

The Texas Natural Resource Conservation Commission (commission) proposes to amend §114.5 (Transportation Planning Definitions); repeal existing §114.270 (Transportation Control Measures); and propose new §114.270 (Transportation Control Measures). The commission also proposes to revise the state implementation plan (SIP) sections concerning transportation control measures (TCMs). The commission proposes these actions to §114.5, §114.270, and the associated SIP in order to revise the rule to meet the United States Environmental Protection Agency (EPA) guidance requirements and allow nonattainment area metropolitan planning organizations (MPOs) to substitute TCMs without a SIP revision.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

TCMs are transportation projects and related activities that are designed to achieve on-road mobile source emissions reductions and are included as control measures in the SIP. Allowable types of TCMs are listed in §7408 (Air Quality Criteria and Control Techniques) of the Federal Clean Air Act, 42 United States Code, 1970, as amended (FCAA), and defined in the federal transportation conformity rule found in Title 40 Code of Federal Regulations (40 CFR), Part 93 (Determining Conformity of Federal Actions to State or Federal Implementation Plans). In general, a TCM is a transportation related project that reduces vehicle use or changes traffic flow and/or congestion conditions. A project that adds single-occupancy-vehicle roadway capacity or is based on improvements in vehicle technology or fuels is not eligible as a TCM. Nonattainment area MPOs work in conjunction with the commission to develop TCMs for inclusion in the SIP. The MPOs are responsible for ensuring the TCM emission reduction targets and time lines are met.

The current TCM rule allows TCMs to be grouped and quantified by categories, without project specific descriptions and associated estimated emissions reductions. Nonattainment area MPOs can substitute TCMs within, but not between, categories without a SIP revision. The EPA objected to the current TCM rule because it does not require the listing of specific TCM projects or allow for public comment on TCM substitutions. EPA's SIP guidance for TCMs requires states to provide EPA with a complete description of the TCM and its estimated emission reduction benefits. MPOs are often reluctant to list specific TCMs in the SIP because specific project locations and emission reductions are often subject to change. Under the current rule, a SIP revision is required to substitute TCMs between categories. SIP revisions trigger transportation conformity determinations which may not have been necessary otherwise. There are also adverse transportation conformity consequences if TCMs are not completed on schedule.

The proposed action would require TCM project specific descriptions and estimated emissions reductions to be included in the SIP. The TCM rule would also be amended to allow nonattainment area MPOs to substitute TCMs without a SIP revision if the substitution(s) result in equal or greater emission reductions. The TCM substitution process would require interagency consultation and a public comment period. The proposed rule change would meet EPA TCM requirements and would allow the MPOs to substitute TCMs without SIP revisions. This flexibility may also encourage MPOs to list more TCMs in the SIP and facilitate reaching SIP emission reduction requirements.

## SECTION BY SECTION RULE ANALYSIS

The proposed amendment to the definition of TCM in §114.5 will mirror the federal definition found in 40 CFR §93.101 (Definitions).

The existing rule in §114.270 is proposed for repeal and a new §114.270 is proposed because of the extensive changes to the section. The proposed new section states the purpose of the rule in §114.270(a), and specifies that the rule applies to nonattainment or maintenance areas in §114.270(b).

The purpose of the rule is to implement requirements relating to TCMs, address the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas, and provide a method for the substitution of TCMs without a SIP revision. The rule applies to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas, as defined in §101.1 of this title (Definitions).

