

Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 15, 2015.

**Susan Lewis,**

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

- 1. The authority citation for part 180 continues to read as follows:  
 Authority: 21 U.S.C. 321(q), 346a and 371.
- 2. In § 180.495, paragraph (a):
- a. Revise the introductory text.
- b. Remove the entries in the table for “Bushberry subgroup 13B”; “Caneberry subgroup 13A”; “Cotton, undelinted seed”; “Fruit, citrus, group 10”; “Fruit, pome, group 11”; “Fruit, stone, group 12”; “Grape”; “Juneberry”; “Lingonberry”; “Nut tree, group 14”; “Okra”; “Onion, green”; “Pistachio”; “Salal”; “Strawberry”; “Vegetable, bulb, group 3, except green onion”; and “Vegetable, fruiting, group 8”.
- c. Revise the entry in the table for “Grape, raisin”.
- d. Add alphabetically entries to the table for “Berry, low growing, subgroup 13–07G, except cranberry”; “Bushberry subgroup 13–07B”; “Caneberry subgroup 13–07A”; “Coffee, green bean”; “Cottonseed subgroup 20C”; “Fruit, citrus, group 10–10”; “Fruit, pome, group 11–10”; “Fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit”; “Nut, tree, group 14–12”; “Onion, bulb, subgroup 3–07A”; “Onion, green, subgroup 3–07B”; “Quinoa, grain”; and “Vegetable, fruiting, group 8–10”.

The additions and revision read as follows:

**§ 180.495 Spinosad; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the insecticide spinosad, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of *spinosyn A* (Factor A: CAS # 131929–60–7; (2*R*,3*aS*,5*aR*,5*bS*,9*S*,13*S*,14*R*,16*aS*,16*bR*)-2-[(6-deoxy-2,3,4-tri-*O*-methyl- $\alpha$ -*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-, 3,3*a*,5*a*,5*b*,6,9,10,11,12,13,14,16*a*,16*b*-tetradecahydro-14-methyl-1*H*-*as*-indaceno[3,2-*d*]oxacyclododecin-7,15-dione; and *spinosyn D* (Factor D; CAS # 131929–63–0; (2*S*,3*aR*,5*aS*,5*bS*,9*S*,13*S*,14*R*,16*aS*,16*bS*)-2-[(6-deoxy-2,3,4-tri-*O*-methyl- $\alpha$ -*L*-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-, 3,3*a*,5*a*,5*b*,6,9,10,11,12,13,14,16*a*,16*b*-tetradecahydro-4,14-methyl-1*H*-*as*-indaceno[3,2-*d*]oxacyclododecin-7,15-dione, calculated as the stoichiometric equivalent of spinosad.

Commodity	Parts per million
Berry, low growing, subgroup 13–07G, except cranberry .....	0.90
Bushberry subgroup 13–07B .....	0.40
Caneberry subgroup 13–07A .....	1.0
Coffee, green bean .....	0.04
Cottonseed subgroup 20C .....	0.02
Fruit, citrus, group 10–10 .....	0.30
Fruit, pome, group 11–10 .....	0.20
Fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit .....	0.50
Fruit, stone 12–12 .....	0.20
Grape, raisin .....	1.0
Nut, tree, group 14–12 .....	0.10
Onion, bulb, subgroup 3–07A .....	0.10
Onion, green, subgroup 3–07B .....	4.0
Quinoa, grain .....	0.02
Vegetable, fruiting, group 8–10 .....	0.40

Commodity	Parts per million
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 271 and 272**

[EPA–R06–RCRA–2015–0110; FRL–9939–51–Region 6]

**Texas: Final Authorization of State-Initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program**

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

**ACTION:** Direct final rule.

**SUMMARY:** During a review of Texas’ regulations, the Environmental Protection Agency (EPA) identified a variety of State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this direct Final action. In addition, this document corrects technical errors made in the September 3, 2014, **Federal Register** authorization document for Texas.

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled “Approved State Hazardous Waste Management Programs” to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA’s inspection and enforcement. The rule codifies in the regulations the prior approval of Texas’ hazardous waste management program and incorporates by reference authorized provisions of the State’s statutes and regulations.

**DATES:** This regulation is effective February 26, 2016, unless the EPA receives adverse written comment on this regulation by the close of business January 27, 2016. If the EPA receives such comments, it will publish a timely

withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of February 26, 2016 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Submit your comments by one of the following methods:

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

2. *Email:* [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov) or [banks.julia@epa.gov](mailto:banks.julia@epa.gov).

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

*Instructions:* Do not submit information that you consider to be Confidential Business Information (CBI) or otherwise protected through <http://www.regulations.gov>, or email. The Federal <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.)

You can view and copy the documents that form the basis for this authorization and codification and associated publicly available materials

from 8:30 a.m. to 4 p.m., Monday through Friday, at the following location: EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number: (214) 665-8533 or (214) 665-8178. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

**FOR FURTHER INFORMATION CONTACT:**

Alima Patterson, Region 6 Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533 or (214) 665-8178, and Email address: [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov) or [banks.julia@epa.gov](mailto:banks.julia@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Authorization of State-Initiated Changes**

*A. Why are revisions to State programs necessary?*

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

*B. What decisions have we made in this rule?*

We conclude that Texas' revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Texas' rules more clear or conform more closely to the Federal equivalents, and are so minor in nature that a formal application is unnecessary. Therefore, we grant Texas final authorization to operate its hazardous waste program with the changes described in the table at Section G below. Texas has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs)

within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Texas, including issuing permits, until the State is granted authorization to do so.

*C. What is the effect of this authorization decision?*

The effect of this decision is that a facility in Texas, subject to RCRA, will now have to comply with the authorized State requirements, instead of the equivalent Federal requirements, in order to comply with RCRA. Texas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions, regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the statutes and regulations for which Texas is being authorized by this direct action are already effective and are not changed by this action.

*D. Why wasn't there a proposed rule before this rule?*

The EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

*E. What happens if EPA receives comments that oppose this action?*

If the EPA receives comments that oppose the authorization of the State-initiated changes in this codification document, we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule

becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we may withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization of the State program will become effective and which part is being withdrawn.

The purpose of this **Federal Register** document is to codify Texas' base hazardous waste management program and its revisions to that program. The EPA has already provided notices and opportunity for comments on the Agency's decisions to codify the Texas program, and the EPA is not now

reopening the decisions, nor requesting comments, on the Texas authorization as published in the **Federal Register** notices specified in Section I.F. of this document.

