

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0464; FRL-9962-23-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the General Definitions for Texas Air Quality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (the Act or CAA), the Environmental Protection Agency (EPA) is approving revisions of the Texas State Implementation Plan (SIP) pertaining to EPA's latest definition of volatile organic compounds (VOC), aligning the lead reporting threshold with the EPA's Annual Emissions Reporting Rule (AERR), shortening the distance from the shoreline for applicable offshore sources to report an emission inventory, and revising terminology and definitions for clarity or consistency with the EPA's AERR.

DATES: This rule is effective on September 6, 2017, unless EPA receives relevant adverse comments by July 10, 2017. If EPA receives relevant adverse comments, 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 your comments, identified by Docket No. EPA-R06-OAR-2016-0464, at <http://www.regulations.gov> or via email to salem.nevine@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Nevine Salem, (214) 665-7222, salem.nevine@epa.gov. For the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Nevine Salem, (214) 665-7222, salem.nevine@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Nevine Salem or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On July 28, 2016, Texas Commission on Environmental Quality (TCEQ) submitted a SIP revision to EPA for review and approval. The SIP revisions include amendments to 30 TAC Section 101.1 and 101.10 in 30 TAC Chapter 101, General Air Quality Rules, Subchapter A, General Rules and corresponding revisions to the State Implementation Plan (SIP). The submitted revisions are described below:

1. Definitions Updates—TAC Chapter 101, Section 101.1

EPA periodically revises the list of negligibly reactive compounds to add or delete organic volatile compounds (VOC) from regulation on the basis that these compounds make a negligible contribution to tropospheric ozone¹

¹ Tropospheric ozone, commonly known as smog, is formed when VOCs and nitrogen oxides (NO_x) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, the EPA and state governments limit the amount of VOCs that can be released into the atmosphere. VOCs are those organic compounds of carbon that form ozone through atmospheric photochemical reactions. Different VOCs have different levels of reactivity. That is, they do not react to form ozone at the same speed or do not form ozone to the same extent. Some VOCs react slowly or form less ozone; therefore, changes in their emissions have less and, in some cases, very limited effects on local or regional ozone pollution episodes. It has been the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory VOC definition so as to focus VOC control efforts on compounds that do significantly increase ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs.

formation. Section 302(s) of the CAA specifies that the EPA has the authority to define the meaning of “VOC,” and hence what compounds shall be treated as VOCs for regulatory purposes. The policy of excluding negligibly reactive compounds from the VOC definition was first set forth in the “Recommended Policy on Control of Volatile Organic Compounds” (42 FR 35314, July 8, 1977) and was supplemented most recently with the “Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans” (Interim Guidance) (70 FR 54046, September 13, 2005). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and therefore suitable for exemption from the regulatory definition of VOC. Compounds that are more reactive than ethane continue to be considered VOCs for regulatory purposes and therefore are subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

The EPA lists compounds that it has determined to be negligibly reactive in its regulations as being excluded from the definition of VOC. (40 CFR 51.100(s)). The specific organic compounds that will be excluded from TCEQ's definition of VOC that is in the SIP with this revision include: *trans*-1,3,3,3-tetrafluoropropene;² HCF₂OCF₂H (HFE-134); HCF₂OCF₂OCF₂H (HFE-236cal2); HCF₂OCF₂CF₂OCF₂H (HFE-338pcc13); HCF₂OCF₂OCF₂CF₂OCF₂OCF₂H (H-Galden 1040x or H-Galden ZT 130(or150 or 180)),³ *trans*-1-chloro-3,3,3-trifluoroprop-1-ene,⁴ and 2-amino-2-methyl-1-propanol,⁵ Texas is updating its SIP to be consistent with current EPA definitions to provide clarity and consistency for owners and operators of sources subject to TCEQ rules regarding VOC control.

² See 78 FR 62451, October 22, 2013—Exclusion of *trans*-1&2, 3,3,3,-tetrafluoropropene.

³ See 78 FR 9823, February 12, 2013—Exclusion of group of four Hydrofluoropolyethers (HFEs).

⁴ See 78 FR 53029, August 28, 2013—Exclusion of *trans* 1-Chloro-3,3,3 trifluoroprop-1-ene.

