

## Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499, Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Amend § 117.571 by revising paragraph (c) to read as follows:

**§ 117.571 Spa Creek.**

\* \* \* \* \*

(c) On Saturdays, Sundays, and holidays year-round, the draw shall open on the hour and half-hour for vessels waiting to pass. Except on July 4th of every year from 8:30 p.m. to 11 p.m., the draw need not open for vessels, and in the event of inclement weather, the alternate date is July 5th.

Dated: October 18, 2004.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 04–24254 Filed 10–28–04; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06–OAR–2004–TX–0002; FRL–7830–8]

#### Approval and Promulgation of Implementation Plans; Texas; Memorandum of Agreement Between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the Texas Commission on Environmental Quality (TCEQ) on February 23, 2004. This revision concerns the Dallas/Fort Worth ozone nonattainment area. Specifically, EPA is approving incorporation of a Memorandum of Agreement (MOA) between the TCEQ and the North Central Texas Council of Governments (NCTCOG) into the SIP. This MOA

commits the NCTCOG to provide the Dallas-Fort Worth International Airport with emissions offsets in the amount of 0.18 tons per day (tpd) of nitrogen oxides (NO<sub>x</sub>) and 0.04 tpd of volatile organic compounds (VOCs) in 2007 and to adjust the modeled 2015 on-road emission estimates to reflect an increase of 1.17 tpd of NO<sub>x</sub> and 0.26 tpd of VOCs, which must be accommodated in future transportation conformity determinations. This action is necessary in order for the Federal Aviation Administration (FAA) to address requirements under the general conformity regulations.

**DATES:** This rule is effective on December 28, 2004 without further notice, unless EPA receives adverse comment by November 29, 2004. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2004–TX–0002, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://docket.epa.gov/rempub/>. Regional Materials in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.

- EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6comment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- E-mail: Mr. Thomas Diggs at [diggs.thomas@epa.gov](mailto:diggs.thomas@epa.gov). Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number (214) 665–7263.

- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m.

weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R06–OAR–2004–TX–0002. EPA's policy is that all comments received will be included in the public file without change and may be made available online at <http://docket.epa.gov/rempub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Materials in EDocket (RME), [regulations.gov](http://regulations.gov) or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal [regulations.gov](http://regulations.gov) website are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at <http://docket.epa.gov/rempub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI 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 materials relevant to this rulemaking are available either electronically in RME or in the official file, which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal

holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Peggy Wade, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7247; fax number (214) 665-7263; e-mail address [wade.peggy@epa.gov](mailto:wade.peggy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever "we," "us" or "our" is used, we mean the EPA.

**Outline**

- I. What Action is EPA Taking?
- II. Why Was this SIP Revision Submitted?
- III. What is the Effect of this Action?
- IV. Final Action
- V. Statutory and Executive Order Reviews

**I. What Action Is EPA Taking?**

On January 14, 2004, the TCEQ adopted a Memorandum of Agreement (MOA) between the Commission and the NCTCOG's Regional Transportation Council (RTC). At the same time, TCEQ adopted a revision to the Texas SIP to incorporate this MOA into it. This MOA commits the RTC to provide the Dallas-Fort Worth International Airport with emissions offsets in the amount of 0.18 tpd of NO<sub>x</sub> and 0.04 tpd of VOCs in 2007 and to adjust the modeled 2015 on-road mobile source emissions estimates by an increase of 1.17 tpd and 0.26 tpd of NO<sub>x</sub> and VOCs, respectively, in future transportation conformity demonstrations.

EPA is taking direct final action to approve the incorporation of this MOA into the DFW SIP.

**II. Why Was This SIP Revision Submitted?**

The Dallas-Fort Worth International Airport (DFWIA) notified the TCEQ and EPA of upcoming aviation projects which would trigger the need for a general conformity determination by the Federal Aviation Administration (FAA).

These projects include construction of a new terminal (Terminal F), addition of a new cargo complex, improvement of airport parking, changes to current operating restrictions of existing terminal facilities, and other related projects included in the DFW Airport Master Plan.

The DFW area is a nonattainment area for the air pollutant ozone, and is operating under a State Implementation Plan (SIP) to control the emissions of NO<sub>x</sub> and VOCs, which are ozone precursor pollutants. Under the Federal (40 CFR part 51) and Texas (30 TAC 101.30) general conformity rules, certain types of Federal actions require a determination as to whether the total emissions from the action conform with the applicable SIP, unless the resultant emissions are expected to be below the *de minimis* levels identified in the Clean Air Act (40 CFR 51.853(b)(1)). The *de minimis* level for the DFW one-hour nonattainment area is 50 tons per year. The applicable SIP, in this case, is the 15% ROP SIP conditionally approved by EPA on November 10, 1998 (63 FR 62943).

Based on submitted estimates of direct and indirect NO<sub>x</sub> and VOC emissions resulting from these projects, emissions are expected to exceed the *de minimis* level of 50 tons per year during some of the project years. During the one-hour attainment year of 2007, only NO<sub>x</sub> estimates exceed this level (0.18 NO<sub>x</sub> tpd or 65.7 NO<sub>x</sub> tpy), but in the peak operation year of 2015 both precursor pollutants are expected to exceed the *de minimis* level (1.16 NO<sub>x</sub> tpd and 0.26 tpd VOC). As a result a general conformity determination by the FAA is required. The conformity regulations provide several options to meet this requirement. One option is to establish enforceable measures which offset the expected emissions from the project.