*F. For what has Texas previously been authorized?*

Texas initially received final authorization on December 26, 1984 (49 FR 48300), to implement its Base Hazardous Waste Management Program. This authorization was clarified in a notice published March 26, 1985 (50 FR 11858). Texas received authorization for revisions to its program, effective October 4, 1985 (51 FR 3952), February 17, 1987 (51 FR 45320), March 15, 1990 (55 FR 7318), July 23, 1990 (55 FR 21383), October 21, 1991 (56 FR 41626), December 4, 1992 (57 FR 45719), June 27, 1994 (59 FR 16987), June 27, 1994 (59 FR 17273), November 26, 1997 (62 FR 47947), December 3, 1997 (62 FR 49163), October 18, 1999 (64 FR 44836), November 15, 1999 (64 FR 49673), September 11, 2000 (65 FR 43246), June 14, 2005 (70 FR 34371), December 29, 2008, (73 FR 64252), July 13, 2009 (74 FR 22469), May 6, 2011 (76 FR 12283),

May 7, 2012 (77 FR 13200), January 9, 2013 (77 FR 71344) and November 3, 2014 (79 FR 52220).

*G. What changes are we authorizing with this action?*

The State has made amendments to the provisions listed in the table which follows. These amendments clarify the State's regulations, and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to, no less stringent than, and not broader in scope than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting Texas final authorization to carry out the following provisions of the State's program, in lieu of the Federal program. These provisions are analogous to the indicated RCRA regulations found at 40 CFR, as of July 1, 2010. The Texas provisions are from the Texas Administrative Code (TAC), Title 30, amended to be effective February 21, 2013 (except as noted below).

State requirement	Analogous federal requirement
30 TAC 305.64(g) .....	40 CFR 270.40(b).
30 TAC 305.69(d)(2)(A) .....	40 CFR 270.42(c)(2)(i).
30 TAC 305.69(k), except A.8, A.9, A.10, A.11, B, D.3.g, H.6&7, J.7 & 8, I.6, L.5, L.9, L.10, M, and N. ....	40 CFR 270.42, appendix I, except A.8, B, C7, D.3.g, H, J, I.6, L.5, L.9, L.10, M, and N.
30 TAC 305.176 .....	40 CFR 270.235.
30 TAC 324.2 introductory paragraph .....	40 CFR 279.1 related.
30 TAC 324.2(3) .....	40 CFR 279.1 related.
30 TAC 324.2(5) .....	40 CFR 279.1 related.
30 TAC 324.2(8) .....	40 CFR 279.1 related.
30 TAC 324.4 .....	40 CFR 279.12.
30 TAC 324.6 .....	40 CFR 279.20 through 279.24 (subpart C).
30 TAC 324.7 .....	40 CFR 279.30 through 279.32 (subpart D).
30 TAC 324.15 .....	40 CFR 279 related.
30 TAC 324.16 .....	40 CFR 279.11 Table 1, Note.
30 TAC 324.22(d)(3) .....	40 CFR 279 related.
30 TAC 335.1(59) .....	40 CFR 260.10 "Facility".
30 TAC 335.1(142) .....	40 CFR 124.2(a) "Standardized permit".
30 TAC 335.2(g) .....	40 CFR 261.4(e) and (f).
30 TAC 335.2(o) (December 31, 2012) .....	40 CFR 270.255 related.
30 TAC 335.19(b) .....	40 CFR 260.31(b).
30 TAC 335.69(f)(4)(C) .....	40 CFR 262.34(d)(4) related.
30 TAC 335.112(a)(14) .....	40 CFR 265.340–265.352 (subpart O).
30 TAC 335.112(b)(7) .....	40 CFR 265 related.
30 TAC 335.152(a)(9) .....	40 CFR 264.220–264.232 (subpart K), except 264.221 & 264.228.
30 TAC 335.152(c)(5) and (c)(6) [December 31, 2012] .....	40 CFR 264 related.
30 TAC 335.152(c)(7) .....	40 CFR 264 related.
30 TAC 335.168(c) .....	40 CFR 264.221(c).
30 TAC 335.170(c) .....	40 CFR 264.251(c).

*H. Who handles permits after the authorization takes effect?*

This authorization does not affect the status of State permits and those permits issued by the EPA, because no new substantive requirements are a part of these revisions.

*I. How does this action affect Indian Country (18 U.S.C. 1151) in Texas?*

Texas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

**II. Technical Corrections**

The following technical corrections are made to the September 3, 2014, Texas authorization **Federal Register** document (79 FR 52220; effective November 3, 2014). There are two types of corrections being made. The first type includes additions or corrections to the

list of citations for checklist entries that were actually included in the published **Federal Register** document. These are presented in order of the entry number and associated checklist, followed by a brief description of the correction being made. The second type of correction is the addition of the checklist entry for the authorization of the 40 CFR part 279 portions of the Corrections to Errors in the Code of Federal Regulations Rule (Checklist 214), a Federal rule which was inadvertently omitted from the original authorization table.

1. For all the checklist entries, the word "Chapter" is corrected to read "Section".
2. For Checklist 203, the following corrections should be made:
  - a. The citation "224.1" is corrected to read "324.1".
  - b. The citation "324.3" is corrected to read "334.3 (except 324.3(5))".
3. For Checklist 207, the following corrections should be made:
  - a. The citation "335.41(f)(2)(iii)" is corrected to read "335.41(f)(2)(A)(iii)".
  - b. The citations "335.69" and 335.67" are removed.
4. For Checklist 208, the following corrections should be made:
  - a. The text "4 as amended" is removed.

- b. The citations "335.152(a)(17)(c)", "335.152(a)(21)", "335.152(a)(9)" and "335.152(19)" are removed.
- c. Add citation "335.112(a)(9)" before "335.125(d)".
- d. Add citation "335.112(a)(19)—(a)(21)" before "335.221(a)(1)".
- e. Add citation "324.3 (except 324.3(5))" before "324.11".
- f. The citation "305.172(2)(a)(iii)—(iv)" is corrected to read "305.172(2)(A)(iii)—(iv)".
- g. The language "amended and effective February 21, 2013" is corrected to read "as amended January 29, 2013 and effective February 21, 2013".
5. For Checklist 220, the following corrections should be made:
  - a. The language "335.61(i)" and "335.79, 335.61(i)(1)–(2), 335.61(i)(2)" is removed.
6. For Checklist 222, the following corrections should be made:
  - a. The citation "335.11(e)" is removed.
  - b. The citations "335.76(a), 335.76(f), 335.76(h)" are removed.
  - c. Add citation "335.251(a) and 335.251(c)" after "335.112(a)(1)".
  - d. The citation "335.71(d)" is removed.
  - e. The citation "335.112(a)(4)" is corrected to read "335.12".
  - f. Add the following text to the end of the Checklist 222 entry: "Note: While