Nonattainment and maintenance area MPO responsibilities are addressed in §114.270(c). The MPOs, in coordination with the commission, will be required to develop a list of TCMs from which a specified number of TCMs will be implemented and a specified amount of emissions reductions will be achieved. The list will include a description of the TCM, the TCM location and project limits, the TCM implementation date and the estimated amount of emissions reductions. MPOs will have the responsibility to: 1) evaluate, coordinate, and track the listed TCMs, and revise the list according to procedures specified in 40 CFR §93.113 and §114.270; 2) submit necessary evidence of the commitments from applicable implementing agencies to the commission to ensure timely TCM implementation; 3) ensure adequate and timely funding of TCMs through the Transportation

Improvement Program (TIP), and ensure conformity of the long range metropolitan transportation plan (MTP) and TIP with the SIP in accordance with §114.260 (Transportation Conformity); 4) obtain information from implementing agencies responsible for TCM implementation; and 5) maintain complete and accurate records on TCMs for five years and make these records available to appropriate agencies. In the event that TCM implementation is behind schedule, MPOs will also have the responsibility to: 1) correct the situation by ensuring the responsible implementing agencies have instituted supplemental efforts as necessary to demonstrate compliance with commitments; 2) develop and submit, in coordination with the implementing agency, an alternative TCM with equivalent emissions reductions and within the same time frame; and 3) initiate a TIP revision as necessary to correct the deficiency.

Implementing agency responsibilities are addressed in §114.270(d). Implementing agencies will have the responsibility to provide the following information: 1) a complete description of the TCMs and their associated emission reduction benefits; 2) evidence that the TCMs were properly adopted by a jurisdiction with legal authority to commit to and execute the program(s); 3) evidence that funding has been, or will be, obligated to implement the TCMs; and 4) a description of the monitoring program to assess the TCM's effectiveness and to allow for necessary in-place corrections or alterations.

The TCM substitution process is outlined in §114.270(e). The proposed rule provides a TCM substitution process that allows nonattainment area MPOs to change the TCMs used as control strategies in the SIP without a SIP revision if the substitution(s) result in equal or greater emission reductions. The substitute TCM(s) must be implemented in the same time frame as the original

TCM(s). If the implementation date has already passed, TCMs that require funding must be included in the first year of the next TIP and MTP adopted by the MPO. The substitute measures must be fully implemented within two years of the original measure's implementation date in order to meet the requirement for timely implementation of TCMs under §114.260. In order for the commission to adopt substitute TCMs, MPOs must provide evidence of adequate personnel, funding, and authority under state or local law to implement and enforce the measures. Commitments to implement the substitute TCMs must be made by the agency with legal authority for implementation.

The analysis of the substitute measures must be consistent with the methodology used for evaluating measures in the SIP. If emissions models and/or transportation models have changed since measures in the SIP were evaluated, the TCM to be replaced and the substitute TCM must be evaluated using the latest modeling techniques. Key methodologies and assumptions that must be consistent are EPA approved regional and hot-spot models, the area's transportation model, and population and employment growth projections.

The MPO will convene a committee (or working group) to identify and evaluate possible substitute measures. The committee shall include members from all affected jurisdictions, the commission, and state and local transportation agencies. The working group will also consult with EPA Region 6. This consultation may be accomplished by sending copies of all draft and final documents, agendas, and reports to EPA Region 6. The MPO, commission, and EPA Region 6 must concur with the appropriateness and equivalency of the substitute TCM.

A public comment period with reasonable (30-days) notice must be held on the substitute TCMs before they can be adopted by the commission and included in the SIP. The commission will be responsible for conducting the public comment period. The commission will submit to EPA Region 6 a summary of comments received, along with the agency's response to comments, after the comment period closes. EPA will notify the commission within 14 days if EPA's concurrence with the substitution has changed as a result of public comments. If EPA fails to notify the commission within 14 days, EPA is deemed to concur.

The commission will maintain documentation of approved TCM substitutions. The documentation will provide a description of the substitute and original TCMs, including requirements and schedules. The documentation will also include a description of the substitution process, including committee or working group members, the public hearing and comment period, EPA's concurrence, and adoption by the commission. The documentation will be submitted to EPA following adoption by the commission of the substitute measure and will be made available to the public as an attachment to the SIP.

#### SECTION BY SECTION SIP ANALYSIS

The existing Vehicle Miles Traveled (VMT) Offset section (VI. B. 8. b.) is being revised to update the date and section reference to the transportation control measure rule found in 30 TAC §114.270. No technical portion of the VMT Offset SIP is being proposed in this revision. The section was also administratively reformatted to conform to the new SIP format being used by the commission.

