

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 117.570	Use of Emissions Credits for Compliance.	03/05/03	03/26/04, 69 FR 15686.	
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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
Attainment Demonstration for Houston/Galveston/Brazoria (HGB) One-hour Ozone Nonattainment Area Adopting Strategy Based on NO _x and Point Source Highly- Reactive VOC Emission Reductions.	Houston/Galveston, TX.	12/01/04	09/06/06 [Insert FR page number where document begins].	

[FR Doc. 06-7412 Filed 9-5-06; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2005-TX-0006; FRL-8216-3]

Approval and Promulgation of State Implementation Plans; Texas; Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas State Implementation Plan (SIP) concerning the Emission Credit Banking and Trading Program. Additionally, EPA is approving a section of Chapter 115 of the Texas Administrative Code (TAC) on Control of Air Pollution from Volatile Organic Compounds that cross-references the Emission Credit Banking and Trading Program and the Discrete Emission Credit Banking and Trading Program. We are also approving a subsection of Chapter 116 of the TAC, Control of Air Pollution by Permits for New Construction or Modification, which provides a definition referred to in both the Emission Credit and the Discrete Emission Credit Banking and Trading Programs.

DATE: This rule is effective on October 6, 2006.
ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2005-TX-0006. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., 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 through www.regulations.gov or in hard copy at the Air Permitting Section (6PD-R), 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 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 related to this SIP revision, and which is part of the EPA docket, 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: Adina Wiley, Air Permitting Section (6PD-R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone 214-665-2115, wiley.adina@epa.gov.

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

Outline

- I. What action is EPA taking?
- II. What is the background for this action?
- III. What are EPA’s responses to comments received on the proposed action?
- IV. What does Federal approval of a State regulation mean to me?
- V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is approving the Emission Credit Banking and Trading program, also referred to as the Emission Reduction Credit (ERC) program, enacted at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H Emissions Banking and Trading, Division 1, sections 101.300-101.304, 101.306, 101.309, and 101.311. These sections were submitted as SIP submittals dated December 20, 2000 (state effective date January 18, 2001);

July 15, 2002 (state effective date April 14, 2002); January 31, 2003 (state effective date January 17, 2003), and December 06, 2004 (state effective date December 2, 2004). Also in this document, EPA is approving section 115.950 in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, which cross-references the ERC program and the Discrete Emission Credit Banking and Trading program, referred to as the Discrete Emission Reduction Credit (DERC) program. This revision was provided in a SIP submittal dated December 20, 2000 (state effective date January 18, 2001). EPA is also approving the definition of "facility" published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter A, section 116.10, submitted as a SIP revision July 22, 1998 (state effective date December 23, 1997).

As discussed in our proposed action at 70 FR 58151–58153, we conclude that the ERC program is consistent with section 110(l) of the Clean Air Act.

The ERC program contains several features that EPA feels are important enough to discuss here. Section 101.302 of the ERC program generally requires that an emission credit be used in the nonattainment area in which it was generated unless the user has obtained prior written approval of both the TCEQ Executive Director and EPA. This section also provides for the use of emission credits generated in another county, state, or nation. Although the threshold EPA approval requirement of section 101.302(f) ensures that EPA approval is necessary for any of the above transactions, TCEQ has agreed to clarify the rule language by December 1, 2006, to more clearly require EPA approval for all transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another, or from attainment counties into nonattainment counties.

EPA has addressed the possibility of cross-jurisdictional trades, such as those in section 101.302, in Appendix 16.16 of "Improving Air Quality with Economic Incentive Programs" (EPA–452/R–01–001, January 2001) (EIP Guidance). Satisfaction of the provisions of Appendix 16.16 will ensure that cross-jurisdictional trades are consistent with the fundamental integrity, equity, and environmental benefit principles described in the EIP Guidance. The EPA review and approval authority contained in section 101.302(f) will be the mechanism by which EPA ensures that inappropriate trades do not take place. In particular, EPA intends to require a further SIP revision (either a

detailed trading program, such as an MOU, or a trade-specific submission) before approving any international trade, interstate trades, or intrastate trades that involve reductions from beyond the nonattainment area.