- Texas has adopted the Federal changes addressed by this January 8, 2010 final rule, the State has appropriately left the authority with the EPA for the non-delegable export functions and is not being authorized to enforce these requirements in lieu of the EPA."
7. For Checklist 223, the following corrections should be made:
    - a. The citation "335.1(138(D)(iv))" is corrected to read "335.1(138)(D)(iv) Table 1".
    - b. Add citation "335.71" after "335.69(f)(4)(C)".
    - c. The citation "335.69(f)(4)(C)" is corrected to read "335.69(f)(4)(D)".
    - d. The citations "335.10(a)" and "335.2(o)" are removed.
    - e. The citation "324.94" is corrected to read "335.94(a)".
    - f. The citations "335.12(e)" and "335.12(c)" are removed.
    - g. The duplicate citation "335.211(b)" after "335.112(a)(3)" is removed.
    - h. The citation "335.222(e)(1)(E)" is corrected to read "335.222(c)(1)(E)".
  8. For Checklist 226, the following correction should be made:
    - a. Insert "30" before "Texas Administrative Code".
  9. Add the following new entry to the Table:

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
40 CFR part 279 portions of the Corrections to Errors in the Code of Federal Regulations. (Checklist 214).	71 FR 40254–40280 July 14, 2006.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Section 361.017 and 361.024; 30 Texas Administrative Code, Sections 324.1, 324.3 (except 324.3(5)), 324.11, 324.12, 324.13, and 324.14, as amended January 29, 2013 and effective February 21, 2013.

### III. Incorporation-by-Reference

#### A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272, and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

#### B. What is the history of the codification of Texas' hazardous waste management program?

The EPA incorporated by reference Texas' then authorized hazardous waste program effective December 3, 1997 (62 FR 49163), November 15, 1999 (64 FR 49673), December 29, 2008 (73 FR 64252), May 6, 2011 (76 FR 12283), and January 9, 2013 (77 FR 71344). In this document, EPA is revising Subpart SS of 40 CFR part 272 to include the recent

authorization revision actions effective November 3, 2014 (79 FR 52220).

#### C. What codification decisions have we made in this rule?

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Texas rules described in the amendments to 40 CFR part 272 set forth below. The EPA has made, and will continue to make, these documents available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

The purpose of this **Federal Register** document is to codify Texas' base hazardous waste management program

and its revisions to that program. This document incorporates by reference Texas' hazardous waste statutes and regulations, and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying Texas' authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the Texas hazardous waste management program.

The EPA is incorporating by reference the Texas authorized hazardous waste program in subpart SS of 40 CFR part 272. Section 272.2201 incorporates by reference Texas' authorized hazardous waste statutes and regulations. Section 272.2201 also references the statutory provisions (including procedural and enforcement provisions), which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

#### *D. What is the effect of Texas' codification on enforcement?*

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013, and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions, and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures, rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Texas procedural and enforcement authorities. Section 272.2201(c)(2) of 40 CFR lists the statutory and regulatory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as, those procedural and enforcement authorities that are part of the States approved program, but these are not incorporated by reference.

#### *E. What State provisions are not part of the codification?*

The public needs to be aware that some provisions of Texas' hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Texas is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;

(3) Unauthorized amendments to authorized State provisions;

(4) New unauthorized State requirements; and

(5) Federal rules for which Texas is authorized, but which were vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 98-1379; June 27, 2014).

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program, and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.2201(c)(3) lists the Texas regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. "Broader in scope" provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Additionally, Texas' hazardous waste regulations include amendments which have not been authorized by the EPA. Since the EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by the EPA include amendments to previously authorized State regulations, as well as, certain Federal rules and new State requirements.

Texas has adopted but is not authorized for the following Federal rules published in the **Federal Register** on April 12, 1996 (61 FR 16290); December 5, 1997 (62 FR 64504); June 8, 2000 (65 FR 36365); and January 8, 2010 (75 FR 1236). Therefore, these Federal amendments included in Texas' adoption by reference at 30 Texas Administrative Code (TAC) sections 335.112(a)(1) and (a)(4), 335.152(a)(1) and (a)(4), and 335.431(c)(1) and (c)(3), are not part of the State's authorized program and are not part of the incorporation by reference addressed by this **Federal Register** document.

Texas has adopted and was authorized for the following Federal rules, which have since been vacated by

the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144, respectively, June 27, 2014): (1) the Comparable Fuels Exclusion at 40 CFR 261.4(a)(16) and 261.38 published in the **Federal Register** on June 19, 1998 (63 FR 33782), as amended on June 15, 2010 (75 FR 33712); and (2) the Gasification Exclusion Rule published on January 2, 2008 (73 FR 57).

In those instances where Texas has made unauthorized amendments to previously authorized sections of State code, the EPA is identifying in 40 CFR 272.2201(c)(4)(i) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by the EPA. Those unauthorized portions of the State regulations are not Federally enforceable. Thus, notwithstanding the language in Texas hazardous waste regulations incorporated by reference at 40 CFR 272.2201(c)(1), the EPA will only enforce those portions of the State regulations that are actually authorized by the EPA. For the convenience of the regulated community, the actual State regulatory text authorized by the EPA for the citations listed at § 272.2201(c)(4) (*i.e.* without the unauthorized amendments) is compiled as a separate document, *Addendum to the EPA Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program, November 2014*. This document is available from EPA Region 6, EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-6444.

State regulations that are not incorporated by reference in this rule at 40 CFR 272.2201(c)(1), or that are not listed in 40 CFR 272.2201(c)(2) ("legal basis for the State's implementation of the hazardous waste management program"), 40 CFR 272.2201(c)(3) ("broader in scope") or 40 CFR 272.2201(c)(4) ("unauthorized State amendments"), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

#### *F. What will be the effect of Federal HSWA requirements on the codification?*

The EPA is not amending 40 CFR part 272 to include HSWA requirements and

prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

#### Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, this action is not subject to review by OMB. This rule incorporated by reference Texas' authorized hazardous waste management regulations, and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approved under 40 CFR part 271, and with which regulated entities must already comply,

it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This action 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 Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of Texas' voluntary participation in the EPA's State program authorization process under RCRA Subtitle C. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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. The EPA will submit a report containing this document 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 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).

#### List of Subjects

##### 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

##### 40 CFR Part 272

Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

**Authority:** This document is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 1, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), the EPA is granting final authorization under part 271 to the State of Texas for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

#### PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

**Authority:** Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.2201 to read as follows:

##### § 272.2201 Texas State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Texas final authorization for the following elements, as submitted to EPA in Texas' Base program application for final authorization which was approved

by EPA effective on December 26, 1984. Subsequent program revision applications were approved effective on October 4, 1985, February 17, 1987, March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, December 3, 1997, October 18, 1999, November 15, 1999, September 11, 2000, June 14, 2005, December 29, 2008, July 13, 2009, May 6, 2011 (76 FR 12283), and May 7, 2012 (77 FR 13200), January 9, 2013 (77 FR 71344), November 3, 2014 (79 FR 52220), and February 26, 2016.