The proposed new Transportation Control Measure section (VI. B. 8. c.) states the requirements relating to TCMs, address the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas, and provide a method for the substitution of TCMs without a SIP revision. The SIP applies to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 114 are in effect there will be no fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 114 would implement requirements relating to TCMs. The proposed amendments address the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas and provide a method for the substitution of TCMs without a SIP revision. TCMs are transportation related projects that are designed to reduce on-road mobile source emissions and are included as control measures in area SIPs. A SIP is a plan developed for any region where existing (measured and estimated) ambient levels of pollutant exceeds the levels specified in a national standard. The plan sets forth a control strategy that provides emission reductions necessary for attainment and maintenance of the national standard. TCMs are one of the tools used to ensure that the transportation plans, programs, and projects conform to the SIP.

MPOs are federally mandated regional transportation planning agencies, typically in an area's Council of Government or city structure, and are generally designated by the state governor for each urbanized area. The purpose of an MPO is to ensure that the metropolitan area has a continuing, cooperative, and comprehensive transportation planning process. The proposed amendments apply to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas. Implementing agencies implement or build transportation projects and include the Texas Department of Transportation (TxDOT), cities, counties, local transit agencies, and sometimes private developers.

The proposed amendments would also require TCM project specific descriptions and estimated emission reductions to be included in the SIP in accordance with EPA TCM SIP guidance. Although the requirement to include specific descriptions and estimated emission reductions in TCMs for SIPs is a new requirement, this information has been previously generated and required in TIPs and long range transportation plans developed by MPOs for the United States Department of Transportation (USDOT) and TxDOT. The additional costs of including such descriptions and estimated emission reductions in TCMs are not anticipated to be significant.

The proposed amendments would also allow nonattainment area MPOs to substitute TCMs without a SIP revision if the substitution(s) result in equal or greater emission reductions. This will allow TCMs to be changed without a formal SIP revision, encourage MPOs to list more TCMs in their SIP, and facilitate reaching SIP emission reduction requirements by substituting TCMs when required.

#### PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the proposed amendments to Chapter 114 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be the potential reduction and/or stabilization of on-road mobile source emissions, potentially cleaner air, and increased flexibility in the use and substitution of TCMs in SIPs. It is also anticipated that the proposed amendments will encourage MPOs to list more TCMs in the SIPs and that this may facilitate reaching SIP emission reduction requirements.

No significant adverse economic effects are anticipated to impact any person or business as a result of implementing the proposed amendments because the proposed amendments are procedural in nature and apply only to MPOs and TCM implementing agencies. Although the requirement to include specific descriptions and estimated emission reductions in TCMs for SIPs is new in the proposed amendments, the information has been previously generated and required in TIPs and long-range transportation plans developed by MPOs for USDOT and TxDOT. The additional cost of including specific descriptions and estimated emission reductions in TCMs is not anticipated to be significant.

While there are no costs directly attributable to the proposed amendments, these amendments propose to allow nonattainment area MPOs to change the TCMs used as control strategies in the SIP without a SIP revision if the substitution(s) result(s) in equal or greater emission reductions. Changing SIP TCMs are likely to change the original fiscal implications of the SIP. While an increase or decrease in cost cannot be anticipated without knowing the goals and details of the original set of TCMs and the substitute TCMs, it seems likely that some change in fiscal implications could occur. The proposed amendments

specify that if the commission adopts substitute TCMs, there must be evidence of adequate personnel, funding, and authority under state or local law to implement and enforce the measures. In addition, commitments to implement the substitute TCMs must be made by the agency with legal authority for implementation.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

No adverse economic effects are anticipated to any small business and micro-business as a result of implementing the proposed amendments because the proposed amendments are procedural in nature and apply only to MPOs and TCM implementing agencies. The proposed amendments do not impose any requirements on small business or micro-businesses. Economic effects associated with proposed TCMs for SIPs will be discussed in the context of and within the fiscal notes for those SIPs.