The DFWIA worked with the Regional Transportation Council in 2002 to identify emission reduction measures to be used to offset the emissions associated with these airport expansion projects. On December 12, 2002, the RTC resolved to implement emission reduction measures to provide offsets for use by the DFWIA to meet general conformity requirements for the year 2007. At a minimum, these measures will offset the 0.18 tpd of NO<sub>x</sub> and 0.04 tpd of VOCs that are expected to be generated in 2007 by the Terminal F projects. In addition, the RTC resolved to provide emission reductions in the amount of 1.17 tpd of NO<sub>x</sub> and 0.26 tpd of VOCs for the year 2015. This will be accomplished by incorporating these expected emissions into the

Metropolitan Transportation Plan for the year 2015, for which the total estimated emissions cannot exceed the emissions cap set by the motor vehicle emissions budget for that year. These emission reduction commitments are intended to assist the FAA in making a general conformity determination for the planned airport expansion projects associated with construction of Terminal F. (Note that although the conformity analysis will be conducted for 2007, the reductions that are the source of the offsets will be continuing in nature over the relevant time period and will not be relied on for other purposes or for other years. Details on the emission reduction measures are available in the Technical Support Document associated with this action.)

**III. What Is the Effect of This Action?**

EPA intends to take direct final action approving this SIP revision providing emission reduction offsets for 2007 and a commitment that the NCTCOG will account for expected project emissions in 2015 as part of its Metropolitan Transportation Plan. These emission reduction commitments will assist the FAA in making a conformity determination for certain projects included in the DFW Airport Master Plan.

The general conformity rules require these measures to be enforceable under both state and Federal law (40 CFR 51.860(g)). Upon the effective date of our action, these measures will be federally enforceable. The MOA between TCEQ and the RTC was adopted by the state on January 14, 2004 and was incorporated in the State Implementation Plan for the DFW ozone nonattainment area on that same day. Thus, these measures are already enforceable by state law.

**IV. Final Action**

EPA is approving the revision to the DFW ozone SIP providing emission reduction offsets to DFW International Airport for the year 2007 and a commitment that the NCTCOG will account for expected emissions from certain improvement projects planned for DFWIA in 2015 as part of its Metropolitan Transportation Plan.

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act and EPA conformity regulations, and is consistent with EPA policy. Therefore, we are approving the request of TCEQ to revise the SIP for the DFW ozone nonattainment area to incorporate this MOA between TCEQ and the Regional Transportation

Council of the North Central Texas Council of Governments.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on December 28, 2004 without further notice unless we receive adverse comment by November 29, 2004. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the

Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not 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 action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 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. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 December 28, 2004. Filing a petition for reconsideration by the Administrator of this final rule 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).)

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 19, 2004.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 40 CFR part 52 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 *et seq.*

#### Subpart SS—Texas

■ 2. In § 52.2270, the table in paragraph (e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures" is amended by adding one new entry to 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 approval/submittal date	EPA approval date	Comments
Memorandum of Agreement between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport.	Dallas-Fort Worth .....	01/14/04	10/29/04	

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BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52**

[R05-OAR-2004-IN-0002; FRL-7826-8]

**Approval and Promulgation of Plan Revisions; Indiana**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving Indiana's February 10, 2004, and April 12, 2004, submittal of a revision to its existing emission reporting rule to be consistent with the emission statement program requirements for stationary sources in the Clean Air Act (CAA). On April 12, 2004, Indiana submitted its final rule as published in the Indiana Register. Indiana held a public hearing on the submittal on December 3, 2003. The rationale for the approval and other information are provided in this rulemaking action.

**DATES:** This "direct final" rule is effective on December 28, 2004 unless EPA receives adverse written comments by November 29, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Regional Material in EDocket ID No. R05-OAR-2004-IN-0002 by one of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments. Agency Web site: <http://docket.epa.gov/rmepub/index.jsp>

material in Edocket(RME), EPA's electronic public docket and connect system, is EPA's preferred method for receiving comments. Once in the system, select "quick search" then key in the appropriate RME Docket identification number. Follow the on-

line instructions for submitting comments.

E-mail: [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

Fax: (312) 886-5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

**Instructions:** Direct your comments to Regional Materials in Edocket (RME) ID No. R05-OAR-2004-IN-0002. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in Edocket (RME), [regulations.gov](http://regulations.gov), or e-mail. The EPA RME website and the federal [regulations.gov](http://regulations.gov) website are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

**Docket:** All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886-6031 before visiting the Region 5 office.) This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031. [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov)

**SUPPLEMENTARY INFORMATION:**

- I. General Information
  - A. Does This Action Apply to Me?
  - B. How Can I Get Copies of This Document and Other Related Information?
  - C. How and to Whom Do I Submit Comments?
- II. What Is Required by the Clean Air Act and How does It Apply to Indiana?
- III. What Change Is Indiana Requesting?
- IV. Why Is This Request Approvable?
- V. Statutory and Executive Order Review