



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2015-0585; FRL-9960-22-Region 6]

#### Approval and Promulgation of Implementation Plans; Texas; Revisions to Emissions Banking and Trading Programs and Compliance Flexibility

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) Emissions Banking and Trading Programs submitted on July 15, 2002; December 22, 2008; April 6, 2010; May 14, 2013; and August 14, 2015. Specifically, we are approving revisions to the Texas Emission Credit, Mass Emissions Cap and Trade, Discrete Emission Credit, and Highly Reactive Volatile Organic Compound Emissions Cap and Trade Programs such that the Texas SIP will include the current state program regulations promulgated and implemented in Texas. We are also approving compliance flexibility provisions for stationary sources using the Texas Emission Reduction Plan submitted on July 15, 2002; May 30, 2007; and July 10, 2015.

**DATES:** This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the EPA receives relevant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0585, at <http://www.regulations.gov> or via email to [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, 214-665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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

**FOR FURTHER INFORMATION CONTACT:** Adina Wiley, 214-665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Adina Wiley or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

### *A. CAA and SIPs*

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS). These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

The Texas SIP includes several discretionary emissions trading programs developed consistent with the EPA’s Economic Incentive Program Guidance, that are designed to promote flexibility and innovation in complying with State and Federal air emission requirements established in the SIP and the SIP-approved air permitting programs.<sup>1</sup> This direct final action will address the revisions to the Texas Emission Credit (EC), Mass Emissions Cap and Trade (MECT), Discrete Emission Credit (DEC), and Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) programs that were submitted to the EPA on July 15, 2002; December 22, 2008; April 6, 2010; May 14, 2013; and August 14, 2015, where the EPA has not yet taken an action on such revisions. This direct final action also addresses another method for

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<sup>1</sup> “Improving Air Quality with Economic Incentive Programs” (EIP Guidance) (EPA-452/R-01-001, January 2001) is the EPA guidance document for reviewing and approving discretionary EIP submittals. The EIP Guidance applies to the establishment of a discretionary EIP for attaining or maintaining the national ambient air quality standards (NAAQS) for criteria pollutants. The EIP Guidance supersedes and takes precedence over the discretionary EIP guidance provided in prior documents such as the 1994 EIP (April 7, 1994, 59 FR 16690, 40 CFR part 51, subpart U) and the guidance in the emission trading policy statement (ETPS) (December 4, 1986, 51 FR 43813).

compliance flexibility for stationary sources using the Texas Emission Reduction Plan (TERP) as submitted to the EPA on July 15, 2002; May 30, 2007; and July 10, 2015. Where the TCEQ also adopted and submitted revisions to other parts of the Texas SIP, those revisions have been addressed in separate rulemakings. Please see the Technical Support Documents accompanying this rulemaking for an identification of the specific sections impacted by this direct final rulemaking.

*B. Overview of the Texas Emissions Banking and Trading Programs*

1. The Emission Credit (EC) Program

The EC Program enacted at 30 Texas Administrative Code (TAC) Chapter 101, Subchapter H, Division 1 allows owners or operators of a facility or mobile source to generate emission credits by reducing emissions of criteria pollutants or their precursors, with the exception of lead, below any applicable regulations or requirements. Emission credits are generated and banked in terms of rate (tons per year). Emission credits, or ECs, encompass reductions generated and banked from stationary sources as emission reduction credits (ERCs) or generated and banked from mobile sources as mobile emission reduction credits (MERCs). The ECs from the bank have traditionally been used as offsets for the permitting of major new or modified facilities in nonattainment areas. ECs have also been banked and traded for alternative compliance with Reasonably Available Control Technology (RACT) requirements. The EPA initially approved the EC program on September 6, 2006 (71 FR 52698) with updates approved on May 18, 2010 (75 FR 27647).

On June 5, 2015, the TCEQ adopted revisions to the EC Program, including renaming the program to the Emission Credit Program and revising provisions for mobile and area source

credit generation. The June 5, 2015, revisions to the EC Program were submitted to the EPA as a SIP revision on August 14, 2015.

