

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**

CHIEF CLERKS OFFICE

2009 JUN 18 AM 11:12

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**AGENDA REQUESTED: July 8, 2009**

**DATE OF REQUEST: June 19, 2009**

**NAME & NUMBER OF PERSON TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kerry Howard, 239-0556**

**CAPTION: Docket No. 2009-0676-MIS**

**Consideration for approval of the substitution of certain transportation control measures originally adopted in the state implementation plan (SIP) for the Dallas-Fort Worth (DFW) area for both the one-hour ozone and 1997 eight-hour ozone National Ambient Air Quality Standards (NAAQS).**

**Approval would substitute certain transportation control measures originally adopted in the one-hour ozone and 2008 eight-hour ozone DFW SIP. The proposed substituted measures would achieve a net emission reduction of 0.28 tons/day of volatile organic compounds and 0.11 tons/day of nitrogen oxides in the one-hour SIP in the Grade Separation and Intersection Improvement categories; and 11.29 tons/day of volatile organic compounds and 4.53 tons/day of nitrogen oxides in the eight-hour SIP in the Grade Separation category. Approval of the substituted measures would allow the DFW region to update its transportation plan and demonstrate conformity with the SIP. (Koy Howard, Terry Salem) (Rule Project No. 2009-022-OTH-NR)**

D.C. Schaubach  
Chief Engineer

Rubel C. C. C.  
Division Director

Kerry Howard  
Agenda Coordinator

Copy to CCC Secretary? NO X YES

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** June 19, 2009  
**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director  
**From:** David C. Schanbacher, P.E., Chief Engineer *DCS*  
**Docket No.:** 2009-0676-MIS  
**Subject:** Commission Approval for a Non-Rulemaking Package  
Chapter 114, Control of Air Pollution from Motor Vehicles, §114.420  
Dallas-Fort Worth transportation control measure substitution  
Rule Project No. 2009-022-OTH-NR

## Reasons for the rule package:

The North Central Texas Council of Governments (NCTCOG) must demonstrate through the conformity process "timely implementation" of transportation control measures (TCMs). However, certain measures are not moving forward because they are delayed beyond the required implementation date, the project scope has changed, or the project has been canceled. These measures are from both the 2000 one-hour ozone and 2008 eight-hour ozone state implementation plan (SIP) revisions. This substitution is needed so the region can update its transportation plan (i.e. add new projects) and demonstrate conformity with the SIP.

**Under what authority are we proposing these changes?** Texas Clean Air Act, §382.002, Policy and Purpose; §382.011, General Powers and duties; and §382.012, State Air Control Plan. On April 7, 2004, the United States Environmental Protection Agency (EPA) issued guidance that describes the adoption and use of TCM substitution methods. In August 2005, Congress enacted the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which provides authority and flexibility for TCM substitutions.

**Is this rulemaking required by federal rule or state statute? Which ones?** No

**Are there any legal deadlines by which these rules must be proposed, adopted, or effective?** In order to move transportation projects forward on schedule, the area must have its revised transportation plan in place by the end of July, including a transportation conformity determination. Before a conformity determination can be approved by the Federal Highway Administration, certain transportation control measures must be substituted. The substitution becomes effective upon this action by the Texas Commission on Environmental Quality (TCEQ). (An approved transportation conformity demonstration means emissions from the area's transportation system are at or below the 2009 attainment demonstration motor vehicle emissions budget enacted in the SIP.)

**What issue(s) or problem(s) are we trying to solve?** Certain projects are not moving forward because they are delayed beyond the required implementation date, the project scope has changed, or the project has been canceled. This substitution will allow the region to update its transportation plan and demonstrate conformity with the SIP.

**Why is it important that we do this rule package?** The region must update its plan and demonstrate conformity in order to add new projects.

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**Other important background or historical information.** In August 2005, Congress enacted SAFETEA-LU, which provides nonattainment and maintenance areas with a streamlined process for either replacing TCMs in approved SIPs with alternate TCMs or for adding TCMs to their approved SIPs. Under this provision, states are no longer required to include a TCM substitution mechanism in their SIPs in order to expedite the process for making TCM substitutions. The process for this non-rule package included a stakeholder meeting and TCEQ public hearing, as well as EPA review and concurrence. The substitutions would not be enacted until EPA's concurrence is final. Under Congressional legislation, EPA headquarters must concur with TCM substitutions. The EPA has delegated this authority to its Regions.