(b) The State of Texas has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations.* (1) The Texas statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Texas regulations that are incorporated by reference in this paragraph are available from West Group Publishing, 610 Opperman Drive, Eagan, 55123, ATTENTION: Order Entry; Phone: 1-800-328-9352; Web site: <http://west.thomson.com>. You may inspect a copy at EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The Binder entitled "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program", dated November 2014.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon, 2010, as amended by the 2012 Cumulative

Annual Pocket Part, effective September 1, 2011); Chapter 361, The Texas Solid Waste Disposal Act, sections 361.002, 361.016, 361.017, 361.018, 361.0215(b)(2) and (b)(3), 361.023, 361.024, 361.029, 361.032, 361.033, 361.035, 361.036, 361.037(a), 361.061, 361.063, 361.0635, 361.064, 361.0641, 361.066(b) and (c), 361.0666, 361.067, 361.068, 361.069, 361.078, 361.079, 361.0791, 361.080, 361.081, 361.082 (except 361.082(a) and (f)), 361.083, 361.0833, 361.084, 361.085, 361.0861(c), 361.0871(b), 361.088, 361.0885, 361.089 (except 361.089(a), (e), and (f)), 361.0891(a), (e), and (f) (2012 Cumulative Annual Pocket Part), 361.090, 361.095(b)-(f), 361.096, 361.097, 361.098, 361.099(a), 361.100, 361.101, 361.102 through 361.109, 361.113, 361.114, 361.116, 361.271 (2012 Cumulative Annual Pocket Part), 361.272 through 361.275, 361.278, 361.301, 361.321(a) and (b), 361.321(c) (except the phrase "Except as provided by Section 361.322(a)"), 361.321(d), 361.321(e) (except the phrase "Except as provided by Section 361.322(e)"), 361.451, 361.501 through 361.506, and 361.509(a) introductory paragraph, (a)(11), (b), (c) introductory paragraph, and (c)(2); Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.0025(b) and (c), 371.024(a), (c), and (d), 371.026(a) and (b), and 371.028.

(ii) Texas Water Code (TWC), Texas Codes Annotated, as amended effective September 1, 2011: Chapter 5, sections 5.102 through 5.105, 5.112, 5.177, 5.351, 5.501 through 5.505, 5.509 through 5.512, 5.515, and 5.551 through 5.557; Chapter 7, sections 7.031, 7.032, 7.051(a), 7.052(a), 7.052(c) and (d), 7.053 through 7.062, 7.064 through 7.069, 7.075, 7.101, 7.102, 7.104, 7.105, 7.107, 7.110, 7.162, 7.163, 7.176, 7.187(a), 7.189, 7.190, 7.252(1), 7.351, 7.353; Chapter 26, sections 26.001(13), 26.011, 26.020 through 26.022, 26.039, and 26.341 through 26.367; and Chapter 27, sections 27.003, 27.017(a), 27.018(a)-(d), and 27.019.

(iii) Texas Government Code as amended effective September 1, 2011, section 311.027.

(iv) Texas Rules of Civil Procedure, as amended effective September 1, 2011, Rule 60.

(v) Texas Administrative Code (TAC), Title 30, Environmental Quality, 2013, as amended, effective through December 31, 2012: Chapter 10; Chapter 39, sections 39.5(g) and (h), 39.11, 39.13 (except (10)), 39.103 (except (f) and (h)), 39.105, 39.107, 39.109, 39.403(b)(1), 39.405(f)(1), 39.411 (except (b)(4)(B), (b)(10), (b)(11), and (b)(13)), 39.413 (except (10)), 39.420 (except (c) and (d)),

39.503 (except the reference to 39.405(h) in (d) introductory paragraph and (g)), and 39.801 through 39.810; Chapter 50, sections 50.13, 50.19, 50.39, 50.113 (except (d)), 50.117(f), 50.119, 50.133, and 50.139; Chapter 55, sections 55.25(a) and (b), 55.27 (except (b)), 55.152(a)(3), 55.152(b), 55.154, 55.156 (except (d) through (g)), 55.201 (except as applicable to contested case hearings), and 55.211 (except as applicable to contested case hearings); Chapter 70, section 70.10; Chapter 281, sections 281.1 (except the clause "except as provided by . . . Prioritization Process"), 281.2 introductory paragraph and (4), 281.3(a) and (b), 281.5 (except the clause "Except as provided by . . . Discharge Permits"), the phrase "radioactive material", and the phrase "subsurface area drip dispersal systems"), 281.17(d) (except the references to radioactive material licenses), 281.17(e) and (f), 281.18(a) (except for the sentence "For applications for radioactive . . . within 30 days.", 281.19(a) (except the last sentence), 281.19(b) (except the phrase "Except as provided in subsection (c) of this section,"), 281.20, 281.21(a) (except the phrase "and the Texas Radiation Control Act . . . Chapter 401.", the acronym "TRCA", and the phrase "subsurface area drip dispersal systems"), 281.21(b), 281.21(c) (except the phrase "radioactive materials," in 281.21(c)(2)), 281.21(d), 281.22(a) (except the phrase "For applications for radioactive . . . to deny the license."), 281.22(b) (except the phrase "or an injection well," in the first sentence and the phrase "For underground injection wells . . . the same facility or activity."), 281.23(a), and 281.24; Chapter 305, sections, 305.29, 305.30, 305.64(d) and (f), 305.66(c), 305.66(e) (except for the last sentence), 305.66(f) through (l), 305.123 (except the phrases "and 401 . . . regulation" and "and 32"), 305.125(1) and (3), 305.125(20), 305.127(1)(B)(i), 305.127(4)(A) and (C), and (6), 305.401 (except the text "\$ 55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment)" at (b), and 305.401(c)); and Chapter 335, sections 335.2(b), 335.43(b), 335.206, 335.391 through 335.393.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon, 2010): Chapter 361, The Texas Solid Waste Disposal Act, sections 361.131 through 361.140; Chapter 371, Texas Oil Collection, Management, and Recycling



Act, sections 371.021, 371.022, 371.024(e), 371.0245, 371.0246, 371.025, and 371.026(c).

(ii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 2013, as amended, effective through December 31, 2012: Chapter 305, sections 305.53, 305.64(b)(4), and 305.69(b)(1)(A) (as it relates to the Application Fee); Chapter 335, sections 335.321 through 335.332, Appendices I and II, and 335.401 through 335.412.