2. The Mass Emissions Cap and Trade (MECT) Program

The MECT Program enacted at 30 TAC Chapter 101, Subchapter H, Division 3 is mandatory under the Texas SIP for stationary facilities that emit oxides of nitrogen (NO<sub>x</sub>) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area which are subject to emission specifications in the TCEQ NO<sub>x</sub> rules at 30 TAC Sections 117.310, 117.1210, and 117.2010; and which are located as a site where they collectively have an uncontrolled design capacity to emit 10 tons per year or more of NO<sub>x</sub>. The program sets a cap on NO<sub>x</sub> emissions beginning January 1, 2002, with a final reduction to the cap occurring in 2007. Facilities are required to meet NO<sub>x</sub> allowances on an annual basis. Facilities may purchase, bank, or sell their allowances. The EPA published a final rule approving the MECT program on November 14, 2001 (66 FR 57252). The EPA has acted on several updates to the MECT program since our initial program approval. See prior EPA actions on September 6, 2006 (71 FR 52698); July 16, 2009 (74 FR 34503); January 2, 2014 (79 FR 57).

TCEQ adopted additional revisions to the MECT on June 5, 2015, and submitted these revisions to the EPA as a SIP revision on August 14, 2015. The revisions make general updates to the MECT and clarify the use of allowances for Nonattainment New Source Review (NNSR) offsets. This rulemaking addresses all revisions to the MECT submitted on August 14, 2015.

3. The Discrete Emission Credit (DEC) Program

The DEC Program enacted at 30 TAC Chapter 101, Subchapter H, Division 4 allows an owner or operator of a facility or mobile source to generate discrete emission credits by reducing emissions of criteria pollutants or their precursors, with the exception of lead, below any

applicable regulation or requirement. Discrete emission credits (DECs) are quantified, banked and traded in terms of mass (tons), not a rate as is the case with ECs. DECs may be generated from stationary sources and banked as discrete emission reduction credits (DERCs) or may be generated from mobile sources and banked as mobile discrete emission reduction credits (MDERCs). Traditionally DECs have been used for Reasonably Available Control Technology (RACT) compliance for (Volatile Organic Compounds) VOCs and NO<sub>x</sub>; DECs can also be used to offset new major sources or major modifications to existing sources in nonattainment areas. The EPA initially approved the DEC Program on September 6, 2006, with updates approved on May 18, 2010 (75 FR 27644).

TCEQ has adopted and submitted revisions to the DEC Program on December 22, 2008 and May 14, 2013 to address the use of DERCs in the Dallas-Fort Worth (DFW) ozone nonattainment area. Additional revisions to the DEC program adopted on June 5, 2015, and submitted August 14, 2015, rename the program to the Discrete Emission Credit Program, further revise the provisions specific to DERC use in DFW, and address the generation of area and mobile source credits. The EPA is addressing all pending revisions to the DEC Program in this action.

#### 4. The Highly Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) Program

The HECT Program enacted at 30 TAC Chapter 101, Subchapter H, Division 6 is mandatory for covered facilities including vent gas streams, flares, and cooling tower heat exchange systems that emit HRVOCs, as defined in 30 TAC Section 115.10, and that are located at a site subject to Chapter 115, Subchapter H. The EPA published final approval of the HECT program on September 6, 2006 (71 FR 52659).

Since our initial approval of the HECT program, the TCEQ adopted revisions on March 10, 2010, in conjunction with the development of the HGB 1997 eight-hour ozone attainment demonstration; these HECT amendments were submitted as revisions to the Texas SIP on April 6, 2010. On January 2, 2014, the EPA approved the majority of these HECT amendments in concert with our final approval of the HGB attainment demonstration for the 1997 eight-hour ozone standard (79 FR 57). Note that we did not take action on the submitted revision to 30 TAC Section 101.396(b) at the request of the state.