While there are no costs to small business and micro-business directly attributable to the proposed amendments, these amendments propose to allow nonattainment area MPOs to change the TCMs used as control strategies in the SIP without a SIP revision if the substitution(s) result(s) in equal or greater emission reductions. Changing SIP TCMs are likely to change the original fiscal implications of the SIP. While an increase or decrease in cost cannot be anticipated without knowing the goals and details of the original set of TCMs and the substitute TCMs, it seems likely that some change in fiscal implications could occur and could affect small business and micro-business. The proposed amendments specify that if the commission adopts substitute TCMs, there must be evidence of adequate personnel, funding, and authority under state or local law to implement and enforce the measures. In

addition, commitments to implement the substitute TCMs must be made by the agency with legal authority for implementation.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 114 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed amendments are procedural in nature and are intended to conform state TCM rules to EPA guidance and to allow nonattainment area MPOs to substitute TCMs without a SIP revision. In addition, the proposed rulemaking does not meet the applicability requirements of a “major environmental rule.” The proposed rulemaking does not exceed a standard set by federal law. The proposed rulemaking has been completed to satisfy the federal requirement set out in 40 CFR §93.113 which requires timely implementation of TCMs in order for serious and above ozone nonattainment areas to demonstrate transportation conformity. Additionally, the proposed rulemaking neither exceeds an express requirement of state law, nor exceeds a

requirement of a delegation agreement. In addition, the proposed amendments conform to EPA rules and guidance regarding TCM requirements.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement requirements relating to TCMs as required by §74.82(c)(5) of the FCAA. TCMs are transportation-related projects that are designed to reduce on-road mobile source emissions and are included in the area's SIP. These requirements address the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas and provide a method for the substitution of TCMs without a SIP revision. The proposed rule would require TCM project specific descriptions and estimated emissions reductions to be included in the SIP. The proposed rule would also allow nonattainment area MPOs to substitute TCMs without a SIP revision if the substitution(s) result(s) in equal or greater emissions reductions. The TCM substitution process would require interagency consultation and a public comment period.

The proposed rule change would meet EPA TCM requirements and would allow the MPOs to substitute TCMs without SIP revisions. This flexibility may also encourage MPOs to list more TCMs in the SIP and facilitate reaching SIP emissions reduction requirements.

Therefore, this revision will not constitute a takings under Chapter 2007 of the Texas Government Code.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, (Consistency with the CMP).

The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR to protect and enhance air quality in the coastal area. This rule is implementing within the state a portion of 40 CFR 93 which is protective of the air quality in the coastal area because it requires transportation plans to conform to the SIP. Therefore, the rule is in agreement with the CMP policy governing air pollutant emissions.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

#### PUBLIC HEARING

A public hearing on this proposal will be held in Austin on December 21, 1999 at 2:00 p.m. in Building F, Room 5108 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of

registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, and who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.

All comments should reference Rule Log Number 99068-114-AI. Comments must be received by 5:00 p.m., December 27, 1999. For further information, please contact Cathy Stephens at (512) 239-1749 or Alan Henderson at (512) 239-1510.

#### STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed amendment implements TCAA, §382.002, relating to Policy and Purpose; §382.012, relating to State Air Control Plan; and §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles.

## SUBCHAPTER A: DEFINITIONS

### §114.5

#### §114.5. Transportation Planning Definitions.

Unless specifically defined in the TCAA or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter G of this chapter (related to Transportation Planning), shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) **Transportation Control Measure (TCM)** - Any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in §7408 of the Federal Clean Air Act, 42 United States Code, 1970, as amended, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, or maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this section. [Any category or group of actions, programs, or transportation services or facilities which reduce on-road mobile source emissions.]

**SUBCHAPTER G. TRANSPORTATION PLANNING**

**§114.270**

**STATUTORY AUTHORITY**

The repeal is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeal implements TCAA, §382.017, relating to Rules.