(4) *Unauthorized State amendments and provisions.* (i) The following

authorized provisions of the Texas regulations include amendments published in the Texas Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at paragraph (c)(1)(i) of this section, EPA will enforce the State provisions that are actually authorized by EPA. The effective dates

of the State's authorized provisions are listed in the table in this paragraph (c)(4)(i). The actual State regulatory text authorized by EPA (*i.e.*, without the unauthorized amendments) is available as a separate document, *Addendum to the EPA-Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, November, 2014*. Copies of the document can be obtained from U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202.

State provision (December 31, 2012)	Effective date of authorized provision	Unauthorized State amendments	
		Texas register reference	Effective date
335.6(a) .....	7/29/92	18 TexReg 2799 .....	5/12/93
		22 TexReg 12060 .....	12/15/97
		23 TexReg 10878 .....	10/19/98
335.6(c) introductory paragraph .....	7/29/92	17 TexReg 8010 .....	11/27/92
		20 TexReg 2709 .....	4/24/95
		20 TexReg 3722 .....	5/30/95
		21 TexReg 1425 .....	3/1/96
		21 TexReg 2400 .....	3/6/96
		22 TexReg 12060 .....	12/15/97
		23 TexReg 10878 .....	10/19/98
		26 TexReg 9135 .....	11/15/01
335.6(g) .....	7/29/92	18 TexReg 3814 .....	6/28/93
		22 TexReg 12060 .....	12/15/97
		23 TexReg 10878 .....	10/19/98
335.24(b) introductory paragraph .....	3/1/96	21 TexReg 10983 .....	11/20/96
		23 TexReg 10878 .....	10/19/98
		38 TexReg 970 .....	2/21/13
335.24(c) introductory paragraph .....	3/1/96	21 TexReg 10983 .....	11/20/96
		23 TexReg 10878 .....	10/19/98
		38 TexReg 970 .....	2/21/13
335.45(b) .....	9/1/86	17 TexReg 5017 .....	7/29/92
335.204(a)(1) .....	5/28/86	16 TexReg 6065 .....	11/7/91
335.204(b)(1) .....	5/28/86	16 TexReg 6065 .....	11/7/91
335.204(b)(6) .....	5/28/86	16 TexReg 6065 .....	11/7/91
335.204(c)(1) .....	5/28/86	16 TexReg 6065 .....	11/7/91
335.204(d)(1) .....	5/28/86	16 TexReg 6065 .....	11/7/91
335.204(e)(6) .....	5/28/86	16 TexReg 6065 .....	11/7/91

(ii) Texas has partially or fully adopted, but is not authorized to implement, the Federal rules that are listed in the table in this paragraph (c)(4)(ii). The EPA will continue to implement the Federal HSWA

requirements for which Texas is not authorized until the State receives specific authorization for those requirements. The EPA will not enforce the non-HSWA Federal rules although they may be enforceable under State

law. For those Federal rules that contain both HSWA and non-HSWA requirements, the EPA will enforce only the HSWA portions of the rules.

Federal requirement	Federal Register reference	Publication date
Clarification of Standards for Hazardous Waste LDR Treatment Variances (SWA) (Checklist 162).	62 FR 64504 .....	December 5, 1997.
Organobromine Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions (HSWA) (Checklist 187).	64 FR 36365 .....	June 8, 2000.
Zinc Fertilizers Made from Recycled Hazardous Secondary Materials (HSWA and Non-HSWA) (Checklist 200).	67 FR 48393 .....	July 24, 2002.

(iii) The Federal rules listed in the table in this paragraph (c)(4)(iii) are not

delegable to States. Texas has adopted these provisions and left the authority to

the EPA for implementation and enforcement.



Federal requirement	Federal Register reference	Publication date
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA) (Checklist 152).	61 FR 16290 .....	April 12, 1996.
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Non-HSWA) (Checklist 222).	75 FR 1236 .....	January 8, 2010.

(iv) Texas has chosen not to adopt, and is not authorized to implement, the following optional Federal rules:

Federal requirement	Federal Register reference	Publication date
NESHAPS Second Technical Correction, Vacatur (Non-HSWA) (Checklist Rule 188.1).	66 FR 24270 .....	May 14, 2001.
Storage, Treatment, Transportation and Disposal of Mixed Waste (Non-HSWA) (Checklist 191).	66 FR 27218 .....	May 16, 2001.
Inorganic Chemical Manufacturing Waste Identification and Listing (HSWA/Non-HSWA) (Checklist Rule 195.1).	67 FR 17119 .....	April 9, 2002.
Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium, Mercury-Containing Batteries and Silver-Containing Batteries (HSWA) (Checklist 201).	67 FR 62618 .....	October 7, 2002.
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks (Non-HSWA) (Checklist 205).	69 FR 22601 .....	April 26, 2004.
Revisions to the Definition of Solid Waste (Non-HSWA) (Checklist 219).	73 FR 64668 .....	October 30, 2008.
Expansion of RCRA Comparable Fuel Exclusion (Non-HSWA) (Checklist 221).	73 FR 77954 .....	December 19, 2008.
Withdrawal of the Emission Comparable Fuel Exclusion (Non-HSWA) (Checklist 224).	73 FR 33712 .....	June 15, 2010.
Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents (Non-HSWA) (Checklist Rule 225).	75 FR 78918 .....	December 17, 2010.

(5) *Vacated Federal rules.* Texas adopted and was authorized for the following Federal rules which have

since been vacated by the U.S. Court of Appeals for the District of Columbia

Circuit (D.C. Cir. No. 98–1379 and 08–1144, respectively; June 27, 2014):

Federal requirement	Federal Register reference	Publication date
Hazardous Waste Combustors; Revised Standards (HSWA) (Checklist 168—40 CFR 261.4(a)(16) and 261.38 only).	63 FR 33782 .....	June 19, 1998.
Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (Checklist 216—Definition of “Gasification” at 40 CFR 260.10 and amendment to 40 CFR 261.4(a)(12)(i)).	73 FR 57 .....	January 2, 2008.
Withdrawal of the Emission Comparable Fuel Exclusion under RCRA (Checklist 224—amendments to 40 CFR 261.4(a)(16) and 261.38).	7 FR 33712 .....	June 15, 2010.