⁵ See 79 FR 17037, March 27, 2014—Exclusion of 2-amino-2-methyl-1-propanol.

2. Emission Inventory Requirements in TAC Chapter 101, Section 101.10

A. Lead Reporting Threshold

On February 6, 2015 (80 FR 8787), the EPA finalized revisions to 40 Code of Federal Regulations (CFR) Part 51, Subpart A, Air Emissions Reporting Rule (AERR) and in 40 CFR 51.122 that lowered the lead (Pb) point source reporting threshold to 0.5 tons per year (tpy). The purpose of this change was to match requirements of the Pb Ambient Air Monitoring Requirements rule (75 FR 81126), which required monitoring agencies to install and operate source-oriented ambient monitors near Pb sources emitting 0.50 tpy or more by December 27, 2011. With this action, the EPA lowered the point source threshold for Pb emissions to 0.5 tons per year (tpy) of actual emissions. The current TCEQ emissions inventory (EI) reporting rule at 30 TAC Section 101.10 in the SIP (and previous version of the AERR) language requires a source to submit an EI if it has 10 tpy or more of actual or 25 tpy or more of potential lead emissions. Currently, the data needed to meet the new EPA lead reporting threshold requirement are collected under TCEQ's special inventory⁶ which requires TCEQ to annually identify and contact these sources for an inventory. This revision for lowering the lead reporting threshold aligns 30 TAC Section 101.10 with the reporting requirements in the EPA's AERR (40 CFR part 51) and would require sources to self-identify and report a full and complete EI annually if they emit 0.5 tpy or more of lead.

B. Off-Shore Emission Inventory Reporting Requirement

Under the current SIP, sources within 25 statute⁷ miles from the shoreline are required to submit an EI if the source meets one of the reporting threshold in 30 TAC Section 101.10. TCEQ proposed amendment shortens the applicable distance for a site on waters from 25 statute miles to 9.0 nautical⁸ miles (10.4

statute miles) from the shoreline.⁹ Texas' territorial waters only extend 9.0 nautical miles. At this time, no sites located between 9.0 nautical miles and 25 statute miles from the shoreline are reporting EIs to Texas. If a site existing between 9.0 nautical miles and 25 statute miles from shore should be required to report in the future, this site would be captured in a federal EI. This revision to align Texas rules with the current federal regulations found in 40 CFR part 51 will clarify requirements in 30 TAC Section 101.10 and change applicability to sources that are within 9.0 nautical miles of the shoreline in accordance with state and federal jurisdiction over offshore sources.

C. Definition and Terminology Revisions

a. 30 TAC Section 101.10(a) requires an inventory to be submitted on forms or other media. The commission adopted amendment removes the redundant phrase "forms or other" from this subsection. The phrase "media" succinctly covers this requirement.

b. Currently, the data needed to meet the new EPA lead reporting threshold requirement as discussed previously are collected under the special inventory requirement in the SIP's subsection (b)(2) and (3). The amendment in TCEQ's revision makes the requirement clear to the community and does not require the agency to rely on the special inventory provision to collect data that is reported annually.

c. All owners or operators of accounts continuing to meet the SIP's reporting requirements in subsection (a) are required to annually update their EI. The amendment adds subsection (a)(5) to the list of applicability requirements listed in subsection (b)(2) that are required to submit an annual emissions inventory update (AEIU). This addition includes the adopted inclusion of the new lead reporting requirement to this existing requirement.

d. An amendment in subsection (a)(5) to change the units from "tons" to "tpy" to more clearly define the period over which the emissions are calculated. An annual time-period has always been assumed for this applicability by the State and EPA but the amendment is to clarify.

e. The term "microns" is changed to "micrometers" in the adoption to align language in 30 TAC Section 101.10(b)(1) with the reporting rule in AERR. In applied sciences, a micron is commonly accepted alternative term to micrometer, and thus, the adopted amendment has no effect on the population of sources

required to report an EI or on the methodology for estimating emissions.

f. Particulate matter with aerodynamic diameter less than or equal to 2.5 micrometers (PM_{2.5}) is added to the list of contaminants that shall be reported in the EI under subsection (b). The list includes the phrase "any other contaminants", PM_{2.5} is subject to the NAAQS and is already required for inclusion in an EI. However, specifically listing PM_{2.5} clarifies the reporting requirement and does not change any existing reporting requirement to the agency.

