



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2020-0229; FRL 10009-40-Region 6]

### Air Plan Approval; Texas; Approval of Substitution for Dallas-Fort Worth Area Transportation Control Measures

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an administrative change to update the Code of Federal Regulations (CFR) to reflect a change made to the Texas State Implementation Plan (SIP) on February 21, 2020, as a result of EPA's concurrence on substitute transportation control measures (TCMs) for the Dallas-Fort Worth (DFW) 8-hour ozone nonattainment area portion of the Texas SIP. EPA has determined that the substitution of the TCMs is consistent with the Clean Air Act and EPA's national guidance on such substitutions, and therefore falls within the "good cause" exemption in the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes an agency to make an action effective immediately.

**DATES:** This action is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2020-0229. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Riley, 214-665-8542,

[riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Under Clean Air Act (CAA) section 176(c)(8), States are allowed to substitute TCMs in approved SIPs for replacement TCMs which achieve equivalent or greater emissions reductions without having to undertake the standard SIP revision process.<sup>1</sup> The DFW area metropolitan planning organization, the North Central Texas Council of Governments (NCTCOG),<sup>2</sup> identified for substitution three TCMs originally approved as High-Occupancy Vehicle (HOV) lanes into the DFW SIP as follows:

**Table 1. Approval of TCMs Into the DFW SIP**

| <b>SIP Revision</b>                                  | <b>EPA Approval</b>              | <b>TCM</b>   |
|--|----------------------------------|--|
| April 2000 DFW 1-Hour Ozone Attainment Demonstration | September 27, 2005 (70 FR 56374) | <ul style="list-style-type: none"> <li>• IH 35 East corridor (Stemmons Freeway) HOV lane between IH 635 and SH 121</li> <li>• IH 635 West corridor (LBJ Freeway) HOV lane between Luna Road/IH 35 E and US 75</li> </ul> |

<sup>1</sup> The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) transportation funding and authorization bill, which was signed into law on August 10, 2005, revised the CAA’s section 176(c) transportation conformity provisions to allow states to substitute or add TCMs into approved SIPs without the standard SIP revision process. These revisions facilitate compliance with the transportation conformity rule’s requirements for timely implementation of TCMs (40 CFR 93.113) by expediting the TCM substitution process.

<sup>2</sup> As the Metropolitan Planning Organization for the DFW area, NCTCOG is delegated authority under 30 Texas Administrative Code §114.270 to implement SIP-approved TCMs for the DFW ozone nonattainment area.

|   |                               |   |
|---|-------------------------------|---|
| May 2007 DFW 1997 8-Hour Ozone Attainment Demonstration | January 14, 2009 (74 FR 1903) | <ul style="list-style-type: none"> <li>• IH 635 East corridor (LBJ Freeway) HOV lane between Coit Road and Greenville Avenue</li> </ul> |
|---|-------------------------------|---|

The NCTGOC determined that since the opening of these HOV lanes, increased congestion in these corridors had resulted from increased population and vehicle miles traveled. As a result, the HOV lanes no longer provided the needed congestion relief and associated nitrogen oxide (NOx) and volatile organic compound (VOC) air quality benefits approved into the DFW SIP as detailed in Table 1.

As a part of the TCM substitution concurrence process required under CAA section 176(c)(8), the NCTCOG published notice on November 7, 2019 in 20 DFW area newspapers and circulars announcing a November 11, 2019 public meeting to provide information on the proposed TCM substitutions and begin a 30-day public comment period. No public comments were received, and EPA did not provide comment or concurrence during this comment period. On December 12, 2019, the NCTCOG Regional Transportation Council adopted a resolution to substitute these HOV lane TCMs for traffic signalization project TCMs to offset any NOx and VOC emission reduction credits lost by removing these corridors from HOV lane usage and keep equivalent emission reduction controls in place.

On February 21, 2020, EPA issued concurrence letters to the Texas Commission on Environmental Quality (TCEQ) and the NCTCOG stating that the substitution of the DFW area IH 35E/IH 635 HOV Lane TCMs with traffic signalization project TCMs met the CAA section 176(c)(8) requirements for substituting TCMs in an area's approved SIP, including the requirement that the substitute measures achieve equivalent or greater emission reductions than the control measure to be replaced. On February 18, 2020, the TCEQ issued similar concurrence

letters to EPA Region 6 and the NCTCOG. Each of the above-noted concurrence letters are included in the docket to this rulemaking as part of the State of Texas' April 8, 2020 submittal to EPA. See EPA's *Guidance for Implementing the Clean Air Act Section 176(c)(8) Transportation Control Measure Substitution and Addition Provision* dated January 2009.