(6) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Texas, signed by the Executive Director of the Texas Commission on Environmental Quality (TCEQ) on December 20, 2011, and by the EPA Regional Administrator on February 17, 2012, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Statement of legal authority.* “Attorney General’s Statement for Final Authorization”, signed by the Attorney General of Texas on May 22, 1984 and revisions, supplements, and addenda to that Statement dated November 21, 1986, July 21, 1988, December 4, 1989,

April 11, 1990, July 31, 1991, February 25, 1992, November 30, 1992, March 8, 1993, January 7, 1994, August 9, 1996, October 16, 1996, as amended February 7, 1997, March 11, 1997, January 5, 1999, November 2, 1999, March 1, 2002, July 16, 2008, December 6, 2011, and February 22, 2013, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(8) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program

under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272 is amended by revising the listing for “Texas” to read as follows:

**Appendix A to Part 272—State Requirements**

\* \* \* \* \*

**Texas**

The statutory provisions include: Texas Health and Safety Code (THSC) Annotated, (Vernon, 2010): Chapter 361, The Texas Solid Waste Disposal Act, sections 361.003 (except (3), (4), (19), (27), (35), and (39)), 361.019(a), 361.0235, 361.066(a), 361.082(a) and (f), 361.086, 361.087, 361.0871(a), 361.094, 361.095(a), 361.099(b),

and 361.110; Chapter 371, The Texas Oil Collection, Management, and Recycling Act, sections 371.003, 371.024(b), 371.026(d), and 371.041.

Copies of the Texas statutes that are incorporated by reference are available from West Group Publishing, 610 Opperman Drive, Eagan, 55123, ATTENTION: Order Entry; Phone: 1-800-328-9352; Web site: <http://west.thomson.com>.

The regulatory provisions include:

Texas Administrative Code (TAC), Title 30, Environmental Quality, 2013, as amended, effective through December 31, 2012, and where indicated, amendments effective February 21, 2013, as published in the Texas Register on February 15, 2013 (38 TexReg 970; based on the proposed rule published October 5, 2012, 37 TexReg 7871). Please note that for some provisions, the authorized versions are found in the TAC, Title 30, Environmental Quality, as amended effective January 1, 1994, January 1, 1997, December 31, 1999, or December 31, 2001. Texas made subsequent changes to these provisions but these changes have not been authorized by EPA. Where the provisions are taken from regulations other than those dated December 31, 2012, notations are made below.

Chapter 3, Section 3.2(25) "Person"; Chapter 20, Section 20.15; Chapter 35, Section 35.402(e); Chapter 37, Sections 37.1, 37.11 through 37.81, 37.100 through 37.161, 37.200 through 37.281, 37.301 through 37.381, 37.400 through 37.411, 37.501 through 37.551, 36.601 through 37.671, and 37.6001 through 37.6041; Chapter 281, Section 281.3(c);

Chapter 305, Subchapter A—General Provisions, Sections 305.1(a) (except the reference to Chapter 401, relative to Radioactive Materials); 305.2 introductory paragraph (except the references to Chapter 401, relative to Radioactive Materials and the reference to TWC 32.002); 305.2(1), (6), (11), (12), (14), (15), (19), (20), (24), (26), (27), (28), (31), and (40)—(42); 305.3;

Chapter 305, Subchapter C—Application for Permit, Sections 305.41 (except the reference to Chapter 401, relative to Radioactive Materials and the reference to TWC Chapter 32); 305.42(a), (b), (d), and (f); 305.43(b); 305.44 (except (d)); 305.45 (except (a)(I) and (J)); 305.47; 305.50(a) introductory paragraph—(a)(8) (except the last two sentences in 305.50(a)(2)); 305.50(a)(13); 305.50(a)(14) (38 TexReg 970, effective February 21, 2013); 305.50(a)(15) and (16); 305.50(b); 305.51;

Chapter 305, Subchapter D—Amendments, Modifications, Renewals, Transfers, Corrections, Revocations, and Suspension of Permits, Sections 305.61; 305.62(a) (except the phrase in the first sentence "§ 305.70 of this title . . . Solid Waste Class I Modifications" and the phrase in the fifth sentence "If the permittee requests a modification of a municipal solid waste permit . . . § 305.70 of this title."); 305.62(b); 305.62(c) introductory paragraph (except the phrase "other than . . . subsection (i) of this section"); 305.62(c)(1); 305.62(c)(2) introductory paragraph; 305.62(c)(2)(A) (except the phrase "except for Texas Pollutant Discharge Elimination System (TPDES) permits,"); 305.62(c)(2)(B) (except

the phrase "except for TPDES permits,"); 305.62(d) (except (d)(6)); 305.62(e)—(h); 305.63(a) (except the last sentence of (a)(3) and (a)(7)); 305.64(a); 305.64(b) (except (b)(4) and (b)(5)); 305.64(c); 305.64(e); 305.64(g) (38 TexReg 970, effective February 21, 2013); 305.65; 305.66(a) (except (a)(7)—(a)(9)); 305.66(d); 305.67(a) and (b); 305.69(a); 305.69(b) (except for "Additional Contents of Application for an Injection Well Permit" and "Waste Containing Radioactive Materials; and Application Fee" at (b)(1)(A)); 305.69(c); 305.69(d) (except (d)(2)(A)); 305.69(d)(2)(A) (38 TexReg 970, effective February 21, 2013); 305.69(e)—(j); 305.69(k) (except (k) A.8–A.10) (38 TexReg 970, effective February 21, 2013);

Chapter 305, Subchapter F—Permit Characteristics and Conditions, Sections 305.121 (except the phrases "radioactive material disposal" and "subsurface area drip dispersal systems"); 305.122(a); 305.122(b)—(d) (38 TexReg 970, effective February 21, 2013); 305.124; 305.125 introductory paragraph; 305.125(2) and (4); 305.125(5) (except the last two sentences); 305.125(6)—(8); 305.125(9) (except (9)(C)); 305.125(10) (except the phrase "and 32"); 305.125(11) (except the phrase "as otherwise required by Chapter 336 of this title" relative to Radioactive Substances in (11)(B)); 305.125(12)—(19), and (21); 305.127 introductory paragraph; 305.127(1)(B)(iii); 305.127(1)(E) and (F); 305.127(2); 305.127(3)(A) (except the last two sentences); 305.127(3)(B) and (C); 305.127(4)(B); 305.127(5)(C); 305.128;

Chapter 305, Subchapter G—Additional Conditions for Hazardous and Industrial Solid Waste Storage, Processing, or Disposal Permits, Sections 305.141 through 305.145; 305.150;

Chapter 305, Subchapter I—Hazardous Waste Incinerator Permits, Sections 305.171 through 305.175; 305.176 (38 TexReg 970, effective February 21, 2013);

Chapter 305, Subchapter J—Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses, Sections 305.181 through 305.184;

Chapter 305, Subchapter K—Research, Development and Demonstration Permits, Sections 305.191 through 305.194;

Chapter 305, Subchapter L—Groundwater Compliance Plan, Section 305.401(c);

