

Mobile Ship Channel or in the Port of Mobile must contact the on-scene Coast Guard representative, request permission to conduct such action, and receive authorization from the on-scene Coast Guard representative prior to initiating such action. The on-scene Coast Guard representative may be contacted on VHF-FM channel 16.

(5) All persons and vessels authorized to enter into this security zone shall obey any direction or order of the Captain of the Port or designated representative. The Captain of the Port Mobile may be contacted by telephone at (251) 441-5976. The on-scene Coast Guard representative may be contacted on VHF-FM channel 16.

(6) All persons and vessels shall comply with the instructions of the Captain of the Port Mobile and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 12, 2005.

**J.D. Bjostad,**

*Captain, U.S. Coast Guard, Captain of the Port Mobile.*

[FR Doc. 05-8073 Filed 4-21-05; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2004-TX-0002; FRL-7902-8]

#### 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:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Texas 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 Texas Commission on Environmental Quality (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 (DFWIA) 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 for the proposed DFWIA project. The rationale for the final approval action and other information are provided in this document.

**DATES:** This rule is effective on May 23, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Materials in EDocket (RME) Docket ID No. R06-OAR-2004-TX-0002. All documents in the docket are listed in the Regional Materials in EDocket (RME) index at <http://docket.epa.gov/rmepub/>; once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which 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 docket materials are available either electronically in RME or in hard copy 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 wherever "we," "us," or "our" is used, we mean the EPA.

#### Outline

- I. What Action Is EPA Taking?
- II. What Is the Background for This Action?
- III. What Did the State Submit and How Did We Evaluate It?
- IV. Responses to Comments on the Direct Final Action
- V. Final Action
- VI. Statutory and Executive Order Reviews

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

On January 14, 2004, TCEQ adopted a Memorandum of Agreement (MOA) between TCEQ and NCTCOG's Regional Transportation Council (RTC). At the same time, TCEQ adopted a revision to the Texas SIP to incorporate this MOA into it, and has since submitted this SIP revision to EPA for approval. This MOA commits the RTC to provide the DFWIA 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 by the FAA.

EPA is approving the incorporation of this MOA into the DFW SIP. This action by EPA will ensure that the MOA, and the resulting emission offsets, are enforceable at both the federal and state levels.

#### II. What Is the Background for This Action?

The DFW area is a nonattainment area for the air pollutant ozone, and is operating under a SIP to control the emissions of NO<sub>x</sub> and VOCs, which are ozone precursor pollutants. Under the Texas general conformity rules (30 TAC 101.30), which implement the general conformity requirements of section 176(c) of the Clean Air Act, certain types of Federal actions, such as FAA approval of environmental documents developed in accordance with the National Environmental Policy Act (NEPA), 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 these regulations (30 TAC 101.30(c)(2)); see 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 Post 1996 Rate of Progress (ROP) SIP approved by EPA on March 28, 2005 (70 FR 15592, effective April 27, 2005).

The DFWIA notified TCEQ and EPA of upcoming aviation projects that would trigger the need for a general conformity determination by the 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.

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. As evaluated in 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.

### III. What Did the State Submit and How Did We Evaluate It?

The conformity regulations provide several options to show that an action conforms to an applicable implementation plan. One option is to establish enforceable measures that offset the expected emissions from the project. 30 TAC 101.30(h)(1)(B); see 40 CFR 51.858(a)(2). 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. Provisions in the general conformity

regulations allow for such an interaction between the general conformity and transportation conformity processes. The general conformity regulations specifically state that a federal agency can demonstrate general conformity, in part, by showing that "the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP [under the transportation conformity regulations]." 30 TAC 101.30(h)(1)(E)(ii); 40 CFR 51.858(a)(v)(ii). See also Question 1 on p. 30 of the General Conformity Guidance Questions and Answers, issued by EPA on July 13, 1994. Details on the emission reduction measures are available in the Technical Support Document associated with this action. 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.

The general conformity rules require these measures to be enforceable under both state and Federal law (30 TAC 101.30(h)(1)(B); see 40 CFR 51.858(a)(2)). 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 into the State Implementation Plan for the DFW ozone nonattainment area on that same day. Thus, these measures are already enforceable by state law.

It is important to note that EPA is not making a general conformity determination itself nor are we approving a general conformity determination for this FAA action. Under the conformity regulations, each Federal agency must make its own conformity determination (30 TAC 101.30(d); see 40 CFR 51.854). With this approval action, EPA is simply approving into the SIP an MOU that will provide a means for the FAA to make future general conformity determinations for the DFWIA.