The TCEQ adopted revisions to the HECT program on June 5, 2015, and submitted these revisions to the SIP on August 14, 2015. The submitted revisions clarify the use of HECT allowances as NNSR offsets, update the equations for allowance allocations, update provisions for changing site ownership, and revise provisions to clarify data substitution for reporting.

This rulemaking addresses the remaining revision to 30 TAC Section 101.396(b) from the April 6, 2010 submittal and all revisions to the HECT submitted on August 14, 2015.

*C. Compliance Flexibility with the Texas Emission Reduction Plan (TERP)*

The TERP, implemented with provisions in 30 TAC Chapter 114, Subchapter K, is a SIP-approved program that provides financial incentives for reducing emissions from mobile sources. Examples of TERP grant projects include financial subsidies to upgrade/retrofit diesel exhaust systems in school buses and replacing heavy-duty and light-duty on-road diesel vehicles with alternative fuel and hybrid vehicles. TCEQ adopted new revisions to promote compliance flexibility for stationary sources subject to NO<sub>x</sub> control requirements either under the MECT or under the requirements of 30 TAC Chapter 117 by requiring partial compliance with the stationary source obligation while simultaneously funding mobile emission reductions achieved through the TERP for a set period of time. The compliance flexibility provisions for sources

subject to the MECT were initially adopted on March 13, 2002 and submitted as SIP revisions on July 15, 2002 as new 30 TAC Section 101.357; no changes have been made since this initial adoption and submittal. The compliance flexibility provisions for sources subject to the NO<sub>x</sub> control requirements in Chapter 117 were initially adopted on March 13, 2002 and submitted as a SIP revision on July 15, 2002 as 30 TAC Section 117.571. TCEQ has revised this section twice since its initial adoption. Revisions adopted May 23, 2007, and submitted as a SIP revision on May 30, 2007, recodified and revised the provisions as 30 TAC Section 117.9810. The TCEQ adopted further revisions to 30 TAC Section 117.9810 on June 3, 2015, and submitted these provisions as a SIP revision on July 10, 2015; this section now only applies to DFW area sources that seek to use emission reductions generated from TERP to meet NO<sub>x</sub> emission control requirements.

## **II. The EPA's Evaluation**

The TSDs for this action include a detailed analysis of the revisions submitted for EPA's consideration. In many instances the revisions are minor or non-substantive in nature and do not change the intent of the original SIP-approved program. Following is a summary of our analysis for those revisions that we view as substantive revisions to our initial SIP-approvals.

### *A. Revisions to the MECT and HECT for Using Allowances as NNSR Offsets*

In the August 14, 2015 submittal, the TCEQ expanded the MECT program at 30 TAC Section 101.352 and the HECT Program at 30 TAC Section 101.393, such that MECT allowances can be used for the entirety of the NNSR NO<sub>x</sub> offset obligation and HECT allowances can be used for the entirety of the NNSR VOC offset obligation, rather than just the 1:1 portion of the offset, as long as the use is authorized in a NNSR permit issued under the SIP-approved NNSR program at 30 TAC Chapter 116, Subchapter B. The TCEQ adopted and

submitted additional clarifications to both the MECT and HECT Program regulations that clarify the applicable offset obligation will be met by a permanent stream of allowances and not through the use of a banked, or vintage allowance or an allowance allocated based on allowable emissions. The owner or operator of the facility must have the necessary allowances in the respective compliance account 30 days prior to operation. The TCEQ will set-aside the portion of allowances for the 1:1 offset obligation; the owner/operator is required to set aside additional allowances if there is a short fall in the offset obligation due to allowance devaluation. The TCEQ will also permanently retire the allowances used for the environmental benefit portion of the offset obligation (the greater than 1:1 portion of the offset obligation). The TCEQ also provides the mechanism under the MECT or HECT Programs where the owner or operator can request the release of allowances if an alternative means of compliance with the offset obligation is approved. The TCEQ will not retroactively release allowances and the portion of allowances retired for the environmental benefit contribution will not be released.