Chapter 305, Subchapter Q—Permits for Boilers and Industrial Furnaces Burning Hazardous Waste, Sections 305.571 through 305.573;

Chapter 305, Subchapter R—Resource Conservation And Recovery Act Standard Permits For Storage And Treatment Units, Sections 305.650 through 305.661;

Chapter 324—Used Oil, Sections 324.1 (38 TexReg 970, effective February 21, 2013), 324.2 (except 324.2(2)) (38 TexReg 970, effective February 21, 2013); 324.3 (except 324.3(5)) (38 TexReg 970, effective February 21, 2013); 324.4 (38 TexReg 970, effective February 21, 2013); 324.6 and 324.7 (38 TexReg 970, effective February 21, 2013); 324.11 through 324.16 (38 TexReg 970, effective February 21, 2013); 324.21; 324.22(d)(3);

Chapter 335, Subchapter A—Industrial Solid Waste and Municipal Hazardous Waste

in General, Sections 335.1 introductory paragraph; 335.1(1)—(4), (6)—(12), (16)—(18), (22), (23), (25)—(29), (32), (34)—(37); 335.1(39) "Designated facility" (38 TexReg 970, effective February 21, 2013); 335.1(40)—(46), (47) (except for the phrase "or is used for neutralizing the pH of non-hazardous industrial solid waste"), (48)—(50), (52)—(57), (59) (38 TexReg 970, effective February 21, 2013), (60)—(63), (65), (66), (69)—(78), (80)—(87), (88)—(91) (except the phrase "solid waste or" in each subsection), (92), (93)—(94) (except the phrase "solid waste or" in both subsections); 335.1(95) "Manifest" and (96) "Manifest document number" (38 TexReg 970, effective February 21, 2013); 335.1(97), (98), (99) (except the phrase "solid waste or"), (100)—(113), (115) (except the phrase "solid waste or"), (116), (117), (121), (122) (except the phrase "solid waste or"), (123)—(126), (128), (130)—(134), (136), (137), (138)(A) introductory paragraph through (138)(A)(iii), (138)(A)(iv) introductory paragraph (except the last sentence) (38 TexReg 970, effective February 21, 2013), (138)(B), (138)(C), (138)(D) (except the phrase "Except for materials described in subparagraph (H) of this paragraph." at (138)(D) introductory paragraph; and (D)(iv) Table 1), (138)(D)(iv) Table 1 (38 TexReg 970, effective February 21, 2013), (138)(E), (138)(F), and (138)(G) (except the phrase "Except for materials described in subparagraph (H) of this paragraph." at (138)(G) introductory paragraph), (138)(I) and (J), (139), (141), (142) (38 TexReg 970, effective February 21, 2013), (143), (144)—(151) (except the phrase "solid waste or" at (144), (147) and (149)), (152) (except the phrase "or industrial solid"), (153)—(156) (except the phrase "or industrial solid" at (155) and (156)), (158)—(160), (161) (except the phrase "solid waste or"), (162)—(167), (168) (except the phrase "or industrial solid"), (169), (170), and (171) (except the phrase "solid waste or"); 335.2(a) and (c); 335.2(e) and (f); 335.2(g) (38 TexReg 970, effective February 21, 2013); 335.2(i), (j), (l), (m), and (o); 335.4; 335.5 (except (d)); 335.6(a); 335.6(b) (January 1, 1997); 335.6(c); 335.6(d) (except the last sentence) (January 1, 1994); 335.6(e) (January 1, 1994); 335.6(f)—(j); 335.7; 335.8(a)(1) and (2); 335.9(a) (except (a)(2) and (3)); 335.9(a)(2) and (3) (January 1, 1997); 335.9(b) (January 1, 1994); 335.10(a) and (b) (38 TexReg 970, effective February 21, 2013); 335.11(a) (38 TexReg 970, effective February 21, 2013); 335.12(a) (38 TexReg 970, effective February 21, 2013); 335.13(a) (January 1, 1997); 335.13(c) and (d) (January 1, 1994); 335.13(e) and (f) (January 1, 1997); 335.13(g) (January 1, 1994); 335.13(k); 335.14; 335.15 introductory paragraph (January 1, 1994); 335.15(1); 335.15(3); 335.17(a); 335.18(a); 335.19 (except 335.19(d)) (38 TexReg 970, effective February 21, 2013); 335.20 through 335.22; 335.23 (except (2)); 335.23(2) (January 1, 1994); 335.24(a) and (b) introductory paragraph; 335.24(b)(1)—(4) (38 TexReg 970, effective February 21, 2013); 335.24(c) (except (c)(1)(A)); 335.24(c)(1)(A) (38 TexReg 970, effective February 21, 2013); 335.24(d) (38 TexReg 970, effective February 21, 2013); 335.24(e); 335.24(f) (38 TexReg 970, effective February 21, 2013); 335.24(m) and (n); 335.29 through 335.31;

Chapter 335, Subchapter B—Hazardous Waste Management General Provisions, Sections 335.41(a)–(c); 335.41(d) (except (d)(1) and (d)(5)–(8)); 335.41(d)(1) (December 31, 2001); 335.41(e)–(j); 335.43(a); 335.44; 335.45; 335.47 (except 335.47(b) and the second sentence in (c)(3)); 335.47(b) (December 31, 1999);

Chapter 335, Subchapter C—Standards Applicable to Generators of Hazardous Waste, Sections 335.61(a) and (b) (38 TexReg 970, effective February 21, 2013); 335.61(c); 335.61(d) (38 TexReg 970, effective February 21, 2013); 335.61(e), (g), and (h); 335.61(i) (38 TexReg 970, effective February 21, 2013); 335.62 (38 TexReg 970, effective February 21, 2013); 335.63; 335.65 through 335.68; 335.69(a) (except “and (n)” in the introductory paragraph; (a)(4)(B) and (a)(4)(C)); 335.69(a)(4)(B) and (C) (38 TexReg 970, effective February 21, 2013); 335.69(b) (38 TexReg 970, effective February 21, 2013); 335.69(c), 335.69(d) and (e) (38 TexReg 970, effective February 21, 2013); 335.69(f) (except (f)(4)(C)); 335.69(f)(4)(C) and (D) (38 TexReg 970, effective February 21, 2013); 335.69(g), (h), and (j)–(l); 335.69(m) (38 TexReg 970, effective February 21, 2013); 335.70; 335.71; 335.73 through 335.75; 335.76(a) (38 TexReg 970, effective February 21, 2013); 335.76(b); 335.76(c) and (d) (38 TexReg 970, effective February 21, 2013); 335.76(e); 335.76(f) (38 TexReg 970, effective February 21, 2013); 335.76(g); 335.77; 335.78(a); 335.78(b) (January 1, 1997); 335.78(c) (38 TexReg 970, effective February 21, 2013); 335.78(d) (except (d)(2)); 335.78(e) introductory paragraph (January 1, 1997); 335.78(e)(1) and (2); 335.78(f) introductory paragraph and (f)(1) (38 TexReg 970, effective February 21, 2013); 335.78(f)(2) (January 1, 1997); 335.78(f)(3) (except 335.78(f)(3)(A)); 335.78(f)(3)(A) (38 TexReg 970, effective February 21, 2013); 335.78(g) (except (g)(2)); 335.78(g)(2) (January 1, 1997); 335.78(h) and (i); 335.78(j) (38 TexReg 970, effective February 21, 2013); 335.79 (38 TexReg 970, effective February 21, 2013);