### IV. Responses to Comments on the Direct Final Action

On October 29, 2004, EPA published a direct final rule approving a revision to incorporate the MOA into the Texas SIP for the DFW ozone nonattainment area. This rule contained the condition that if any adverse comments were received by the end of the public comment period on November 29, 2004, the direct final rule would be withdrawn and we would respond to

the comments in a subsequent final action. One consolidated set of comments was received from a representative of Blue Skies Alliance, Downwinders at Risk, Public Citizen and Sierra Club. The following summarizes the comments and EPA's response to these comments.

*Comment 1:* The action allows Texas to avoid Clean Air Act obligations under the 1-hour ozone standard by allowing emission reduction measures to offset airport emissions. Any reductions from these measures should be included in the area's SIP to meet its outstanding 1-hour obligation.

*Response:* EPA action on the 1-hour ozone attainment demonstration SIP submitted by TCEQ to EPA on April 25, 2000, is outside the scope of this **Federal Register** action. The general conformity regulations authorize the use of emission offsets in conformity determinations (30 TAC 101.30(h)(1)(B); see 40 CFR 51.858(a)(2)). This provision states that emission offsets may be implemented through a revision to the SIP or a similarly enforceable measure so that sufficient emission reductions are achieved that there is no net increase in emissions of the criteria pollutant. The incorporation of this MOA into the Texas SIP is not specifically related to the attainment demonstration SIP. EPA action to incorporate this MOA into the general Texas SIP will render the provisions of the MOA federally enforceable as required by the general conformity regulations discussed above. Although there is currently not an approved 1-hour ozone attainment demonstration SIP for the DFW area, EPA has outlined several options that will allow States to fulfill unmet 1-hour obligations in the recent rulemaking related to promulgation of the 8-hour ozone NAAQS (69 FR 23951).

*Comment 2:* Comment questions the ability of 2015 MVEBs to accommodate emissions from the airport project and states that the proposed action blurs the distinction between the conformity rules that allow conformity to be determined by either inclusion of the emissions in the SIP or by providing separate offsets.

*Response:* EPA disagrees with this comment. The MOA commits the North Central Texas Council of Governments to accommodate expected emissions from the airport project by adjusting (*i.e.*, increasing) the modeled regional mobile emissions estimates for 2015. EPA action to incorporate this MOA into the general Texas SIP will render the provisions of the MOA federally enforceable as required by the general conformity regulations. Therefore, any

failure by the NCTCOG to adjust the regional emissions estimates in 2015 could result in a finding by EPA of a failure to implement the SIP and could jeopardize future transportation conformity determinations required for the area's Metropolitan Transportation Plan and Transportation Improvement Program. Further, the conformity rule provisions for demonstrating conformity allow a combination of approaches to be used. 30 TAC 101.30(h); see 40 CFR 51.858(a). The FAA has decided to demonstrate conformity by implementing emissions offsets and by ensuring that the 2015 emissions estimates will be included in a conforming Transportation Improvement Program as authorized by 30 TAC 101.30(h)(1)(E)(ii). See 40 CFR 51.858(a)(5)(ii); Question 39 of General Conformity Guidance for Airports Questions and Answers (published jointly by EPA and FAA on September 25, 2002). The NCTCOG must continue to adjust the regional emissions analysis to accommodate this airport project in any transportation conformity determination undertaken prior to the MOA expiration date of December 31, 2015.

*Comment 3:* The general conformity determination would rely on inclusion of 2015 emissions in a future 1-hour SIP.

*Response:* EPA disagrees. Any conformity determination made by the FAA or other Federal agency is not dependent upon submission or approval of a 1-hour ozone attainment demonstration SIP. The conformity regulations provide several mechanisms to demonstrate conformity that are unrelated to whether an approved SIP is in place, including the provision related to emissions offsets (30 TAC 101.30(h)(1)(B); 40 CFR 51.858(a)(2)).

*Comment 4:* EPA should treat the 1999 [sic] attainment demonstration SIP as disapproved and find that no projects may proceed until current inventories are developed and an attainment demonstration is made.

*Response:* EPA believes the commenters are referring to the attainment demonstration SIP submitted in 2000, because EPA has taken final action on the 1999 attainment demonstration SIP. On June 2, 1999, EPA published a final rule finding that the 1999 SIP submitted by TCEQ was incomplete (64 FR 29570). To date, EPA has taken no action on the 2000 attainment demonstration SIP. Action on this SIP is outside the scope of this notice. The conformity regulations provide several mechanisms to demonstrate conformity that are unrelated to whether an approved SIP is

in place, including the provision related to emissions offsets (30 TAC 101.30(h)(1)(B); 40 CFR 51.858(a)(2)).