The requirements for NNSR offsets are established under section 173(c) of the CAA. Section 173(c)(1) provides that an owner or operator of a stationary source may comply with any offset requirement by obtaining emission reductions of the air pollutant from the same source or other sources in the same nonattainment area. Emission reductions used for offsets must be in effect and enforceable by the time the new or modified source commences operation and ensure that the total tonnage of increased emissions of the air pollutant shall be offset by the equal or greater reduction in actual emissions. Sections 173(c)(1)(A) and (B) provide exceptions to the location of the offsetting emission reductions by providing that reductions may be achieved in another nonattainment area if the area is of an equal or higher nonattainment classification and emissions from the other area contribute to a violation of the NAAQS in the nonattainment area

where the source will be located. Section 173(c)(2) provides that emission reductions required elsewhere under the Act will not be creditable as emission reductions for purposes of NNSR offsets. The EPA regulations pertaining to NNSR offset requirements are found at 40 CFR 51.165(a)(3).

The EPA has provided specific guidance for the interactions between multi-source emission cap and trade programs and the NNSR permitting program in our EIP Guidance under sections 6.3(d) and Appendix 16.14. Together, these sections provide that reductions from an EIP can be used for NNSR purposes provided that the emission reductions independently meet the relevant NNSR requirements in the CAA and in EPA's regulations and guidance. Further, major sources and modifications may not be exempted from NSR requirements and the reductions under the EIP may not be used for netting unless they occur contemporaneously with use and occur at the same source as the emission increase. The EIP Guidance reiterates that reductions used for NNSR offsets must be federally enforceable and satisfy the requirements of CAA section 173(c).

The revisions to the MECT and HECT offset provisions continue to satisfy the offset requirements under CAA Section 173(c). First as to location, an owner/operator with a NO<sub>x</sub> offset obligation in the HGB area could use the MECT allowances to satisfy the offset obligation since the allowances are provided in the HGB ozone nonattainment area. Similarly, an owner/operator with a VOC offset obligation in the HGB area could use the HECT allowances to satisfy the offset obligation since the allowances are provided in the HGB ozone nonattainment area. The use of allowances for the entirety of the offset obligation is not restricted by the CAA, nor is it restricted under the EPA's EIP at Appendix 16.14. The MECT and HECT revisions specify that the allowances must be obtained 30 days prior to commencement of operation,

ensuring that the requirements under CAA section 173(c)(1) regarding timing are satisfied. A source from outside the HGB ozone nonattainment area could theoretically use MECT allowances for NO<sub>x</sub> offset compliance or HECT allowances for VOC offset compliance, provided that the HGB ozone nonattainment area is of equal or greater nonattainment designation and that the source could demonstrate emissions from HGB contribute to a NAAQS violation in the other nonattainment area of use. The EPA believes that the possibility of the use of MECT or HECT allowances for an offset obligation outside of the HGB area will be extremely limited because any source trying to use MECT or HECT allowances outside of the HGB would be obligated to make the above-referenced demonstrations under CAA section 173(c)(1)(A) and (B) to ensure that the CAA is satisfied. Finally, the MECT and HECT caps and the pending revisions to the MECT and HECT programs are not required by the CAA; therefore, MECT or HECT allowances would be creditable for offset purposes under CAA section 173(c)(2).

The revisions to the MECT and HECT also satisfy the NNSR offset criteria established in EPA's EIP Guidance, Appendix 16.14. The use of MECT or HECT allowances for netting out of NNSR requirements is prohibited under the SIP-approved program requirements. Ultimately, by using a permanent stream of allowances to satisfy the entirety of the NNSR offset obligation, the overall MECT or HECT cap will be reduced. Therefore, the air shed will be protected while still providing for future growth consistent with the goals of the CAA and the NNSR program.