**Scope of the rulemaking:** The proposed substitutions would result in more emission reductions than the measures to be substituted, as documented in the attached tables.

**Impact on the regulated community:**

**Who will be affected?** None

**Does it create a group of affected persons who were not affected previously? How?** No

**Will there be a fiscal impact? If so, estimate.** No

**Impact on the public:**

**Who will be affected?** None

**Does it create a group of affected persons who were not affected previously? How?** No

**Will there be a fiscal impact? If so, estimate.** No

**Stakeholder meetings:**

**Have any stakeholder meetings been held?** Yes. A meeting was held on January 28, 2009.

**With whom?** The NCTCOG, EPA, the Federal Highway Administration, and the Texas Department of Transportation.

**What were the general sentiments?** The stakeholders recommended that the substitution move forward.

**Were any changes made in response to stakeholder concerns?** No

**Potentially controversial matters:** None. The substitution process could reduce controversy because: (1) removed projects must be substituted with projects of equal or greater emission reductions; and (2) substituted transportation control measures must go through a public involvement process focused solely on transportation control measures, as compared to a SIP revision where public involvement concerns a broad SIP package.

**Public Comment:** The TCEQ held a public hearing in Arlington on April 17, 2009, at the NCTCOG. No oral or written comments were received.

Commissioners

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**Agency contacts:**

Koy Howard, Rule Project Manager, 239-2306, Air Quality Division

Terry Salem, Staff Attorney, 239-0469

Amy Browning, Staff Attorney, 239-0891

**Attachments (2):**

NCTCOG 1-Hour State Implementation Plan Transportation Control Measure Substitution Table

NCTCOG 8-Hour State Implementation Plan Transportation Control Measure Substitution Table

cc: Chief Clerk, 5 copies  
Executive Director's Office  
David C. Schanbacher, P.E.  
Daniel Womack  
Kevin Patteson  
Betsy Bird  
Office of General Counsel  
Koy Howard

<b>1-Hour SIP Delayed and Cancelled TCM</b>			
<b>Project Type</b>	<b>Number</b>	<b>Emission Benefits</b>	
		<b>NO<sub>x</sub></b>	<b>VOC</b>
<b>Grade Separation</b>	2	7.49	19.24
<b>Intersection Improvement</b>	42	27.69	71.14
Total	44	35.18	90.39

Note: Numbers have been rounded.

<b>Projects Substituting 1-Hour SIP Delayed and Cancelled TCM</b>			
<b>Project Type</b>	<b>Number</b>	<b>Emission Benefits</b>	
		<b>NO<sub>x</sub></b>	<b>VOC</b>
<b>Grade Separation</b>	3	17.41	44.72
<b>Intersection Improvement</b>	36	17.89	45.95
Total	39	35.29	90.67

Note: Numbers have been rounded.

<b>8-Hour SIP Delayed and Cancelled TCM</b>			
<b>Project Type</b>	<b>Number</b>	<b>Emission Benefits</b>	
		<b>NO<sub>x</sub></b>	<b>VOC</b>
<b>Grade Separation</b>	2	5.88	14.64

<b>Projects Substituting 8-Hour SIP Delayed and Cancelled TCM</b>			
<b>Project Type</b>	<b>Number</b>	<b>Emission Benefits</b>	
		<b>NO<sub>x</sub></b>	<b>VOC</b>
<b>Grade Separation</b>	2	10.41	25.93



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

MAY 14 2009

Ms. Susana M. Hildebrand, P.E.  
Director, Air Quality Planning and Implementation Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Dear Ms. Hildebrand:

On April 28, 2009, the U.S. Environmental Protection Agency, Region 6 (EPA) received your package seeking our review and concurrence on the substitution of certain transportation control measures (TCM) originally adopted in the Dallas/Fort Worth December 2000 1-hour Ozone State Implementation Plan (SIP) and December 2008 8-hour Ozone revisions. We appreciate your sharing this package for our review.