Chapter 335, Subchapter D—Standards Applicable to Transporters of Hazardous Waste, Sections 335.91 (except (e)); 335.92; 335.93 (except (e)); 335.93(e) (December 31, 1999); 335.94 (except the phrase “owned or operated by a registered transporter” in (a) introductory paragraph);

Chapter 335, Subchapter E—Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, Sections 335.111(a) and (b) (38 TexReg 970, effective February 21, 2013); 335.111(c)–(e); 335.112(a) introductory paragraph; 335.112(a)(1) (38 TexReg 970, effective February 21, 2013); 335.112(a)(2); 335.112(a)(3) and (4) (38 TexReg 970, effective February 21, 2013); 335.112(a)(5)–(12); 335.112(a)(13) and (14) (38 TexReg 970, effective February 21, 2013); 335.112(a)(15) and (16); 335.112(a)(18)–(24); 335.112(b) (except (b)(4)(K) and (b)(7)); 335.112(b)(4)(K) and (b)(7) (38 TexReg 970, effective February 21, 2013); 335.112(c); 335.113; 335.115 through 335.128;

Chapter 335, Subchapter F—Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, Sections 335.151(a) (38

TexReg 970, effective February 21, 2013); 335.151(b); 335.151(c) (38 TexReg 970, effective February 21, 2013); 335.151(d); 335.151(e) (38 TexReg 970, effective February 21, 2013); 335.151(f); 335.152(a) introductory paragraph; 335.152(a)(1) (38 TexReg 970, effective February 21, 2013); 335.152(a)(2); 335.152(a)(3) and (4) (38 TexReg 970, effective February 21, 2013); 335.152(a)(5)–(8); 335.152(a)(9) (38 TexReg 970, effective February 21, 2013); 335.152(a)(10) and (11); 335.152(a)(12) (38 TexReg 970, effective February 21, 2013); 335.152(a)(13); 335.152(a)(14) (38 TexReg 970, effective February 21, 2013); 335.152(a)(15)–(22); 335.152(b); 335.152(c) (except (c)(7)); 335.152(c)(7) (38 TexReg 970, effective February 21, 2013); 335.152(d); 335.153; 335.155 introductory paragraph (38 TexReg 970, effective February 21, 2013); 335.155(1) and (2); 335.155(3) (38 TexReg 970, effective February 21, 2013); 335.156 through 335.167; 335.168 (except (c)); 335.168(c) (38 TexReg 970, effective February 21, 2013); 335.169; 335.170 (except (c)); 335.170(c) (38 TexReg 970, effective February 21, 2013); 335.171 through 335.179;

Chapter 335, Subchapter G—Location Standards for Hazardous Waste Storage, Processing, or Disposal, Sections 335.201(a) (except (a)(3)); 335.201(c); 335.202 introductory paragraph; 335.202(2), (4), (9)–(11), (13), (15)–(18); 335.203; 335.204(a) introductory paragraph–(a)(5); 335.204(b)(1)–(6); 335.204(c)(1)–(5); 335.204(d)(1)–(5); 335.204(e) introductory paragraph; 335.204(e)(1) introductory paragraph (except the phrase “Except as . . . (B) of this paragraph,” and the word “event” at the end of the paragraph); 335.204(e)(2)–(7); 335.204(f); 335.205(a) introductory paragraph–(a)(2) and (e);

Chapter 335, Subchapter H—Standards for the Management of Specific Wastes and Specific Types of Facilities, Sections 335.211; 335.212; 335.213 (38 TexReg 970, effective February 21, 2013); 335.214; 335.221; 335.222(except (c)(1)); 335.222(c)(1) (38 TexReg 970, effective February 21, 2013); 335.223 through 335.225; 335.241(except (b)(4)); 335.251 (38 TexReg 970, effective February 21, 2013); 335.261 (except (e)); 335.271; 335.272;

Chapter 335, Subchapter O—Land Disposal Restrictions, Section 335.431 (except (c)(1)); 335.431(c)(1) (38 TexReg 970, effective February 21, 2013);

Chapter 335, Subchapter R—Waste Classification, Sections 335.504 introductory paragraph; 335.504(1)–(3) (38 TexReg 970, effective February 21, 2013);

Subchapter U, Standards For Owners And Operators Of Hazardous Waste Facilities Operating Under A Standard Permit, Sections 601 and 602.

Copies of the Texas regulations that are incorporated by reference are available from West Group Publishing, 610 Opperman Drive, Eagan, 55123, ATTENTION: Order Entry; Phone: 1–800–328–9352; Web site: <http://west.thomson.com>.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 219

[Docket No. FRA–2001–11213, Notice No. 20]

#### Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2016

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of determination.

**SUMMARY:** This notice of determination provides the FRA Administrator’s minimum annual random drug and alcohol testing rates for calendar year 2016.

**DATES:** This notice of determination is effective December 28, 2015.

**FOR FURTHER INFORMATION CONTACT:** Jerry Powers, FRA Drug and Alcohol Program Manager, W33–310, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (telephone 202–493–6313); or Sam Noe, FRA Drug and Alcohol Program Specialist, (telephone 615–719–2951).

**SUPPLEMENTARY INFORMATION:** FRA determines the minimum annual random drug testing rate and minimum random alcohol testing rate for the next calendar year based on railroad industry data available for two previous calendar years (for this Notice, calendar years 2013 and 2014). Railroad industry data submitted to FRA’s Management Information System shows the rail industry’s random drug testing positive rate remained below 1.0 percent for the applicable two calendar years. FRA’s Administrator has therefore determined the minimum annual random drug testing rate for the period January 1, 2016, through December 31, 2016, will remain at 25 percent of covered railroad employees under 49 CFR 219.602. In addition, because the industry-wide random alcohol testing violation rate remained below 0.5 percent for the applicable two calendar years, the Administrator has determined the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2016, through December 31, 2016 under 49 CFR 219.608. Because these rates represent minimums, railroads may conduct FRA random testing at higher rates.