*B. Revisions to how DERCS are used as NNSR Offsets*

The August 14, 2015 submitted revisions to the DEC Program included revisions on how DERCS can be used as NNSR offsets and how this usage is accounted for in the applicable NNSR permit. The current SIP-approved language requires that if DERCS are to be used for the

offset obligation in an NNSR permit, the applicable permit will include an enforceable requirement that the facility obtain at least one additional year of DECAs for offsets before continuing operation; this creates a rolling requirement for the owner/operator of the stationary source to obtain and request approval for the use of DECAs each year under an NNSR permit. In the August 14, 2015 submittal, the TCEQ revised the regulations so that the prior language applies only to the use of MDECAs as NNSR offsets. For DECAs, the user must complete an application form to use DECAs at least 90 days before operation and at least 90 days before continuing operation for any period that was not included in the initial application. This change has been made to reflect that users of DECAs for offsets are generally obtaining sufficient DECAs to cover several years of operation, if not the entirety of the expected lifetime of the source, before commencing construction. In those situations, the prior SIP-approved language created an undue burden on the owner or operator to annually submit paperwork when the DECAs had already been obtained and approved for use. Under the revised regulations, the enforceable commitment to obtain sufficient DECAs is the NNSR permit requirement that emissions must be offset prior to the commencement of operation. If the owner or operator is using DECAs for the offset obligation they still must obtain the DECAs in advance of operation and have those DECAs approved for use by the TCEQ Executive Director. While the submitted revisions change the method in which users of DECAs as NNSR offsets request approval of such use from the TCEQ, the underlying premise of using DECAs as NNSR offsets is unchanged. The change in methodology is consistent with the offset requirements of the CAA at 173(c)(1) that require the offsets to be in effect and enforceable by the time the source commences operation.

*C. Use of DECAs in the DFW Ozone Nonattainment Area*

On December 22, 2008, the TCEQ submitted revisions to the Texas SIP Narrative and the state's Emissions Banking and Trading Rules at 30 TAC Sections 101.376 and 101.379 to address the use of DERCs in the DFW nonattainment area with respect to the 1997 eight-hour ozone NAAQS. The submitted regulations created an enforceable mechanism to restrict the use of DERCs in the DFW eight-hour ozone nonattainment area through the establishment of the DFW DERC limit. The DFW DERC limit was calculated as a ton per day limit based on the TCEQ's photochemical modeling demonstration, emission reductions from fleet turnover that were not used to satisfy attainment SIP contingency measures and DERCs generated and not used after the inception of the DFW DERC limit.

The TCEQ submitted the DFW attainment demonstration for the 2008 ozone NAAQS on July 10, 2015, with updates submitted on August 5, 2016. As part of these revisions, the TCEQ reevaluated the DERC usage limitations for the DFW area. The TCEQ determined that the previously adopted and submitted DFW DERC limit calculation was unsustainable. The July 10, 2015 submittal included sensitivity analyses that modeled a fixed 17.0 tpd limit and enabled the DFW area to reach attainment. The TCEQ submitted the revised DFW DERC limit and associated revisions to the DERC regulations in the August 14, 2015 submittal.

In addition to the limit on DERC usage in DFW, the TCEQ adopted and submitted an exemption from this limit in the December 22, 2008 with updates submitted on May 14, 2013. This exemption is specific to DERCs used in the DFW area in response to an emergency situation declared by the Electric Reliability Council of Texas (ERCOT) where the safety or reliability of the Texas electric grid is compromised or threatened. The EPA finds this exemption approvable because the TCEQ Executive Director can only approve these requests if all other requirements for DERC usage are satisfied. The DERC usage requirements are protective of the

NAAQS by requiring the TCEQ Executive Director to consider the locations requested for DERC usage and determine whether the requested use would cause or contribute to a violation of the NAAQS through ozone spike formation.