**§ 114.270. Transportation Control Measures.**

## **SUBCHAPTER G. TRANSPORTATION PLANNING**

### **§114.270**

#### **STATUTORY AUTHORITY**

The new section is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed new section implements TCAA, §382.002, relating to Policy and Purpose; §382.012, relating to State Air Control Plan; and §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles.

#### **§114.270. Transportation Control Measures.**

(a) Purpose. The purpose of this section is to implement requirements relating to transportation control measures (TCMs). These requirements address the roles and responsibilities of the metropolitan planning organizations (MPOs) and implementing transportation agencies in nonattainment and maintenance areas and provide a method for the substitution of TCMs without a state implementation plan (SIP) revision.

(b) Applicability. This section applies to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas. The affected nonattainment and maintenance areas are listed in §101.1 of this title (relating to Definitions).

(c) MPO responsibilities. The MPO shall:

(1) in coordination with the commission, develop a list of TCMs from which a specified number of TCMs will be implemented and a specified amount of emissions reductions will be achieved. The list will include a description of each TCM, the TCM location and project limits, the TCM implementation date, and the estimated amount of emission reduction. The list will be included in the SIP;

(2) evaluate, coordinate, and track the listed TCMs, and revise the list, as necessary, according to procedures specified in this section, and §93.113 (relating to Criteria and Procedures: Timely Implementation of TCMs) of Title 40, Code of Federal Regulations Part 93 (40 CFR 93);

(3) obtain and submit to the commission evidence of the commitments from applicable implementing agencies needed to ensure timely TCM implementation. The evidence must include:

(A) evidence that all necessary funding approvals have been obtained from all appropriate implementing agencies, including the Texas Department of Transportation (TxDOT), if applicable; and

(B) evidence that a complete schedule to plan, adopt, fund, implement, monitor, and ensure compliance with the TCM has been adopted by the implementing agencies;

(4) ensure adequate and timely funding of such projects through the development, management, and revision of the Transportation Improvement Program (TIP) and ensure conformity of the metropolitan transportation plan (MTP) and TIP with the SIP in accordance with §114.260 of this title (relating to Transportation Conformity);

(5) obtain information specified in subsection (d) of this section from implementing agencies responsible for TCMs included in the SIP;

(6) maintain complete and accurate records for at least five years. TCM records shall be sufficient to accurately reflect the effectiveness of the TCM program and shall include the following:

(A) the annual status of the implementation of the TCM, including quantification of progress based on the measurable criteria established in implementing agency commitments;

(B) an annual estimate of the funding and other resources expended toward implementing the TCM, and a comparison of the actual and projected expenditures;

(C) an annual estimate of the emission reductions achieved from implementation of the TCM, and a comparison of the actual and projected reductions; and

(D) any modifications to the TCM since the last annual report and/or projected modifications for the next reporting period to compensate for a shortfall in the implementation of the TCM or in the associated emissions reductions;

(7) make such records available to representatives of the commission, the EPA, the Federal Highway Administration (FHWA), the Federal Transit Administration, TxDOT, and local air pollution agencies having jurisdiction in the area, upon request;

(8) if information regarding the status of the TCMs indicates that a TCM has not been adequately implemented according to schedule, initiate the provisions of this section and 40 CFR §93.113 to:

(A) ensure that the implementing agencies have instituted supplemental efforts to demonstrate compliance with TCM commitments, future TCM milestones, or goals;

(B) initiate, develop, and submit an alternative TCM in coordination with the same or other implementing agencies that demonstrates equivalent or greater emissions reductions, in the same time frame, to the existing program; and

(C) initiate a TIP revision if necessary to ensure that sufficient funding and authorization has been provided to correct the deficiency.

(d) Implementing agency responsibilities. The implementing agency shall have the responsibility to provide:

(1) a complete description of the TCMs and their associated estimated emission reduction benefits;

(2) evidence that the TCMs were properly adopted by a jurisdiction with legal authority to commit to and execute the program;

(3) evidence that funding has been, or will be, obligated to implement the TCMs; and

(4) a description of the monitoring program to assess the TCM effectiveness and to allow for necessary in-place corrections or alterations.

