inherent in decentralized I/M programs. The law firm BHS also argues that Texas's plan relies on an unproven data link and an inadequate number of auditing staff. The law firm BHS also notes that the State oversight test fee is only $1.75 per inspection, while in California $7.00 is needed per inspection. Thus, a logical conclusion is that Texas is underfunding its program.

*Response to Comment*

The EPA rules do not specify the exact oversight test fee or number of employees each State is required to use in support of its I/M program. Rather each State is required to assess and use sufficient resources needed to support the program consistent with the SIP, and identify the dedicated resources for I/M program implementation. The EPA believes the State is in a better position to assess its specific resource needs and fulfill EPA's general resource requirements. The EPA believes that the oversight resources cited in the Texas SIP are sufficient for the purposes of interim approval. As the Texas program operates and undergoes evaluation, EPA will be better able to assess the adequacy of the State resources. For example, the State commits in the SIP to meet the numbers of EPA required covert and overt audits and reporting requirements. If the State is unable to meet the EPA requirements contained in the SIP, EPA could require the State to correct the deficiency.

## III. Interim Final Rulemaking Action

The EPA is conditionally approving the Texas I/M program as a revision to the Texas SIP, based upon certain conditions. This conditional approval satisfies the requirements of section 182 and the NHSDA for low enhanced and basic I/M programs. For the purposes of strengthening the SIP, EPA is also giving a limited approval under section 110 if the State fulfills all of its commitments within 12 months of this final rulemaking. This limited approval under section 110 will not expire at the end of the 18 month interim period. Thus, although an approved I/M SIP satisfying the requirements of section 182 may no longer be in place after the termination of the interim SIP approval period provided by the NHSDA, this program will remain a part of the Federally enforceable SIP. Should the State fail to fulfill the conditions by the deadlines contained in each condition, the latest of which is no more than one year after the date of EPA's final interim approval action, this conditional interim approval will convert to a disapproval pursuant to the Act section 110(k)(4). In that event, EPA would issue a letter to notify the State of Texas that the conditions had not been met and that the approval had converted to a disapproval.

## IV. Conditional Interim Approval

Under the terms of EPA's October 3, 1996, proposed interim conditional approval rulemaking, the State of Texas was required to remedy three major deficiencies with the I/M program SIP (as specified in the NPR), within twelve months of final interim approval. The State's commitment to support the additional needed legislation was to be carried out in Texas's 75th Legislative Session. The EPA will be evaluating the I/M legislation that was passed during this session. As discussed in detail later in this notice, this approval is being granted on an interim basis, for an 18-month period under authority of the NHDSA.

The major conditions for approvability of the SIP are as follows:

Texas must obtain all of the legal authority needed to implement its program. The specific authority needed was outlined in EPA's proposed approval action (61 FR 51651) and was identified in a February 27, 1996, Governor's Executive Order that was submitted as part of the Texas I/M SIP. The legal authority identified in the Executive Order includes: (1) The denial of reregistration of vehicles that have not complied with I/M program requirements, (2) the establishment of a class C misdemeanor penalty for operating a grossly polluting vehicle in a nonattainment area (i.e., enforcement of remote sensing), and (3) the requirement for an inspection within 60 days of resale and prior to transfer of title to nonfamily member consumers in Dallas, Tarrant, or Harris counties.

The EPA is aware that the State of Texas has expressed plans to remove the ''test-on-resale'' provisions from their I/M plan. In addition, EPA has recently received a SIP submission to remove the ''test-on-resale'' provision from the SIP. The EPA will be evaluating the submission for completeness and approvability. Regarding the ''test-on-resale'' provisions of the State plan, EPA included a condition for obtaining legal authority to implement this provision based on the requirement in the NHSDA's that states have all of the statutory authority needed for program implementation. While the ''test-on-resale'' provision was not required by the Act or the Federal I/M rule, the provision was intended to improve program effectiveness and consumer protection. Texas has stated that certain program changes have made the program unnecessary and that the State is therefore taking no credit for this particular element. The EPA agrees with the State's assessment of the creditable impact of such a component. While the EPA still believes that the ''test-on-resale'' authority may prove to be beneficial for consumer protection and program effectiveness should loaded mode testing develop as the program proceeds, EPA will not require the State to obtain authority for and implement the ''test-on-resale'' provisions of the current State plan if the State submits a SIP revision.