The EPA is taking action now to evaluate and approve the revisions to the DEC regulations themselves that adopt and implement the DERC usage limit for the DFW ozone nonattainment area as submitted on December 22, 2008, and revised in the May 14, 2013 and August 14, 2015 submittals. The EPA believes it is appropriate to approve the regulations to restrict DERC usage in the DFW nonattainment area. We support the use of a fixed daily limit as provided in the sensitivity analyses of the DFW Attainment Demonstration for the 2008 ozone NAAQS because of the clarity provided to the sources using DERCs and the TCEQ in implementing the usage restrictions. We find that the adopted revisions for the DFW DERC limit are sufficient to restrict DERC usage consistent with the levels modeled by the TCEQ in the DFW Attainment Demonstration for the 2008 ozone NAAQS. While this direct final action approves the regulations for the DFW DERC limit, we are not evaluating the DFW Attainment Demonstration at this time.

*D. Analysis of Compliance Flexibility with TERP*

Site owners or operators subject to the MECT in HGB or the Chapter 117 NO<sub>x</sub> requirements for DFW<sup>2</sup> have an obligation to meet certain NO<sub>x</sub> emission limits. Site owners or operators unable to meet these emission limitations and desiring to use TERP emission reductions for compliance relief, can petition the TCEQ Executive Director for a determination of technical infeasibility. The regulations state that an owner or operator should demonstrate that

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<sup>2</sup> The compliance flexibility provisions under 30 TAC Section 117.9810 can be used by DFW area sources subject to the requirements at 30 TAC Sections 117.405 (reasonably available control technology), 117.410 (major sources), or 117.1310 (electric generating sources).

they cannot comply with the entirety of the NO<sub>x</sub> obligation at the current time, but rather can comply with 80% of their obligation. The owner or operator must further demonstrate that the source will be in full compliance with the NO<sub>x</sub> obligation within 5 years of the compliance deadline. In determining whether to grant the petition for technical infeasibility, the TCEQ Executive Director will consider at a minimum: current technology, adaptability of technology to a specific source, age and projected useful life of the source and cost benefits at the time of application. If the TCEQ Executive Director agrees with the petition for technical infeasibility, the site owner or operator can defer 20% of their NO<sub>x</sub> compliance obligation by paying into the TERP fund at a cost of \$75,000 per ton of NO<sub>x</sub> emissions; not to exceed 25 tons per year or 0.5 tons per day on a site-wide basis. The TCEQ uses this money to fund TERP projects to benefit the community where the site using the emissions reductions is located. Because the cost per ton of NO<sub>x</sub> (\$75,000 per ton) is much greater than the cost effectiveness of TERP programs (an average of \$6,165 per ton from the beginning of TERP in 2002 through August 31, 2015<sup>3</sup>) it is expected that this provision will allow for much greater emission reductions and much greater environmental benefit than would otherwise be obtained.

*E. Analysis under section 110(l) of the CAA*

Our analysis indicates that the July 15, 2002; December 22, 2008; April 6, 2010; May 14, 2013, and August 14, 2015 submitted revisions to the Texas EC, MECT, DEC, and HECT Programs were adopted and submitted as revisions to the Texas SIP after reasonable notice and public hearing. The Texas EC and DEC programs are SIP approved programs that provide for compliance flexibility and generation and use of emission credits in the SIP-approved NNSR permitting program. The Texas MECT and HECT are necessary components of the HGB

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<sup>3</sup> March 22, 2016 email from Steve Dayton, TCEQ, to Clovis Steib, EPA Region 6.

nonattainment requirements. The submitted revisions to the EC, MECT, DEC and HECT clarify and update the existing programs – these submitted revisions do not change the fundamental premise or structure of the programs. Therefore, we find that the revisions to the EC, MECT, DEC and HECT will not interfere with attainment, reasonable further progress or any other applicable requirements of the Act.