As provided in Section 176(c)(8) of the Clean Air Act, as amended by the Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), EPA participated as a member of the TCM Substitution Workgroup and was involved in the early discussions of the TCMs at risk of not being implemented and their appropriate replacement measures. Accordingly, the substitute measures:

- 1) achieve greater emissions reductions than the measures they replace;
- 2) will be implemented in accordance with a schedule consistent with the schedule for the control measures they replace in the SIP;
- 3) are accompanied with evidence of adequate personnel and funding authority to implement, monitor, and enforce the control measures; and
- 4) were developed through a collaborative process that included participation by all affected jurisdictions, consultation with EPA, and reasonable public notice and comment.

Therefore, pursuant to Section 176(c)(8) of the Clean Air Act, 42 U.S.C. § 7506(c)(8), EPA concurs with the specific substitutions identified in the package and we have no additional comments.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas H. Diggs".

Thomas H. Diggs  
Associate Director for Air

**ORDER APPROVING SUBSTITUTIONS TO TRANSPORTATION CONTROL MEASURES IN THE  
DALLAS/FORT WORTH STATE IMPLEMENTATION PLAN**

Docket No. 2009-0676-MIS

On July 8, 2009, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered approval of the substitution of certain transportation control measures originally adopted in the state implementation plan (SIP) for the Dallas/Fort Worth (DFW) 1-hour and 1997 8-hour ozone nonattainment areas. The Commission approved the transportation control measure substitutions. The substituted transportation control measures would achieve a net emission reduction increase of 0.28 tons per day of volatile organic compounds (VOC) and 0.11 tons per day of nitrogen oxides (NO<sub>x</sub>) from the DFW 1-hour ozone SIP in the following categories: (1) grade separations; and (2) intersection improvements. The substituted transportation control measures would achieve a net emission reduction increase of 11.29 tons per day of VOC and 4.53 tons per day of NO<sub>x</sub> from the DFW 8-hour ozone SIP in the following categories: (1) grade separations. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2001), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. Notice of the proposed substitutions was published for comment in the March 27, 2009, issue of the *Texas Register* ( 34 TexReg 2170).

Pursuant to 30 TAC § 114.270, the Metropolitan Planning Organization (MPO) for the DFW Area, the North Central Texas Council of Governments (NCTCOG), convened a working group of members from all affected jurisdictions, the Commission and state and local transportation agencies, which reviewed the proposed transportation control measure substitutions and consulted with EPA Region VI.

Pursuant to 30 TAC § 114.270 and after proper notice, the Commission conducted a public hearing to consider the transportation control measure substitutions. Proper notice included prominent advertisement in the area affected at least 30 days prior to the date of the hearing. A public hearing was held in Arlington, Texas, on April 17, 2009. No oral or written comments were received.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of EPA Region VI, and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed transportation control measure substitutions, either orally or in writing, at the hearing or during the comment period. Prior to the scheduled hearing, copies of the proposed transportation control measure substitutions were available for public inspection at the Commission's central office and website, from the NCTCOG offices in Arlington, Texas and NCTCOG's website.

Pursuant to 30 TAC § 114.270, the Commission requested EPA concurrence with the proposed transportation control measure substitutions; and EPA concurrence was received on May 14, 2009. The substitution is not effective until EPA concurs, as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU). The Commission Chairman will transmit a copy of this Order, together with the approved transportation control measure substitutions, to the Regional Administrator of EPA Region VI as required by 30 TAC § 114.270 as a substitution to the Texas SIP pursuant to the Federal Clean Air Act, § 110, codified at 42 U.S. Code Ann. §§ 7410 - 7671q, as amended.

IT IS THEREFORE ORDERED BY THE COMMISSION that the transportation control measure substitutions incorporated by reference to this Order are hereby approved to be effective as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU). The approved transportation control measure substitutions are incorporated by reference in this Order as if set forth at length verbatim in this Order. The Commission further authorizes staff to make any non-substantive revisions as necessary to comply with SIP submittal requirements.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033 (Vernon 2000 & Vernon Supp. 2005).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date issued:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Buddy Garcia, Chairman