*Comment 5:* Construction emissions in the SIP should first be mitigated to as low a level as possible, and then offset with emission reduction measures.

*Response:* Although EPA supports and encourages air quality mitigation measures and use of Best Management Practices in construction operations, mitigation is not required prior to determination of emission offsets.

*Comment 6:* Offset requirements are underestimated because the 90% NO<sub>x</sub> emission reduction controls on airport Ground Support Equipment (GSE) are not part of an approved SIP. Agreed Orders do not assure that all future airport activity will be controlled to the assumed level.

*Response:* Agreed Orders and Memoranda of Agreement (MOAs) concerning emission reductions in Ground Support Equipment at DFW area airports were signed by the parties involved in 2001 and approved into the SIP by EPA on April 22, 2002 (67 FR 19515). Therefore, as measures approved into the Texas SIP, the Agreed Orders and MOAs are federally enforceable and subject to the enforcement provisions generally applicable to SIPs, including potential sanctions that could be triggered if EPA finds that TCEQ has failed to implement the SIP.

*Comment 7:* Emission estimates are likely erroneous. The commenters reference a Texas Transportation Institute (TTI) Airport Emissions Inventory study.

*Response:* The emissions estimates were based on inventories, emission factors and emission models that were available at the time the analysis was started. While emission inventories and models are updated periodically, EPA believes that the initial estimates provided by the DFWIA are reasonable and appropriate. The revised 2007 NO<sub>x</sub> inventory, upon which the Agreed Orders and MOAs are based, is the result of a more refined survey of the GSE population in actual use at the affected airports. This inventory revision went through the State's administrative process for adoption and was subsequently accepted by EPA. The TTI study referenced by the commenters was cited in the DFW 5% Increment-of-Progress SIP, which is still under consideration by TCEQ. This study was not available at the time the GSE Agreed Orders were developed.

Please note that EPA is not making a general conformity determination itself; we are solely approving a mechanism that the FAA may use for a future

general conformity determination for the DFWIA. Each Federal agency must make an independent conformity determination for its action. Prior to making conformity determination the FAA must evaluate the emission estimate methodology and inventory. Any conformity determination made by the FAA is subject to the public notice and involvement provisions of the general conformity regulations.

*Comment 8:* Current controls on existing sources expire and are not enforceable because the MOU containing the DFWIA emission reduction commitments expires in 2007.

*Response:* The GSE Agreed Orders and MOAs (among which is presumably the MOU referenced in the comment) have been signed and incorporated into the Texas SIP. Therefore, because EPA has already approved the orders and MOAs into the SIP in a separate final action (see 67 FR 19515), this comment is outside the scope of this action. Nonetheless, airport operators and major carriers in the affected areas have already made the required conversions of GSE to electric. Although the GSE MOA expires in 2007, it is unreasonable to expect that airport operators and carriers would then convert this equipment back to diesel.

*Comment 9:* The Technical Support Document must address the effectiveness of various elements of the SIP that generate the basis of the GSE emission factors.

*Response:* This request is beyond the scope of this action. EPA is not acting on the 2000 attainment demonstration SIP with this notice. The GSE emission factors used mirror those used to develop the Agreed Orders with DFWIA, the Cities of Dallas and Fort Worth and the GSE owners/operators at DFWIA. These Agreed Orders were approved by EPA and incorporated into the general Texas SIP on April 22, 2002 (67 FR 19515).

*Comment 10:* General conformity regulations require the use of the latest and most accurate emission estimation techniques available per 40 CFR 93.160(b), but MOA activity is based on 1996 data.

*Response:* The emissions inventory was prepared in accordance with methods and models approved by EPA and FAA, and used the latest available inventory at the time the analysis was begun. Please note that this **Federal Register** action is not a conformity determination and the FAA may require additional analyses with updated inventories and currently available models prior to any future conformity determination it may undertake.

*Comment 11:* The general conformity determination does not reference FAA's Emissions and Dispersion Modeling system (EDMS).

*Response:* This is not a general conformity determination but simply a mechanism by which to make available emission reduction credits or offsets for possible use by a Federal agency in making a conformity determination. Emission estimates for the Terminal F projects provided by DFWIA included use of the FAA's EDMS model, among others (see the Technical Support Document associated with the proposal for this action.)

*Comment 12:* The analysis is proposed using MOBILE5 and should be reevaluated using MOBILE6.