The revisions to the MECT adopted on March 13, 2002, and submitted on July 15, 2002, establish a new provision under the MECT allowing for compliance flexibility with MECT requirements by using TERP projects. Similarly, the compliance flexibility provisions for Chapter 117 NO<sub>x</sub> obligations in DFW initially submitted on July 15, 2002 and revised on May 30, 2007, and July 14, 2015, establish the ability for a source to comply with NO<sub>x</sub> obligations by funding TERP projects. The EPA believes that the compliance flexibility afforded under 30 TAC Sections 101.357 and 117.9810 is approvable and, if used, would result in an equal or greater reduction of NO<sub>x</sub> emissions in the respective airshed from a combination of stationary and mobile sources. Therefore, these compliance flexibility provisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this CAA.

### **III. Final Action**

We are approving through a direct final action the submitted revisions to the Texas Emissions Banking and Trading Programs from July 15, 2002; December 22, 2008; April 6, 2010; May 14, 2013; and August 14, 2015. The EPA has determined that these revisions are approvable because the submitted rules were adopted and submitted in accordance with the CAA and are necessary to update functionality of the SIP-approved trading programs and are

consistent with the CAA and the EPA's policy and guidance on emissions trading. Therefore, under section 110 of the Act, the EPA is approving the following revisions to the Texas SIP:

- Revisions to the 30 TAC Chapter 101, Subchapter H, Division 1 Title submitted August 14, 2015;
- Revisions to 30 TAC Section 101.300 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.301 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.302 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.303 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.306 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.309 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.350 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.351 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.352 adopted on June 3, 2015 and submitted August 14, 2015;

- Revisions to 30 TAC Section 101.353 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.354 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.356 adopted on June 3, 2015 and submitted August 14, 2015;
- New 30 TAC Section 101.357 adopted on March 13, 2002 and submitted July 15, 2002;
- Repeal of 30 TAC Section 101.358 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.359 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.360 adopted on June 3, 2015 and submitted August 14, 2015.
- Revisions to the 30 TAC Chapter 101, Subchapter H, Division 4 Title submitted August 14, 2015;
- Revisions to 30 TAC Section 101.370 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.371 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.372 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.373 adopted on June 3, 2015 and submitted August 14, 2015;

- Revisions to 30 TAC Section 101.376 adopted on December 10, 2008 and submitted December 22, 2008;
- Revisions to 30 TAC Section 101.376 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.378 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.379 adopted on December 10, 2008 and submitted December 22, 2008;
- Revisions to 30 TAC Section 101.379 adopted on April 10, 2013 and submitted May 14, 2013;
- Revisions to 30 TAC Section 101.379 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to the 30 TAC Chapter 101, Subchapter H, Division 6 Title submitted August 14, 2015;
- Revisions to 30 TAC Section 101.390 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.391 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.392 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.393 adopted on June 3, 2015 and submitted August 14, 2015;

- Revisions to 30 TAC Section 101.394 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.396(b) adopted on March 10, 2010 and submitted on April 6, 2010;
- Revisions to 30 TAC Section 101.396 adopted on June 3, 2015 and submitted August 14, 2015;
- Revisions to 30 TAC Section 101.399 adopted on June 3, 2015 and submitted August 14, 2015; and
- Revisions to 30 TAC Section 101.400 adopted on June 3, 2015 and submitted August 14, 2015.

The EPA has also determined that the revisions to the NO<sub>x</sub> requirements under 30 TAC Chapter 117 submitted on July 15, 2002; May 30, 2007; and July 10, 2015 allowing for compliance flexibility using the TERP are approvable and were adopted and submitted in accordance with the CAA. Therefore, under section 110 of the Act, the EPA is approving the following revisions to the Texas SIP:

- Revisions to 30 TAC Section 117.571 adopted on March 13, 2002, and submitted July 15, 2002;
- The recodification of 30 TAC Section 117.571 as new 30 TAC Section 117.9810 adopted on May 23, 2007, and submitted on May 30, 2007; and
- Revisions to 30 TAC Section 117.9810 adopted on June 3, 2015, and submitted on July 10, 2015.

