



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0329; FRL-9954-36-Region 6]

Approval and Promulgation of Implementation Plans: Texas; Approval of Substitution for 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 May 31, 2016, as a result of EPA's concurrence on a substitute transportation control measure (TCM) for the Dallas/Ft. Worth (DFW) portion of the Texas SIP. On August 16, 2016, the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), submitted a revision to the Texas SIP requesting that EPA update its SIP to reflect a substitution of a TCM. The substitution was made pursuant to the TCM substitution provisions contained in the Clean Air Act (CAA). EPA concurred on this substitution on May 31, 2016. In this administrative action, EPA is updating the non-regulatory provisions of the Texas SIP to reflect the substitution. In summary, the substitution was a replacement of a High-Occupancy Vehicle (HOV) Lane TCM within the DFW 8-hour ozone nonattainment area with traffic signalization projects. EPA has determined that this action falls under the "good cause" exemption in the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes an agency to make an action effective immediately, thereby avoiding the 30-day delayed effective date otherwise provided for in the APA.

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-2016-0329. 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 either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, 214-665-8542, riley.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: On May 31, 2016, EPA issued a concurrence letter to TCEQ stating that the substitution of the DFW area US67/IH-35E HOV Lane TCM with traffic signalization project TCMs met the CAA section 176(c)(8) requirements for substituting TCMs in an area's approved SIP. *See also* EPA's Guidance for Implementing the CAA section 176(c)(8) Transportation Control Measure Substitution and Addition Provision contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users which was signed into law on August 10, 2005, dated January 2009. The DFW area US67/IH-35E HOV Lane TCM was originally approved into the SIP on September 27, 2005 (70 FR 56374).¹ The TCM was also included for applicable NO_x and VOC benefits in the May 2007 DFW 1997 8-

¹ EPA's May 31, 2016 concurrence letter to TCEQ provided an incorrect SIP citation for EPA approval of the US67/IH-35E HOV Lane TCM. September 27, 2005 (70 FR 56374) is the correct SIP citation.

hour Ozone Attainment Demonstration SIP Revision, which was conditionally approved by EPA on January 14, 2009 (74 FR 1903).

As a part of the concurrence process, the public was provided an opportunity to comment on the proposed TCM substitution. Public notice and comment was provided by the DFW metropolitan planning organization, the North Central Texas Council of Governments (NCTCOG), during a Regional Transportation Council meeting held on May 12, 2016. Public notice for this meeting was published in 20 DFW area newspapers and circulars.

Through this concurrence process, EPA determined that the requirements of CAA section 176(c)(8) were met, including the requirement that the substitute measures achieve equivalent or greater emission reductions than the control measure to be replaced. Upon EPA's concurrence, the HOV Lane substitution took effect as a matter of federal law. A copy of EPA's concurrence letter is included in the Docket for this action. This letter can be accessed at www.regulations.gov using Docket ID No. EPA-R06-OAR-2014-0871. In accordance with the requirements for TCM substitution, on August 16, 2016, TCEQ submitted a request for EPA to update the DFW portion of the Texas SIP to reflect EPA's previous approval of the TCM substitution of the HOV Lane 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 of a TCM for the conversion of the US67/IH-35E HOV Lane to traffic signalization projects:

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date
DFW nine-county area US67/IH-35E HOV Lane TCM to traffic signalization TCMs. Affected counties are Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, Rockwall	Dallas-Fort Worth	8/16/2016

Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” The substitution was made through the process included in CAA section 176(c)(8). 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 **Federal Register**.

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 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.

Dated: October 27, 2016.

Samuel Coleman,
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

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(e), the table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding an entry at the end of the table to read as follows:

§ 52.2270 Identification of plan.

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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 US67/IH-35E HOV Lane TCM to traffic signalization TCMs	Dallas-Fort Worth: Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman and Rockwall Counties	8/16/2016	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	

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