*Response:* At the time the analysis was developed, MOBILE5 was the latest EPA-approved model for estimating on-road mobile source emissions. EPA released a later version of the MOBILE model, MOBILE6, on January 29, 2002 (67 FR 4254). EPA regulations allow a grace period for emission analysis begun prior to the issuance of a new emissions model. In accordance with 30 TAC 101.30(i)(2)(A)(ii) and 40 CFR 58.859(b)(1)(ii), general conformity analyses for which the analysis was begun during the grace period or no more than three years before the **Federal Register** notice of availability of the latest emissions model may continue to use the previous version of the model specified by EPA. The initial emissions estimate prepared by DFWIA was submitted in January 2003, well within the three-year window of model acceptability. Depending on the timing of any conformity determination by FAA based on the submitted emissions estimates, that agency may choose to require an updated emissions analysis using MOBILE6. However, that decision is outside the scope of this action.

*Comment 13:* The FAA/EPA general conformity guidance for airports requires incorporation of mitigation measures into the project.

*Response:* The FAA is not making a general conformity determination at this time, and this comment is outside the scope of this action. Any conformity determination made by FAA will be subject to the mitigation and public notice and involvement provisions of the general conformity regulation.

*Comment 14:* The mitigation measures are ill-defined per 40 CFR 93.160 requirements.

*Response:* DFWIA is proposing to use offsets rather than mitigation to demonstrate conformity in this case. Although a draft list of candidate projects that could be used as offsets was provided by the NCTCOG, specific

projects to be used as offsets have not been identified. We agree with the commenters that these measures must be specifically identified, along with a timeline for implementation, and included in a conformity determination if the FAA intends to use such measures as offsets. This action supports the requirements of 30 TAC 101.30(h)(1)(B) and 40 CFR 51.858(a)(2) by making use of any such measures federally enforceable. For further discussion of mitigation and offsets, please see Question 38 in the General Conformity Guidance for Airports: Questions and Answers jointly issued by EPA and FAA on September 25, 2002.

*Comment 15:* "Signal improvement" is not a sufficient description of the emission reduction measures.

*Response:* The list of emission reduction measures proposed by the NCTCOG and provided in the Technical Support Document of EPA's proposed approval of the MOA is draft and therefore subject to change. With this action, EPA is merely approving the mechanism to commit to use such measures in general conformity determinations. The appropriateness of individual measures is outside the scope of this action and will be addressed by the FAA if a conformity determination is conducted for the Terminal F project. The term "signal improvement" is a recognized term used in professional practice and with generally agreed upon methodologies to calculate emission reduction benefits from such measures.

*Comment 16:* Emission offsets are Reasonably Available Control Measures and should not be used to permit emissions growth.

*Response:* Under 30 TAC 101.30(b)(1) and 40 CFR 58.852, emissions reductions can be considered surplus when they are not required for use by or credited to other applicable SIP provisions. The applicable SIP (*i.e.*, the most recently approved SIP) is the Post 1996 ROP SIP, approved by EPA on March 28, 2005 (70 FR 15592, effective April 27, 2005). The emission offsets memorialized by this MOA are not part of the 15% ROP SIP, nor are they reserved for use elsewhere. The 15% ROP SIP does not contain an airport emission budget, so conformity may be demonstrated by one of the other means available under 30 TAC 101.30(h) and 40 CFR 51.858, including offsetting the expected emissions from the project so that no net increase in emissions occurs.

*Comment 17:* Minutes from TCEQ's modeling meetings disclose projections that enormous additional emission reduction measures will be needed for DFW to attain the 1-hour or 8-hour

ozone standards. These offsets are not surplus reductions.

*Response:* As a result of recent promulgation of a new ozone standard, the 8-hour ozone standard, TCEQ must submit a SIP demonstrating that this standard can be attained in the DFW 8-hour nonattainment area no later than the statutory attainment date (69 FR 23951). As a result of the MOA signed between TCEQ and NCTCOG, the emission reductions identified to offset the expected increase in emissions due to construction and operation of Terminal F at DFWIA would not be available for use in demonstrating attainment of the 8-hour standard. TCEQ may include an airport emissions budget in the 8-hour attainment demonstration SIP for the DFW area. If so and if approved by EPA, this would offer the FAA another means to demonstrate conformity of airport projects to the SIP.

*Comment 18:* Deferring analysis of a project's conformity by assigning project emissions to a future MVEB is improper.

*Response:* The conformity regulations intend for federal agencies to be accountable for emissions resultant from their actions. In fact, the general conformity regulations specifically state that a federal agency can demonstrate general conformity, in part, by showing that "the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP [under the transportation conformity regulations]." 30 TAC 101.30(h)(1)(E)(ii); 40 CFR 51.858(a)(v)(ii). See also, Question 1 on p. 30 of the General Conformity Guidance Questions and Answers, issued by EPA on July 13, 1994.