Among these types of trades requiring a further SIP revision, international trades present an especially difficult case. For instance, currently there is no approvable mechanism for demonstrating that reductions made in another country are surplus or enforceable. Nonetheless, emission reductions in other countries could potentially offer substantial air quality benefits in the United States. In approving the ERC program, EPA is recognizing the concept of international trading and describing a framework (*i.e.*, the submission of a SIP revision demonstrating, among other things, the validity and enforceability of foreign reductions) for such trading, in the event that a suitable and approvable mechanism is ever developed for resolving concerns including enforceability and surplus. Until such a mechanism is developed and approved by EPA, however, EPA will not approve international trades under the ERC rule.

EPA is also approving a provision in section 101.302(d) that allows generators and users of ERCs to use an alternate quantification protocol that is different from one of the approved protocols in Chapter 115 or Chapter 117 (Control of Air Pollution from Volatile Organic Compounds and Control of Air Pollution from Nitrogen Compounds) of the Texas rules. Generators/users wanting to use other quantification protocols must follow the quantification requirements at section 101.302(d)(1)(C), which include a requirement for EPA adequacy review of such alternate protocols. TCEQ has agreed to clarify the provisions of section 101.302(d)(1)(C) by December 1, 2006, to clarify that a proposed alternate quantification protocol may not be used if the TCEQ Executive Director receives a letter from EPA that objects to the use of the protocol during the 45-day adequacy review period or if EPA proposes disapproval of the protocol in the **Federal Register**. See also 70 FR 58149 for a description of the approval process for alternate quantification protocols.

Today's action also approves the use of ERCs for compliance with the Highly-Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) program in the HGB nonattainment area. Section 101.306(a)(7) provides that ERCs can be used for "compliance with other requirements as allowable within the guidelines of local, state, and federal

laws." Therefore, even though the ERC program does not specifically mention the use of ERCs within the HECT, it is authorized by the general provision. The TCEQ has agreed to revise the section 101.306 language by December 1, 2006, to specify that ERCs may be used with the HECT as an annual allocation of allowances under section 101.399.

II. What is the background for this action?

The ERC rules establish a type of Economic Incentive Program (EIP). This program provides flexibility for sources in complying with certain State and Federal requirements. The ERC program was first adopted by the State at 30 TAC section 101.29 on December 23, 1997, for use with volatile organic compound (VOC) and nitrogen oxides (NO_x) requirements in ozone nonattainment areas. Effective January 18, 2001, section 101.29 was repealed and Chapter 101, Subchapter H, Divisions 1, 3, and 4 were created for the ERC, Mass Emissions Cap and Trade (MECT) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area, and Discrete Emission Credit Banking and Trading (DERC) programs, respectively. As of April 14, 2002, TCEQ amended the geographic scope of the ERC program to include provisions for reductions generated outside the United States at section 101.302. Effective January 17, 2003, TCEQ reorganized the ERC and DERC program rules into more standardized formats parallel to each other, with a rule structure that followed a process of recognizing, quantifying, and certifying reductions as credits while explaining the guidelines for trading and using creditable reductions. These revisions amended sections 101.300, 101.301, 101.302, 101.303, 101.304, 101.306, 101.309, and 101.311. The most recent submittal, of December 06, 2004, amended sections 101.300, 101.302, 101.303, 101.304, and 101.311, expanding the ERC program to cover reductions of criteria pollutants (excluding lead) or precursors of criteria pollutants for which an area is designated nonattainment. The ERC program adoption and the subsequent revisions were submitted to EPA as SIP revisions; today's approval is the first time we have acted on this program. In doing so we are acting on the original submission of July 22, 1998, and all subsequent revisions through the December 6, 2004, submittal.