g. A second certifying statement has been added as 30 TAC Section 101.10(d)(2). Texas Health and Safety Code (THSC), Section 382.0215(f) requires that an owner or operator that is required to submit an EI and had no emissions events during the reporting year must include as part of the inventory a statement to this effect. The EI update process and reporting forms already include this certifying statement. An EI cannot be considered completed or for electronically submitted accounts, submitted without either completing this certification or submitting emissions event data. The amendments do not change this practice nor the wording in the certifying statement on the EI; it only includes the existing practice, which is required by THSC Section 382.0215 and reflected in 30 TAC Section 101.10.

II. The EPA's Evaluation

On July 28, 2016, TCEQ submitted SIP revisions to EPA for review and approval. The revisions amend Emission Inventory and General Air Quality rules in 30 TAC Chapter 101. The amended rules will incorporate EPA's latest finalized definitions of VOC compounds, align the lead reporting threshold with the AERR, shorten the distance from the shoreline for applicable offshore sources to report an emission inventory, and revise terminology and definitions for clarity and consistency with the EPA's AERR. These changes are consistent with section 110 of the CAA and meet the regulatory requirements pertaining to the SIPs.

III. Final Action

Pursuant to section 110 of the CAA, EPA is approving the SIP revisions TCEQ submitted to EPA regarding the above revisions to 30 TAC Chapter 101 Emissions Inventory and General Definitions update. These revisions are consistent with section 110 of the CAA and meet the regulatory requirements pertaining to SIPs.

⁶ Special Inventories: Any person owning or operating a source of air emissions which is or could be affected by any rule or regulation of the commission (TCEQ) shall file emissions-related data with the commission (upon request by the executive director or a designated representative of the commission) as necessary data may take special procedure arrangements with the Emissions Assessments Section to submit data separate from routine emission inventory submissions or other arrangements as necessary to support claims of confidentiality.

⁷ Statute mile = 1 mile (1.6 kilometer).

⁸ A nautical mile is based on the circumference of the earth, and is equal to one minute of latitude. It is slightly more than a statute (land measured) mile (1 nautical mile = 1.1508 statute miles). Nautical miles are used for charting and navigating.

⁹ 43 U.S.C. 1301.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 6, 2017 without further notice unless the Agency receives relevant adverse comments by July 10, 2017. If EPA receives relevant adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does

not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land

or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Samuel Coleman was designated the Acting Regional Administrator on May 24, 2017 through the order of succession outlined in Regional Order R6-1110.13, a copy of which is included in the docket for this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 24, 2017.

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 citation for part 52 continues to read as follows:

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

Subpart SS—Texas

- 2. In § 52.2270(c), the table titled "EPA Approved Regulations in the Texas SIP" is amended by revising the entries for Sections 101.1 and 101.10.

The revisions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 101—General Air Quality Regulations				
Subchapter A—General Rules				
Section 101.1	Definitions	7/6/2016	6/8/2017, [Insert Federal Register citation].	
*	*	*	*	*
Section 101.10	Emissions Inventory Requirements.	7/6/2016	6/8/2017, [Insert Federal Register citation].	
*	*	*	*	*

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[FR Doc. 2017-11903 Filed 6-7-17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[EPA-HQ-OPP-2017-0036; FRL-9961-29]

Triclopyr; Pesticide Tolerances for Emergency Exemptions**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of triclopyr in or on sugarcane. This action is in response to EPA's granting of an emergency exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sugarcane. This regulation establishes a maximum permissible level for residues of triclopyr in or on this commodity. The time-limited tolerance will expire on December 31, 2020.

DATES: This regulation is effective June 8, 2017. Objections and requests for hearings must be received on or before August 7, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0036 is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDfrNotices@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl. To access the OCSPP test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0036 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 7, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified

by docket ID number EPA-HQ-OPP-2017-0036, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of triclopyr (2-[(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid), including its metabolites and degradates in or on sugarcane, cane at 40 parts per million (ppm). This time-limited tolerance will expire on December 31, 2020.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.*, without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including