*Comment 19:* A finding of conformity does not meet § 93.160 mitigation requirements and does not constitute a finding that emissions in interim years will actually be achieved.

*Response:* Mitigation measures were not specifically included in the emission estimates for Terminal F provided by DWIA, but may be required by FAA prior to any conformity determination on this project. Any such requirement is outside the scope of this **Federal Register** action. The general conformity regulations do not require emissions offsets and/or mitigation for every year of a project. Specific analysis years are defined at 30 TAC 101.30(i)(4) and 40 CFR 51.859(d) and include the area's attainment year (currently 2007 for the DFW area under the 1-hour standard) and the year emissions from the action are expected to be at their greatest, and any year in which the

applicable SIP includes an emission budget.

*Comment 20:* The 2015 MVEBs have little relevance to future SIP goals, as future conformity determinations will be based on the DFW 5% Increment-of-Progress SIP.

*Response:* TCEQ has proposed a 5% Increment-of-Progress (IOP) SIP as a transition SIP between the 1-hour and 8-hour ozone standards in accordance with the 8-hour ozone rules promulgated at 69 FR 23951. However, this SIP has not yet been adopted nor submitted to EPA for approval. Until EPA approves of the proposed 5% IOP SIP, it is not considered the applicable SIP for general conformity demonstrations. As a result of the incorporation of the MOA into the general Texas SIP, the amount of emission reductions necessary to satisfy the terms of the MOA will need to be subtracted from any 2015 MVEB in effect at the time, regardless of which SIP they come from.

*Comment 21:* The general conformity determination calculates project emissions with MOBILE5.

*Response:* Please see response to Comment 12 above.

*Comment 22:* The project will cause or contribute to future ozone violations.

*Response:* The purpose of the criteria to demonstrate conformity found at 30 TAC 101.30(h) and 40 CFR 51.858 is to ensure that the actions of Federal agencies conform to the State's air quality plan. One way to demonstrate conformity is by committing to offset or mitigate any expected emissions increases that are not otherwise exempted from conformity. This action memorializes the commitment of the NCTCOG to work with the FAA in determining appropriate emission reduction measures that may be used to offset emission increases associated with specific projects at the DFWIA. The FAA may require other mitigation deemed necessary for a positive conformity determination. Offsetting the expected emissions by implementation of emission reduction measures elsewhere in the DFW nonattainment area and demonstrating conformity in this manner will, by law, result in a finding that any increases in emissions associated with the Terminal F suite of projects will not cause or contribute to future ozone violations. As noted previously, the FAA has the ultimate responsibility for making the general conformity determination for the Terminal F projects.

*Comment 23:* The DFW Rate of Progress SIP is no longer accurate or current enough to support a conformity finding.

*Response:* Incorporation of the MOA into the general Texas SIP by this **Federal Register** action will enable the FAA to demonstrate conformity by a means other than reliance on the ROP SIP and still meet the general conformity requirements of section 176 (c) of the Clean Air Act.

*Comment 24:* The risk from toxic emissions upon downwind communities must be identified.

*Response:* General conformity regulations apply only to the criteria pollutants defined at 40 CFR 51.853(b). For further information on mobile source air toxics, please see 66 FR 17229.

## V. 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 transportation conformity determination for the Metropolitan Transportation Plan.

## VI. 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 (Pub. L. 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 under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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 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 June 21, 2005. 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 14, 2005.

**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.**

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(e)\* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective 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	04/22/05 [Insert FR page number where document begins].	* * * * *

[FR Doc. 05–8121 Filed 4–21–05; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP–2004–0388; FRL–7702–4]

**Tetraconazole; Time-Limited Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of tetraconazole, 1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxy)propyl]-1H-1,2,4-triazole in or on sugarbeet roots at 0.05 parts per million (ppm), sugarbeet top at 3.0 ppm, sugarbeet dried pulp at 0.15 ppm, sugarbeet molasses at 0.15 ppm, meat of cattle, goat, horse, and sheep at 0.05 ppm, liver of cattle, goat, horse, and sheep at 4.0 ppm, fat of cattle, goat, horse, and sheep at 0.30 ppm, meat byproducts except liver of cattle, goat, horse and sheep at 0.10 ppm and milk at 0.05 ppm. Sipcam Agro USA, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Registrations will be limited to the following States: Colorado,

Minnesota, Michigan, Montana, North Dakota, Nebraska, and Wyoming where use has previously occurred under section 18 of FIFRA. The tolerances will expire on November 30, 2012.

**DATES:** This regulation is effective April 22, 2005. Objections and requests for hearings must be received on or before June 21, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2004–0388. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. 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 docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: [waller.mary@epa.gov](mailto:waller.mary@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. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be