III. What are EPA's responses to comments received on the proposed action?

EPA's responses to comments submitted by Galveston-Houston

Association for Smog Prevention (GHASP), Environmental Defense (Texas Office), the Lone Star Chapter of the Sierra Club, and Public Citizen (Texas Office) on November 4, 2005, are as follows. EPA has summarized the comments below; the complete comments can be found in the ERC rulemaking docket (EPA-R06-OAR-2005-TX-0006). In commenting on the ERC program, these commenters raise no concerns about pollutants other than VOCs (and highly reactive VOC, or HRVOC) emissions.¹

Comment 1: There are problems with the inventory of VOC and HRVOC emissions in the HGB nonattainment area.

Response to Comment 1: While EPA acknowledges that there have been past VOC emission inventory problems from sources associated with the petrochemical industry (see our proposed approval of the revisions to the HGB attainment demonstration, 70 FR 58119), EPA believes that the emissions inventory developed by TCEQ for the HGB nonattainment area is an acceptable approach to characterizing the emissions in the HGB nonattainment area. In addition, we are incorporating by reference our responses to comments provided in our approval of the attainment demonstration for the HGB ozone nonattainment area (EPA-R06-OAR-2005-TX-0018). Those responses more specifically address the commenters' concerns regarding the development and use of the imputed inventory, characterization of other VOCs in the inventory, and appropriate emissions monitoring techniques for flares, fugitive emissions, and upsets.

Comment 2: The VOC and HRVOC trading programs use unreliable data, which cannot be replicably measured. There are problems with current methods for measurement of HRVOC and VOC emissions; therefore, the VOC and HRVOC trading programs do not

¹During the comment period, EPA did not receive comments regarding environmental justice and the ERC program. However, during the finalization process we have reevaluated our interpretation of the definition of Environmental Justice as found in Executive Order 12898. In our proposed approval of the ERC program, we stated that "environmental justice concerns arise when a trading program could result in disproportionate impacts on communities populated by racial minorities, people with low incomes, or Tribes." On further review, we believe the following description is more consistent with E.O. 12898: "Environmental justice concerns can arise when a final rule, such as a trading program, could result in disproportionate burdens on particular communities, including minority or low income communities." This revised language does not alter our determination that the ERC program does not raise environmental justice concerns.

meet EPA's EIP Guidance for quantification.

Response to Comment 2: EPA disagrees. The proposed ERC rule, at 70 FR 58149, describes the basis for EPA's conclusion that the ERC rule satisfies the EIP Guidance criteria on quantifiability, which are found in Chapter 4 ("Fundamental Principles of All EIPs").

Emissions and emission reductions attributed to an EIP are quantifiable if they can be reliably and replicably measured: The source must be able to reliably calculate the amount of emissions and emission reductions from the EIP strategy, and must be able to replicate the calculations. Under the ERC program, sources address the element of quantification by using a quantification protocol that has been approved by TCEQ and EPA. Both agencies have important roles in ensuring these protocols provide reliable and replicable emission measurements. The approved quantification protocols for VOC ERC generation and use are contained in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. These methods are all reliable and replicable, either because EPA has promulgated regulations or published guidance listing them as appropriate methods for measuring VOC emissions, or because the American Society for Testing and Materials (ASTM) has determined that they are appropriate standard methods. EPA approval is required before an alternate quantification protocol can be used. See section 101.302(d)(1)(C). Examples of the approved quantification methods for VOC ERC generation and use include:

- Test Methods 1–4 (40 CFR 60, Appendix A) for determining flow rates;
- Test Method 18 (40 CFR 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- EPA guidance in "Procedures for Certifying Quantity of Volatile Organic Compounds (VOC) Emitted by Paint, Ink, and Other Coating," EPA-450/3-84-019; and
- Determination of true vapor pressure using ASTM Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid Vapor pressure.

Comment 3: TCEQ and EPA lack confidence in current methods for measuring emissions. This lack of confidence increases the risks associated with a market-based trading program, until the TCEQ is able to reconcile ambient monitoring with industry emission inventories. For example, trading could exacerbate the

challenge of identifying the cause of any program failures because comparisons of ambient monitoring trend data to emission inventory data will require consideration of the timing and magnitude of trades.