Additionally, we are making a non-substantive revision and a ministerial correction to the table in 40 CFR 52.2270(c). The EPA is making a non-substantive revision at 40 CFR

52.2270(c) to remove a duplicative entry for 30 TAC Section 117.9800 – Use of Emission Credits for Compliance. The EPA initially approved this section as submitted by the State on April 6, 2012, on July 31, 2014 (79 FR 44300). We then approved revisions to this section submitted by the State on July 3, 2015, on April 13, 2016 (81 FR 21750), but did not remove the initial entry of our approval from the table. Additionally, we are making a ministerial correction to reflect that 30 TAC Section 117.410(c), (pertaining to carbon monoxide and ammonia emissions), is not in the EPA-approved Texas SIP. Our April 13, 2016 final action on the Texas SIP did not properly update the CFR table to show a recodification of subsections in 30 TAC Section 117.410 (81 FR 21750). The EPA is also revising the table in 40 CFR 52.2270(e) for Nonregulatory and Quasi-Regulatory Measures to reflect our final action on the DERC SIP Narrative adopted on December 10, 2008 and submitted on December 22, 2008 by the State.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment,

paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Incorporation by Reference**

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

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Samuel Coleman was designated the Acting Regional Administrator on April 27, 2017, through the order of succession outlined in Regional Order R6-1110.1, a copy of which is included in the docket for this action.

Dated: April 27, 2017.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart SS – Texas**

2. In §52.2270:

a. In paragraph (c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by:

- i. Revising the centered headings for Divisions 1, 4 and 6 under Chapter 101, Subchapter H and the entries for Sections 101.300 – 101.303, 101.306, 101.309, 101.350 – 101.354, 101.356, 101.359, 101.360, 101.370 – 101.373, 101.376, 101.378, 101.379, 101.390 – 101.394, 101.396, 101.399, 101.400, and 117.410;
- ii. Removing the entry for Section 101.358 and the second entry for Section 117.9800; and
- iii. Adding in numerical order entries for Sections 101.357 and 117.9810.

b. In paragraph (e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding the entry “Discrete Emissions Reduction Credits (DERC) SIP” at the end.

The revisions and additions read as follows:

**§52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
<b>Chapter 101 – General Air Quality Rules</b>				
* * * * *				
<b>Subchapter H – Emissions Banking and Trading</b>				
<b>Division 1 – Emission Credit Program</b>				
Section 101.300	Definitions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.301	Purpose	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.302	General Provisions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.303	Emission Reduction Credit Generation and Certification	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				

Section 101.306	Emission Credit Use	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.309	Emission Credit Banking and Trading	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Section 101.350	Definitions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.351	Applicability	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.352	General Provisions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.353	Allocation of Allowances	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

Section 101.354	Allowance Deductions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.356	Allowance Banking and Trading	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.357	Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP)	3/13/2002	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.359	Reporting	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.360	Level of Activity Certification	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
<b>Division 4 – Discrete Emission Credit Program</b>				
Section 101.370	Definitions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

Section 101.371	Purpose	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.372	General Provisions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.373	Discrete Emission Reduction Credit Generation and Certification	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Section 101.376	Discrete Emission Credit Use	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.378	Discrete Emission Credit Banking and Trading	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.379	Program Audits and Reports	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

**Division 6 – Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program**

Section 101.390	Definitions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.391	Applicability	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.392	Exemptions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.393	General Provisions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.394	Allocation of Allowances	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.396	Allowance Deductions	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

Section 101.399	Allowance Banking and Trading	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.400	Reporting	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Section 117.410	Emission Specifications for Eight-Hour Attainment Demonstration Reporting	6/3/2015	4/13/2016, 81 FR 21750	117.410(c) NOT in SIP.
* * * * *				
Section 117.9810	Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP)	6/3/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				

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(e) \* \* \*

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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
* * * * *				
Discrete Emissions Reduction Credits (DERC) SIP	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties, TX	12/10/2008	<b>Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	

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[FR Doc. 2017-09472 Filed: 5/10/2017 8:45 am; Publication Date: 5/11/2017]