Court of Appeals for the appropriate circuit by February 22, 2000. 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 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 2, 1999.

William A. Spratlin,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations 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 AA—Missouri

2. In § 52.1320 in paragraph (c), the table for ''Kansas City Article III—Air Pollution'' is removed and to the table for ''Kansas City Chapter 8—Air Quality 17'' is revised to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED MISSOURI REGULATIONS

MISSOURI citation	Title	State effective date	EPA approval date	Explanations
*	*	*	*	*
Kansas City Chapter 8—Air Quality				
8–2	Definitions	12/10/98	12/22/99	
*	*	*	*	*
8–5	Emission of Particulate Matter	12/10/98	12/22/99	Only subsections 8–5(c)(1)b, 8–5(c)(1)c, 8–5(c)(2)a, 8–5(c)(3)a, 8–5(c)(3)b, 8–5(c)(3)c, 8–5(c)(3)d are approved in the SIP.
*	*	*	*	*

[FR Doc. 99–32860 Filed 12–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–115–1–7434a; FRL–6504–4]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Miscellaneous Industrial Sources, Cutback Asphalt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Miscellaneous Industrial Sources, specifically, asphaltic operations in the Nueces County and the ozone nonattainment areas. The EPA is approving these revisions to regulate emissions of VOCs in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on February 22, 2000, without further notice, unless EPA receives adverse comment by January 21, 2000. 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: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

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SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

1. What Action Is EPA Taking?

On August 31, 1999, the Governor of Texas submitted the Subchapter F, ''Miscellaneous Industrial Sources,'' of Chapter 115, ''Control of Air Pollution From Volatile Organic Compounds,'' as a revision to the SIP. This rule making will specifically approve revisions to sections 115.512 concerning Control Requirements, 115.513 concerning Alternate Control Requirements, 115.515 concerning Testing Requirements, and 115.516 concerning Recordkeeping Requirements. Also, we are approving a new section 115.510 concerning definitions of ''cutback asphalt,'' ''conventional cutback asphalt,'' ''exempt cutback asphalt,'' and ''asphalt emulsion.'' In this document we are approving revisions to the Texas SIP concerning control of VOC emissions from asphaltic operations in Nueces County and ozone nonattainment areas. The County of Nueces is not classified as a nonattainment area for ozone. The ozone nonattainment areas include the Houston/Galveston (H/G), Beaumont/Port Arthur (B/PA), Dallas Fort Worth (DFW), and El Paso (EP). For more information on the SIP revision and EPA's evaluation, please refer to our TSD dated October 1999.

In the ''Final Action'' section of this document we state that we are publishing this rule without prior proposal and EPA is planning to approve this action without further notice.

2. What Is Cutback Asphalt?

If you liquify paving asphalt (asphaltic cement) with petroleum distillates, you will have cutback asphalt (liquified asphalt). Cutback asphalt contains a significant amount of light petroleum solvents such as kerosene, diesel, or naphtha. These solvents or diluents are added to the asphalt either at the refinery or the asphalt plant. As a result, cutback asphalt can be a significant source of VOCs.

3. Why Do We Regulate VOCs?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

4. Where Can I Find EPA Guidelines on Cutback Asphalt?

You can find our guidelines on cutback asphalt in the document number EPA–450/2–77–037—''Control of Volatile Organic Compounds from Use of Cutback Asphalt.''

5. What Are the Asphalt Rule Changes?

The intended purpose of this rule is to reduce VOC emissions. Specifically, this rule revision applies to sources located or operating in the Nueces county, Texas. The county of Nueces is classified as an attainment area for ozone. This rule will limit the VOC volume on cutback use in the Nueces county from 8 to 7 percent. This revision will make the volume limitation for cutback use in the Nueces county more consistent with the volume limitation for cutback use in the ozone nonattainment areas.

This rule will replace the term ''emulsified asphalt'' with the term ''alternative asphalt'' for sources located or operating in both the DFW, EP, B/PA, and H/G ozone nonattainment areas and the Nueces county. *See* section 115.510.

Control requirements in section 115.512 for the DFW, EP, B/PA, and H/G ozone nonattainment areas remain the same as the control requirements in the existing federally approved SIP for Texas. The only change to the control requirements in section 115.512 is lowering of the volume limitation for cutback use in the Nueces county.

If you are in the Nueces county or any of the above-mentioned nonattainment areas, you should refer to the rule to determine if and how this rule will affect you.

For detailed evaluation of the asphalt rule changes, please see pages 2 and 3 of our TSD dated October 1999.

6. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas. The H/G, DFW, EP, and B/PA are nonattainment areas for ozone.

7. What Is a State Implementation Plan?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The NAAQS are established under section 109 of the Act to protect public health, and they address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

8. What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State may submit the adopted provisions to us and request that these provisions be included in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If adverse comments are received, we must address them prior to a final action.

All State regulations and supporting information approved by us under section 110 of the Act are incorporated into the federally approved SIP. Records of these SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations which were approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

9. What Does Federal Approval of a SIP Mean to Me?

Enforcement of the State regulation before and after it is incorporated into federally approved SIP is primarily a State function. However, once the regulation is federally approved, we and the public may take enforcement action

against violators of these regulations if the State fails to do so.