## V. Further Requirements for Permanent I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. At the end of this period, the approval will lapse. At that time, EPA must take final rulemaking action upon Texas' SIP, under the authority of section 110 of the Act. Final approval of Texas' plan will be granted based upon the following criteria:

(1) Texas has complied with all the major conditions of its commitment to EPA,

(2) The EPA's review of Texas' program evaluation confirms that the appropriate amount of program credit was claimed by the State of Texas and achieved with the interim program,

(3) Final Texas Department of Public Safety program regulations are submitted to EPA, and

(4) The Texas I/M program meets all of the requirements of EPA's I/M rule, including those *de minimus* deficiencies identified in the October 3, 1996, proposal (61 FR 51651) as minor for purposes of interim approval.

(5) The remote sensing program proves to be effective in identifying and obtaining repairs on vehicles with high levels of emissions, or the Texas I/M core program area is expanded to include the entire urbanized area for both Dallas/Fort Worth and Houston.

## VI. Administrative Requirements

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

### *A. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

### *B. Regulatory Flexibility Analysis*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA prepares 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.

Conditional approvals of SIP submittals 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 a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

*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 General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **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 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 September 9, 1997.

Filing a petition for reconsideration by the Administrator of this interim final rule to conditionally approve the Texas I/M SIP, on an interim basis, 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) of the Administrative Procedures Act).

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 1, 1997.

**Jerry Clifford,**

*Acting Regional Administrator.*

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. 7401–7671q.

## Subpart SS—Texas

2. Section 52.2310 is added to read as follows:

**§ 52.2310 Conditional approval.**

The State of Texas' March 14, 1996, submittal for an motor vehicle inspection and maintenance (I/M) program, is conditionally approved based on certain contingencies, for an interim period to last eighteen months. If the State of Texas fails to fully start its program by November 15, 1997, at the latest, this conditional approval will convert to a disapproval after EPA sends a letter to the State. If the State of Texas fails to satisfy the following conditions within 12 months of August 11, 1997, this conditional approval will automatically convert to a disapproval as explained under section 110(k) of the Clean Air Act. The conditions for approvability are as follows:

Texas must obtain all of the legal authority needed to implement its program. The specific authority needed was outlined in EPA's proposed approval action and was identified in a February 27, 1996, Governor's Executive Order that was submitted as part of the Texas I/M SIP. The legal authority identified in the Executive Order includes: The denial of reregistration of vehicles that have not complied with I/M program requirements; the establishment of a class C misdemeanor penalty for operating a gross polluting vehicle in a nonattainment area; and the requirement for an inspection within 60 days of resale and prior to transfer of title to nonfamily member consumers in Dallas, Tarrant, or Harris counties (or regarding the third major condition, the removal of the test-on-resale program element from the SIP). Texas has committed to support additional needed legislation in Texas's 75th Legislative Session. Should Texas fail to fulfill these conditions by the end of the 75th Legislative Session, this approval will convert to a disapproval. Texas must also fully start its I/M program by November 15, 1997, or this action will covert to a disapproval.

[FR Doc. 97–18245 Filed 7–10–97; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MM Docket No. 97–5; RM–8954]**

## Radio Broadcasting Services; Thorndale, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Jackson Lake Broadcasting Company, allots Channel 257A to Thorndale, Texas, as the community's first local aural transmission service. Channel 257A can be allotted to Thorndale in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.8 kilometers (8.6 miles) south in order to avoid a short-spacing conflict with the licensed operation of Station WACO(FM), Channel 260C, Waco, Texas. The coordinates for Channel 257A at Thorndale are 30–29–29 NL and 97–11–21 WL. With this action, this proceeding is terminated.

**DATES:** Effective August 11, 1997. The window period for filing applications will open on August 11, 1997, and close on September 11, 1997.