Response to Comment 3: EPA disagrees. We have discussed above in response to Comments 1 and 2 our conclusion that the methods used for measuring emissions under the ERC program are consistent with EPA policy and guidance, and that the emissions inventory developed by TCEQ is an acceptable approach to characterizing the emissions in the HGB nonattainment area. Sources that generate and use ERCs must notify the TCEQ. The TCEQ is then responsible for certifying that the generation or use strategy is appropriate. Through the certification process TCEQ is made aware of trades before they happen. This advance knowledge of trades could then be applied to the reconciliation process and actually provide additional data instead of being a hindrance.

Comment 4: EPA should find that it is premature for TCEQ to allow trading of unquantifiable emissions of VOCs in the HGB nonattainment area. If either the source or the recipient incorrectly estimates the emissions involved in a trade, the region is at risk of a net increase in emissions as a result of the trade. Until refineries and chemical plants are able to routinely quantify their VOC emissions, EPA should not allow trading of these VOC emissions.

Response to Comment 4: EPA disagrees that VOC emissions should be ineligible for trading in the HGB nonattainment area. EPA believes that allowing the petrochemical industry to trade VOC emissions under the ERC rule is appropriate notwithstanding the commenter's concern about emissions estimates, because the ERC program satisfies the EIP Guidance criteria for quantification. For example, sources generating and banking VOC ERCs must either use the approved quantification protocols in Chapter 115 or obtain EPA approval for an alternate quantification method. These protocols will ensure that sources correctly calculate the emission reduction to be banked as an ERC. The source using the banked reduction also must calculate the amount of necessary VOC ERCs using the approved quantification protocols. The TCEQ Executive Director will review and approve each requested ERC use to ensure that sources using ERCs have enough credit to cover their use strategy. Therefore, EPA believes that sources using the approved quantification protocols will correctly estimate the amount of ERCs generated

and used, and we also believe that the program is designed to minimize incorrect emissions estimates. Further, users of VOC ERCs must purchase and retire an additional ten percent VOC ERCs as an environmental benefit. The ten percent environmental benefit will also help ensure that the trading program will not negatively impact the nonattainment area in which the ERC is generated and used.

EPA's response to Texas Industry Project (TIP) comments made on November 4, 2005, is as follows:

Comment: TIP supports EPA's proposed approval of the ERC program and urges EPA to finalize its approval as soon as practicable.

Response: EPA appreciates the support of TIP for our approval of the ERC program.

IV. What does federal approval of a State regulation mean to me?

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

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by November 6, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

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

Dated: August 24, 2006.

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. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended:

■ a. Under Chapter 101—General Air Quality Rules, under the centered heading Subchapter H—Emissions Banking and Trading, by adding a new centered heading "Division 1—Emission Credit Banking and Trading" followed by new entries for sections 101.300, 101.301, 101.302, 101.303, 101.304, 101.306, 101.309, and 101.311;

■ b. Under Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds, under the centered heading Subchapter J—Administrative Provisions, immediately before the entry for section 115.950, by adding a new centered heading "Division 4—Emissions Trading" and by revising the entry for section 115.950;

■ c. Under Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification, under the centered heading Subchapter A—Definitions, by revising the entry for section 116.10.

The additions and revisions read as follows:

§ 52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal	Explanation approval date	Explanation
Chapter 101—General Air Quality Rules				
*	*	*	*	*
Subchapter H—Emissions Banking and Trading Division 1—Emission Credit Banking and Trading				
Section 101.300	Definitions	11/10/04	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	
Section 101.301	Purpose	12/13/02	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	
Section 101.302	General Provisions	11/10/04	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	
Section 101.303	Emission Reduction Credit General and Certification.	11/10/04	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	
Section 101.304	Mobile Emission Reduction Credit Generation and Certification.	11/10/04	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	
Section 101.306	Emission Credit Use	12/13/02	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	
Section 101.309	Emission Credit Banking and Trading.	12/13/02	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	
Section 101.311	Program Audits and Reports	11/10/04	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	
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Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter J—Administrative Provisions				
*	*	*	*	*
Division 4—Emissions Trading				
Section 115.950	Use of Emissions Credits for Compliance.	12/06/00	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal	Explanation approval date	Explanation
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification Subchapter A—Definitions				
Section 116.10	General Definitions	06/17/98	[Insert date of <i>FR</i> publication] [Insert <i>FR</i> page number where document begins].	The SIP does not in- clude subsections 116.10(1), (2), (3), (6), (8), (9), (10), and (14).
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[FR Doc. 06-7413 Filed 9-5-06; 8:45 am]

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**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R06-OAR-2005-TX-0029; FRL-8216-5]

**Approval and Promulgation of State
Implementation Plans; Texas; Discrete
Emission Credit Banking and Trading
Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; conditional approval.

SUMMARY: EPA is finalizing our conditional approval of revisions to the Texas State Implementation Plan (SIP) concerning the Discrete Emission Credit Banking and Trading Program.

DATES: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2005-TX-0029. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., 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 through www.regulations.gov or in hard copy at the Air Permitting Section (6PD-R), 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 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 related to this SIP revision, and which is part of the EPA docket, 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: Adina Wiley, Air Permitting Section (6PD-R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone 214-665-2115, wiley.adina@epa.gov.

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

Outline

- I. What Action Is EPA Taking?
- II. What is a conditional approval?
- III. What future actions are necessary for the DERC rule to fully meet EPA’s expectations?
- IV. What is the background for this action?
- V. What are EPA’s responses to comments received on the proposed action?
- VI. What does Federal approval of a State regulation mean to me?
- VII. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is conditionally approving, as part of the Texas SIP, the Discrete Emission Credit Banking and Trading program, also referred to as the Discrete Emission Reduction Credit (DERC) program, enacted at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H, Division 4, sections 101.370-101.374, 101.376, 101.378, and 101.379. These revisions were provided

in SIP revisions dated July 22, 1998 (state effective date December 23, 1997); December 20, 2000 (state effective date January 18, 2001); July 15, 2002 (state effective date April 14, 2002); January 31, 2003 (state effective date January 17, 2003), and December 06, 2004 (state effective date December 2, 2004).

As discussed in our proposed action at 70 FR 58164-58166, we conclude that the DERC program is consistent with section 110(l) of the Clean Air Act.

The DERC program that we are conditionally approving today into the Texas SIP includes numerous cross-references to different State rules. In order to be able to conditionally approve (or fully approve) a revision into a SIP, we also must conditionally approve (or fully approve) any cross-referenced rules that are integral to the establishment, implementation, and enforcement of the SIP revision. Our detailed evaluation of all the cross-references in the State’s DERC rule language to other State rules not part of Subchapter H, Division 4, sections 101.370-101.374, 101.376, 101.378, and 101.379 can be found in the “Review of Cross-References in the DERC Program” discussion in Section IV of the Technical Support Document (available in the rulemaking docket EPA-R06-OAR-2005-TX-0029).

Today, EPA finds that the cross-references in the following sections of the DERC program have already been approved into the Texas SIP: 101.370(29) at 65 FR 70792; 101.372(b)(3) at 63 FR 11835; 101.372(d)(1)(A) at 66 FR 57244; 101.372(d)(1)(B) at 60 FR 12438, 62 FR 27964, 65 FR 18003, 66 FR 36917, and 66 FR 54688; 101.372(f)(4) at 66 FR 36917; 101.373(b)(1) at 67 FR 58697; and 101.376(d)(2)(A) at 66 FR 57244. Additionally, the cross-references in sections 101.370(28) and 101.376(c)(5) have been approved by the EPA into the Texas Federal Operating Permits Program on December 06, 2001, and March 31, 2005. The cross-reference in section 101.376(b)(3) is addressed in a