10. What Are Advantages of Adopting This Rule?

Adopting this rule will have the following advantages: (1) Reduces the VOC content of the asphalt, for Nueces county, from 8 percent of the total annual volume to 7 percent. The total annual volume percentage for the asphalt use is calculated over a two-year period, (2) makes the VOC content requirement for asphalt in the Nueces county more consistent with that of nonattainment areas, (3) allows use of alternative asphalt mixes with equal or less VOC emissions, and (4) offers more operational flexibility for a source to meet the market demands.

11. What Test Methods Will Texas Use To Determine Compliance With the VOC Content Requirements?

According to section 115.515, Texas will apply the following test methods to determine compliance with this VOC rule: (1) American Society of Testing and Materials (ASTM) Test Method D 244, ''Standard Test Methods for Emulsified Asphalts, Sections 11 to 15, Residue and Oil Distillate by Distillation,'' as published in the 1997 edition of the Annual Book of ASTM Standards, for determining VOC content of asphalt emulsions; or (2) ASTM Test Method D 402, ''Standard Test Method for Distillation of Cut-Back Asphaltic Products,'' as published in the 1997 edition of the Annual Book of ASTM Standards, for determining the VOC content of cutback asphalt.

12. What Are the Subchapter F Requirements for Cutback Asphalt?

The following table contains a summary of the requirements in Subchapter F for the H/G, the B/PA, the DFW, and the EP areas and the Nueces county concerning VOC contents in cutback asphalt and asphalt emulsion.

TABLE 1.—ASPHALTIC VOC CONTENT REQUIREMENTS AND THEIR CORRESPONDING AREAS IN TEXAS

Location	Requirement	Explanation
H/G, B/PA, DFW, EP areas and Nueces county	VOC content 7 percent or less of total volume, averaged over 2-year period.	For paving roadways, driveways, or parking lots.
H/G, B/PA, DFW, EP areas	No cutback asphalt	From April 16 to September 15 of any year
H/G, B/PA, DFW, EP areas and Nueces county	Asphalt emulsion 0.5 percent for seal coats	By weight percent.
H/G, B/PA, DFW, EP areas and Nueces county	3.0 percent for chip seals when dusty or dirty aggregate used.	By weight percent for asphaltic emulsion.
H/G, B/PA, DFW, EP areas and Nueces county	8.0 percent for mixing with open graded aggregate containing less than 1 percent of dust or clay-like materials.	By weight percent for asphaltic emulsion.
H/G, B/PA, DFW, EP areas and Nueces county	12.0 percent for mixing with dense graded aggregate when used to produce a mix designed to have 10 percent or less voids when fully compacted.	by weight percent for asphaltic emulsion.

When more than one asphaltic VOC content requirement from the above table applies to an asphaltic emulsion, one must use the most stringent requirement. *See* section 115.512(3).

Final Action

The 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 today's **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 February 22, 2000, without further notice unless we receive adverse comment by January 21, 2000. If EPA receives 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 at this time.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Executive 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612, ''Federalism,'' and E.O. 12875, ''Enhancing the Intergovernmental Partnership.'' Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the E.O. to include regulations that 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.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will 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 E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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. The 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). This rule will be effective February 22, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2000. 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, Asphalt, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: November 19, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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. Section 52.2270 is amended under Chapter 115, Subchapter F, by removing the entry for section 115.512 to 115.519 and inserting in its place individual entries for section 115.510 through section 115.519 reading as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Regulation 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter F Miscellaneous Industrial Sources				
Cutback Asphalt				
Section 115.510	Definitions	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
*	*	*	*	*
Section 115.512	Control Requirements	August 18, 1999/August 31, 1999.	December 22, 1999 and Federal Register cite.	
Section 115.513	Alternative Control Requirements.	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
*	*	*	*	*
Section 115.515	Testing Requirements	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
Section 115.516	Recordkeeping Requirements.	August 18, 1999/August 31, 1999.	December 22, 1999 and 64 FR 71670.	
Section 115.517	Exemptions	05/08/92	03/07/95 60 FR 12438	Ref 52.2299(c)(88).
*	*	*	*	*
Section 115.519	Counties and Compliance Schedules.	05/08/92	03/07/95 60 FR 12438	Ref 52.2299(c)(88).
*	*	*	*	*

[FR Doc. 99–32858 Filed 12–21–99; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300957; FRL–6398–2]

RIN 2070–AB78

Myclobutanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil and its metabolites in or on hops at 5.0 parts per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2001. This regulation also extends time-limited tolerances for combined residues of the fungicide myclobutanil and its metabolites, in or on caneberries at 1.0 ppm and in or on peppermint and spearmint at 2.5 ppm for an additional 1–year period. These tolerances will expire and are revoked on December 31, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on caneberries, hops, peppermint and spearmint. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (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 section 18 of FIFRA.

DATES: This regulation is effective December 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300957, must be received by EPA on or before February 22, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300957 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9358; and e-mail address: Deegan.Dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing