

**Authority:** 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

Dated: March 12, 2010.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of  
Diversion Control.

[FR Doc. 2010-6035 Filed 3-29-10; 8:45 am]

**BILLING CODE 4410-09-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2010-0147; FRL-9130-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Emission Credit Banking and Trading Program

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading, referred to elsewhere in this notice as the Emission Reduction Credit (ERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The August 16, 2007, submittal amends two sections of the ERC program to update cross-references to recently recodified 30 TAC Chapter 117 provisions. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

**DATES:** Comments must be received on or before *April 29, 2010*.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2010-0147, by one of the following methods:

(1) <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at [robinson.jeffrey@epa.gov](mailto:robinson.jeffrey@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6 “Contact Us” Web site:* <http://epa.gov/region6/r6coment.htm>. Please click on “6PD” (Multimedia) and select “Air” before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), at fax number 214-665-6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2010-0147. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail 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, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA

Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits 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. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor 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:** If you have questions concerning today’s proposed rule, please contact Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document wherever, any reference to “we,” “us,” or “our” is used, we mean EPA.

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## I. What Action Is EPA Taking?

We are proposing to approve severable portions of two revisions to the Texas SIP submitted by the Texas Commission on Environmental Quality (TCEQ) on October 24, 2006, and August 16, 2007, specific to the ERC Program. The ERC Program, SIP-approved by EPA on September 6, 2006, establishes a market-based trading program for the generation and use of emission credits (generated and used at a specified emission rate, tons per year) to provide flexibility for sources in complying with certain State and Federal requirements. The revisions we are proposing to approve amend existing sections and create a new section in the ERC Program at Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The severable portions of the August 16, 2007 submittal that we are proposing to approve non-substantively revise the ERC Program to correctly update the cross-references to the stationary source nitrogen oxide (NO<sub>x</sub>) rules found in the Texas SIP at 30 TAC Chapter 117 as a result of the non-substantive recodification of Chapter 117 approved by EPA as part of the Texas SIP on December 3, 2008 (*see* 73 FR 73562). Consequently, we are proposing to approve the revisions to the Texas SIP at 30 TAC sections 101.302(a), 101.302(d)(1)(C)(vi), 101.302(f), and 101.306(a)(5) and the creation of new section 101.305 submitted on October 24, 2006. Additionally, we are proposing to approve revisions to the Texas SIP at 30 TAC sections 101.302(d)(1)(A) and 101.306(b)(3) submitted on August 16, 2007 by the TCEQ.

## II. What Did Texas Submit?

We are proposing to approve severable portions of two revisions to the Texas SIP specific to the ERC Program. The first revision we are proposing action on was adopted by the TCEQ on October 4, 2006 and submitted to EPA on October 24, 2006. At the same time that TCEQ adopted and submitted revisions to the ERC Program, revisions were also adopted and submitted for the Discrete Emission Credit Banking and Trading Program (referred to elsewhere

in this notice as the Discrete Emission Reduction Credit (DERC) Program) and the Emissions Banking and Trading of Allowances (EBTA) Program. The revisions to the DERC and EBTA Programs are specific to separate, distinct trading programs and, as such, are severable from the ERC Program revisions. We are not proposing to act upon the severable revisions to the DERC Program at 30 TAC Chapter 101, Subchapter H, Division 4, sections 101.372, 101.373, 101.375, 101.376 and 101.378. EPA is processing a separate rulemaking to address the 2006 and 2007 DERC Program revisions (*see* EPA-R06-OAR-2010-0418). EPA has not yet taken action on the EBTA Program at 30 TAC Chapter 101, Subchapter H, Division 2 and therefore is not proposing action today on the repeal and replacement of section 101.338 and the revisions to section 101.339. The second revision upon which we are proposing action was adopted by the TCEQ on July 25, 2007, and submitted to EPA on August 16, 2007. Also at this time TCEQ adopted and submitted revisions to the general air quality definitions, the DERC Program, and the System Cap Trading (SCT) Program. We are not acting today upon revisions to the general air quality definitions at 30 TAC Chapter 101, Subchapter A, section 101.1 because the ERC Program does not rely upon them (therefore the revisions are severable from the ERC Program) and previous revisions to section 101.1 are still pending for review by EPA. We are also not acting today upon the revisions to the DERC Program at 30 TAC Chapter 101, Subchapter H, Division 4, sections 101.372 and 101.376 because these revisions are severable from the ERC program and the October 24, 2006, SIP revision is still under EPA review. EPA intends to take a separate rulemaking action to address the 2006 and 2007 DERC Program revisions (*see* EPA-R06-OAR-2010-0418). EPA has not yet taken action on the System Cap Trading Program at 30 TAC Chapter 101, Subchapter H, Division 5 and therefore is not acting today upon the severable revisions to sections 101.383 and 101.385.

A copy of the October 24, 2006, and August 16, 2007, SIP submittals as well as our Technical Support Document (TSD) can be obtained from the Docket, as discussed in the "Docket" section above. A discussion of the specific Texas rule changes that we are approving is included in the TSD and summarized below.

### A. October 24, 2006 SIP Submittal

#### 1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The existing SIP-approved version of section 101.302 was adopted by the TCEQ on December 13, 2002, and approved by EPA on September 6, 2006 (*see* 71 FR 52698). The revisions to sections 101.302(a) and (f) adopted by the TCEQ on October 4, 2006, delete the information pertaining to international emission reductions and move these provisions to new section 101.305. Additionally, section 101.302(d)(1)(C)(vi) is revised to clarify EPA's approval process of the quantification protocols for the ERC Program.

#### 2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.305—Emission Reductions Achieved Outside the United States

On October 4, 2006, TCEQ adopted new section 101.305. This new section contains the previously SIP-approved international emission reduction provisions from sections 101.302(a) and (f) and updates the international provisions consistent with the requirements of Texas Senate Bill 784.

#### 3. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.306—Emission Credit Use

The existing SIP-approved version of section 101.306 was adopted by the TCEQ on December 13, 2002, and approved by EPA on September 6, 2006 (*see* 71 FR 52698). The proposed SIP revision adopted by the TCEQ on October 4, 2006, amends section 101.306(a)(5) to update the list of approved uses of emission credits to include the use of emission credits as allowances in the Highly-Reactive Volatile Organic Compound Emission Cap and Trade (HECT) Program at 30 TAC Chapter 101, Subchapter H, Division 6.

### B. August 16, 2007 SIP Submittal

#### 1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The revisions to section 101.302 adopted by the TCEQ on July 25, 2007, further revise the revisions adopted by the TCEQ on October 4, 2006. The 2007 revisions non-substantively amend section 101.302(d)(1)(A) to correctly cross-reference the recodified stationary source nitrogen oxide (NO<sub>x</sub>) rules to the Texas SIP at 30 TAC Chapter 117.

2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.306—Emission Credit Use

The revisions to section 101.306 adopted by the TCEQ on July 25, 2007, further revise the revisions adopted by the TCEQ on October 4, 2002. The 2007 revisions non-substantively amend section 101.306(b)(3) to correctly cross-reference the recodified stationary source NO<sub>x</sub> rules to the Texas SIP at 30 TAC Chapter 117.

### III. What Is EPA's Evaluation of These SIP Revisions?

#### A. October 24, 2006 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The October 4, 2006, revisions to sections 101.302(a), 101.302(d)(1)(C)(vi) and 101.302(f) are approvable. Sections 101.302(a) and 101.302(f) were revised to delete the information pertaining to international emission reductions and relocate these provisions to new section 101.305. This consolidation of the international emission reduction provisions improves the clarity of the ERC Program by creating a new section specific to international emission reductions. Section 101.302(d)(1)(C)(vi) was revised to clarify EPA's role in the approval of emission quantification protocols. While the previous SIP-approved provisions were accurate and consistent with EPA's Economic Incentive Program (EIP) Guidance ("Improving Air Quality with Economic Incentive Programs" (EPA-452/R-01-001, January 2001)), the revised language has been restructured to more closely follow the provisions for approving emission quantification protocols at section 5.2(c) of the EIP Guidance.

The revisions to section 101.302 described above were made pursuant to TCEQ's September 8, 2005, commitment letter for the DERC Program (included in the docket for this action). In this commitment letter, TCEQ committed to revising, among other things, section 101.302 to more clearly require EPA approval for international emission reduction transactions and to clarify the EPA's role in approving emission quantification protocols. Because EPA granted full approval to the ERC Program on September 6, 2006, the ERC-specific elements in the DERC commitment letter can be decoupled from EPA's analysis of the DERC-specific elements submitted by TCEQ in response to our conditional approval of the DERC Program. Therefore, EPA can propose approval of the revisions to

section 101.302 without analyzing the remainder of the DERC conditional approval commitments.

2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.305—Emission Reductions Achieved Outside the United States

New section 101.305 adopted on October 4, 2006, is approvable. EPA finds that in addition to relocating the SIP-approved international emission reduction language from section 101.302, new section 101.305 has expanded the scope of our original ERC Program approval to allow the use of international reductions in lieu of ERCs to occur in attainment areas within 100-km of the Texas-Mexico border, consistent with the requirements of Texas Senate Bill 784. However, the continued requirement at section 101.305 for EPA approval before any such use is consistent with the intent of our ERC Program approval on September 6, 2006. EPA approval continues to be through a case-specific SIP revision that must clearly demonstrate through a detailed CAA section 110(l) analysis that the use of such international reductions will not jeopardize attainment or maintenance of the National Ambient Air Quality Standards or any other applicable standards. As noted in our September 6, 2006, final approval of the ERC Program " \* \* \* 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." See 71 FR 52698, 52699. In approving this revision to the ERC program, EPA is continuing to recognize "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." See 71 FR 52698, 52699. Further, it is important to note, that even though we are approving the use of international reductions in lieu of ERCs along the Texas-Mexico border, the use of these reductions must still meet the requirements of the CAA. Therefore, the international reductions are not available for use as Federal NSR offsets

since section 173(c)(1) of the CAA requires that offset reductions come from the same nonattainment area as the proposed source or modification or another nonattainment area with an equal or higher nonattainment classification.

3. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.306—Emission Credit Use

The October 4, 2006, revision to section 101.306(a)(5) is approvable. TCEQ correctly updated the list of approved uses of emission credits to include the use of emission credits as allowances in the HECT. EPA approved the use of emission credits as HECT allowances in our September 6, 2006, approval of the HECT (*see* 71 FR 52659).

The revision to section 101.306 described above was also made pursuant to TCEQ's September 8, 2005, commitment letter for the DERC Program (included in the docket for this action). In this commitment letter, TCEQ committed to revising, among other things, section 101.306 to identify that emission credits could be used as HECT allowances. Because EPA granted full approval to the ERC Program on September 6, 2006, the ERC-specific elements in the DERC commitment letter can be decoupled from EPA's analysis of the DERC-specific elements submitted by TCEQ in response to our conditional approval of the DERC Program. Therefore, EPA can propose approval of the revisions to section 101.306 without analyzing the remainder of the DERC conditional approval commitments.

#### B. August 16, 2007 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The July 25, 2007, revisions to section 101.302(d)(1)(A) are approvable. As demonstrated further in our TSD, these non-substantive revisions correctly cross-reference the recodified stationary source NO<sub>x</sub> rules in the Texas SIP at 30 TAC Chapter 117. These non-substantive revisions do not affect the approved emission quantification protocols established for the ERC Program.

2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.306—Emission Credit Use

The July 25, 2007, revisions to section 101.306(b)(3) are approvable. As demonstrated further in our TSD, these non-substantive revisions correctly cross-reference the recodified stationary source NO<sub>x</sub> rules in the Texas SIP at 30

TAC Chapter 117. These non-substantive revisions do not affect the emission use calculations established for the ERC Program.

#### IV. Final Action

EPA is proposing to approve severable revisions to the Texas SIP submitted on October 24, 2006, and August 16, 2007. Specifically from the October 24, 2006 submittal, EPA is approving the amendments to section 101.302(a) and (f) that move the international emission reduction requirements to a new section, the amendments to section 101.302(d)(1)(C)(vi) that clarify EPA's role in approving emission quantification protocols, and the amendment to section 101.306(a)(5) that updates the approved uses for ERCs to include the HECT. EPA is also proposing to approve provisions for international emission reductions at new section 101.305 submitted on October 24, 2006. Additionally, we are proposing to approve the following nonsubstantive revisions to the Texas SIP submitted on August 16, 2007: revisions to sections 101.302(d)(1)(A) and 101.306(b)(3) to update the cross-references to recently recodified provisions in 30 TAC Chapter 117.

In a separate rulemaking, EPA is proposing action on the severable DERC Program revisions at 30 TAC sections 101.372, 101.373, 101.375, 101.376, and 101.378 submitted on October 24, 2006, and 30 TAC sections 101.372 and 101.376 submitted on August 16, 2007 (*see* EPA-R06-OAR-2010-0418).

At this time, EPA is not taking action on the revisions to the Emissions Banking and Trading of Allowances Program at 30 TAC sections 101.338 and 101.339 submitted on October 24, 2006. EPA is also not taking action at this time on the revisions to the general air quality definitions at 30 TAC Section 101.1 or the revisions to the System Cap Trading Program at 30 TAC sections 101.383, and 101.385 submitted on August 16, 2007. These severable revisions remain under review by EPA and will be addressed in separate actions.

#### V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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 Clean Air Act; 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, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

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

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

Dated: March 18, 2010.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2010-6800 Filed 3-29-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2010-0148; FRL-9130-5]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Discrete Emission Credit Banking and Trading Program

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading, referred to elsewhere in this notice as the Discrete Emission Reduction Credit (DERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to prohibit the generation and use of DERCs from shutdown activities and further clarify procedures for using emission protocols. The August 16, 2007, submittal amends two sections of the DERC program to update cross-references to recently recodified 30 TAC Chapter 117 provisions. Additionally, EPA is proposing to find that the Texas Commission on Environmental Quality (TCEQ) has satisfied all elements of our September 6, 2006, final conditional approval of the DERC program with the submittal of the October 24, 2006, SIP submittal; and as such, the DERC program conditional approval is proposed for full approval. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

**DATES:** Comments must be received on or before *April 29, 2010*.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-