Upon issuance EPA's February 21, 2020 concurrence letters, the HOV Lane substitutions took effect as a matter of federal law.<sup>3</sup> In accordance with the requirements for TCM substitution, on April 8, 2020, the State of Texas submitted through the TCEQ a request for EPA to update the DFW portion of the Texas SIP to reflect EPA's February 21, 2020 approval of the TCM substitution of the HOV Lanes with the traffic signalization project TCMs in its SIP (the subject of this administrative change). Today, EPA is taking administrative action to update the non-regulatory provisions of the Texas SIP in 40 CFR 52.2270(e) to reflect EPA's concurrence on the substitution to convert the IH 35E/IH 635 HOV Lane TCMs to traffic signalization project TCMs:

| Name of nonregulatory SIP provision  | Applicable geographic or nonattainment area | State submittal date/effective date |
|--|---|-------------------------------------|
| DFW nine-county area IH-35E/IH-635 HOV Lane TCMs to traffic signalization TCMs. Affected counties are Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, Rockwall | Dallas-Fort Worth                           | 4/8/2020                            |

Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” EPA's January 2009 guidance

---

<sup>3</sup> CAA section 176(c)(8)(B) stipulates that concurrence by the MPO, State air pollution control agency and the EPA shall constitute adoption of the substitute control measures, and that once adopted, the substitute measures become, by operation of law, part of the SIP and become federally enforceable.

establishes EPA's rationale for utilizing the good cause provision under the APA to take actions relating to TCM substitutions without additional need for public comment because the substitution was originally made through the process approved into the Texas SIP (79 FR 5287) in addition to the CAA section 176(c)(8) statutory provision as applicable, and because the public has had the opportunity to comment on the specific substitution during NCTCOG's public comment period.<sup>4</sup> Effective immediately, today's action codifies provisions which are already in effect. The public had an opportunity to comment on this substitution during the public comment period prior to approval of the substitution. Immediate notice of this action in the **Federal Register** benefits the public by providing the updated Texas SIP Compilation and "Identification of Plan" portion of the CFR.

## **Statutory and Executive Order Reviews**

### *A. General Requirements*

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this administrative action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to

---

<sup>4</sup> EPA's rationale for applicability of the APA "good cause" exemption to TCM substitution rulemakings is provided in its January 2009 *Guidance for Implementing the Clean Air Act Section 176(c)(8) Transportation Control Measure Substitution and Addition Provision*, EPA-420-B-09-002. <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1002W66.PDF?Dockey=P1002W66.PDF>

sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This administrative action also does 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), nor will it 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 administrative action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This administrative action does not involve technical standards; 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. The administrative action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This administrative action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section

808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's administrative action simply codifies a provision which is already in effect as a matter of law in Federal and approved state programs. 5 U.S.C. 808(2). These announced actions were effective upon EPA's concurrence. EPA will submit a report containing this action 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 this action in the **Federal Register**. This update to Texas' SIP Compilation is not a "major rule" as defined by 5 U.S.C. 804(2).

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

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

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

Dated: May 14, 2020.

**Kenley McQueen,**  
*Regional Administrator, Region 6.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

**PART 52—[AMENDED]**

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

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

**SUBPART SS—TEXAS**

2. In § 52.2270, in paragraph (e), amend the table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” by adding an entry for “DFW nine-county area IH-35E/IH-635 HOV Lane TCMs to traffic signalization TCMs” at the end of the table to read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

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

| Name of SIP provision  | Applicable geographic or nonattainment area   | State submittal/effective date | EPA approval date  | Comments |
|--|---|--------------------------------|--|----------|
| *****  |   |                                |  |          |
| DFW nine-county area IH-35E/IH-635 HOV Lane TCMs to traffic signalization TCMs | Dallas-Fort Worth: Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman and Rockwall Counties | 4/8/2020                       | <b>[Insert date of publication in the Federal Register]</b><br><b>[Insert Federal Register citation]</b> |          |

\* \* \* \* \*