(e) TCM substitution process. If a TCM is not included in the MTP or TIP in the same time frame as in the applicable SIP, the parties in the interagency consultation process established under §114.260 of this title shall determine whether the TCM continues to be appropriate. When the MPO and the commission concur that a TCM identified in the SIP is no longer appropriate for any reason, the agencies may initiate the process described below to identify and adopt a substitute TCM.

(1) A substitute TCM must provide for:

(A) equivalent or greater emissions reductions than the TCM to be replaced;

(B) implementation in the time frame established for the TCM in the SIP. If the implementation date has already passed, measures that require funding must be included in the first year of the next TIP and MTP adopted by the MPO;

(C) full implementation within two years after the implementation date of the original TCM in order to meet timely TCM implementation criteria under §114.260 of this title;

(D) evidence of adequate personnel, funding, and authority under state or local law to implement and enforce the measures in order for the commission to adopt the substitute TCM;  
and

(E) evidence of commitments to implement the substitute TCM must be made by the agency with legal authority for implementation.

(2) The analysis of substitute TCMs must be consistent with the methodology used for evaluating TCMs in the SIP. If emissions models and/or transportation models have changed since measures in the SIP were evaluated, both the TCM to be replaced and the substitute TCM shall be evaluated using the latest modeling techniques to demonstrate that equivalent or greater emissions

reductions will be achieved through implementation of the substitute TCM. Key methodologies and assumptions that must be consistent are:

(A) EPA approved regional and hot-spot (for carbon monoxide and inhalable particulate matter) emission models;

(B) the area transportation model; and

(C) population and employment growth projections.

(3) To identify and evaluate possible substitute TCMs, the MPO shall convene a committee or working group, which shall consult with EPA Region 6. Consultation may be accomplished by sending copies of all draft and final documents, agendas, and reports to EPA Region

6. The committee or working group shall include:

(A) members from all affected jurisdictions;

(B) the commission; and

(C) state and local transportation agencies.

(4) The MPO, the commission, the FHWA, and the EPA Region 6 must concur with the appropriateness and equivalency of the substitute TCM. All agreed upon substitute TCMs must be adopted by the commission following the public comment period and the EPA 14-day concurrence period.

(5) Before adopting a substitute measure, the substitute TCM(s) must have been subject to a public hearing and comment process. There must be at least one public hearing on the substitution. The hearing can only be held after reasonable public notice, which will be considered to be a minimum of 30 days prior to the hearing. The public notice shall include:

(A) prominent advertising in the affected area announcing the date, time, and place of the hearing;

(B) availability of each proposed substitute TCM for public inspection in at least one location in the affected area;

(C) notification to interested parties by the MPO;

(D) notification to the EPA Regional Administrator (through the EPA Region 6 Office);

(E) notification to the commission; and

(F) notification to the chief executives of affected local governments, planning agencies, transportation agencies, environmental control agencies, and economic development agencies.

(6) The public notice shall include a description of the substitute TCM and supporting analysis, including assumptions and methodology.

(7) The commission shall submit to EPA Region 6 a summary of comments received during the public comment period along with the commission responses following the close of the public comment period. EPA shall notify the commission within 14 days if its concurrence with the substitute TCM has changed as a result of the public comments. If EPA fails to notify the commission within 14 days, EPA is deemed to concur.

(8) The TCM being replaced shall stay in effect until the substitute TCM has been adopted. By adopting a substitute TCM, the commission formally rescinds the previously applicable TCM.

(9) The commission shall maintain documentation of approved TCM substitutions. The documentation shall consist of a description of the substitute and replaced TCMs, including the requirements and schedules; a description of the substitution process, including a list of the committee or working group members; the public hearing and comment process; EPA concurrence; and commission adoption. The documentation shall be submitted to EPA following the adoption of the substitute measure by the commission and made available to the public as an attachment to the SIP.

(10) The commission shall seek a financial penalty against the MPO or an implementing agency only in the case of an egregious or knowing violation of the provisions of this section.