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 *FR* publication] [Insert *FR* page number where document begins].	The SIP does not include subsections 116.10(1), (2), (3), (6), (8), (9), (10), and (14).
* *	*	*	*	*

[FR Doc. 06–7413 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

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?

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

corresponding action on the Texas Mass Emissions Cap and Trade program published separately in today's **Federal Register**.

We are not approving section 101.376(c)(4) into the Texas SIP because the cross-references to 30 TAC Chapter 106 Permit by Rule, sections 106.261 (3) or (4) or section 106.262(3) are incorrect and do not exist in State law, the Texas SIP, or the Texas Federal Operating Permits program. Consequently, unless and until the State adopts and submits a revision to EPA for approval as a SIP revision and EPA approves it, the use of discrete emission credits to exceed the provisions in certain types of pre-construction permits termed Permits by Rule is not available under the Texas SIP.

In our proposed conditional approval of the DERC program, we also proposed approving section 115.950 in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, which cross-references the DERC program, and we proposed 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. Our final action on those two provisions is not included in this final rule, but is instead in our final action on the Emission Credit Banking and Trading program, referred to as the Emission Reduction Credit (ERC) program. Our approval of sections 115.950 and the definition of ''facility'' in 116.10 is not affected by the conditions on our approval of the DERC program.

II. What is a conditional approval?

Under section 110(k)(4) of the Clean Air Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain that is no more than one year from the date of conditional approval. If EPA determines that the revised rule is approvable, EPA will propose approval of the rule. If the State fails to meet its commitment within the one-year period, the approval is treated as a disapproval. There are at least two ways that the conditional approval may be converted to a disapproval.

- If the State fails to adopt and submit the specified measures by the date it committed to do so, or fails to submit anything at all, EPA will issue a finding of disapproval, but will not have to propose the disapproval. No proposal is required, because in the original proposed and final conditional approval EPA will have provided notice and an opportunity for comment on the fact that EPA would directly make the finding of disapproval (by letter) if the State failed to submit anything. Therefore, under this scenario, after the date by which the state committed to adopt and submit the measures, the Regional Administrator (RA) would send a letter to the State finding that it failed to meet its commitment and that the SIP submittal was therefore disapproved. The 18-month clock for sanctions and the two-year clock for a Federal Implementation Plan (FIP) would start as of the date of the letter. Subsequently, a notice to that effect would be published in the **Federal Register**, and appropriate language inserted in the Code of Federal Regulations (CFR). Similarly, if EPA receives a submittal addressing the commitment but determines that the submittal is incomplete, the RA will send a letter to the State making such a finding. As with the failure to submit, the sanctions and FIP clocks will begin as of the date of the finding letter.
- Where the State does make a complete submittal by the date it committed to do so, EPA will evaluate that submittal to determine if it may be approved and will take final action on the submittal within 12 months after the date EPA determines the submittal is complete. If the submittal does not adequately address the deficiencies that were the subject of the conditional approval, and is therefore not approvable, EPA must go through notice-and-comment rulemaking to disapprove the submittal. The 18-month clock for sanctions and the two-year clock for a FIP start as of the date of final disapproval.

In either instance, whether EPA finally approves or disapproves the rule, the conditional approval remains in effect until EPA takes its final action. Note that EPA will conditionally approve a certain rule only once. Subsequent submittals of the same rule that attempt to correct the same specifically identified problems will not be eligible for conditional approval.

III. What future actions are necessary for the DERC rule to fully meet EPA's expectations?

TCEQ has submitted a commitment letter to Region 6 outlining the steps that will be taken to achieve full approval. This letter, dated September 8, 2005, can be found in the DERC administrative record, EPA–R06–OAR–2005–TX–0029. The commitments are:

(1) Revising the language in section 101.373:

a. To prohibit the future generation of discrete emission reduction credits from permanent shutdowns; and

b. To allow discrete emission reduction credits generated from permanent shutdowns before September 30, 2002, to remain available for use for no more than five years from the date of the commitment letter.

(2) TCEQ will perform a credit audit to remove from the emissions bank all discrete emission reduction credits generated from permanent shutdowns after September 30, 2002.

(3) Revising the language in sections 101.302(f), 101.372(f)(7), and 101.372(f)(8) to clarify that EPA approval is required for individual 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 areas.

(4) TCEQ will revise Form DEC–1, Notice of Generation and Generator Certification of Discrete Emission Credits; Form MDEC–1, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits; and Form DEC–2, Notice of Intent to Use Discrete Emission Credits, to include a waiver to the Federal statute of limitations defense for generators and users of discrete emission credits.

(5) TCEQ will maintain its current policy of preserving all records relating to discrete emission credit generation and use for a minimum of five years after the use strategy has ended.

Additionally, TCEQ has agreed to comply with these commitments during the conditional approval period. Specifically, TCEQ will not approve any trades involving the types of reductions described in item (3) above, will not approve any use of discrete shutdown credits that were generated after September 30, 2002, will only allow shutdown DERCs generated before September 30, 2002, to be used for up to five years from the date of the commitment letter, and will require the waiver described in item (4) above for generators and users of discrete emission credits. TCEQ must submit revised rules satisfying the above conditions to EPA on or before December 01, 2006. The conditional approval will automatically become a disapproval if the revisions are not completed and submitted to EPA by this date.

IV. What is the background for this action?

The DERC rules establish a type of Economic Incentive Program (EIP), in particular an open market emissions trading program as described in EPA's EIP Guidance document, Improving Air Quality with Economic Incentive

Programs' (EPA–452/R–01–001, January 2001). This program provides flexibility for sources in complying with certain State and Federal requirements. In an open market trading program, a source generates emission credits by reducing its emissions during a discrete period of time. These credits, called discrete emission credits, or DECs, in the Texas program, are quantified in units of mass. Discrete emission credit (DEC) is a generic term that encompasses reductions from stationary sources (discrete emission reduction credits, or DERCs), and reductions from mobile sources (mobile discrete emission reduction credits, or MDERCs). The DERC program was first adopted by the State at 30 TAC section 101.29 on December 23, 1997. Effective January 18, 2001, section 101.29 was repealed and Chapter 101, Subchapter H, Divisions l, 3, and 4 were created. This action created separate divisions for the ERC, Mass Emissions Cap and Trade (MECT) in the Houston/Galveston/Brazoria (HGB) area, and DERC programs. Amendments to the MECT were adopted on October 18, 2001; these amendments also included changes made primarily for clarification to sections 101.370, 101.372, and 101.373 in the DERC program. As of April 14, 2002, TCEQ amended the program to include the provisions in Texas Senate Bill 1561 for air emissions trading across international boundaries. Effective January 17, 2003, TCEQ reorganized the DERC and ERC program rules into more standardized formats parallel to each other, with a rule structure which followed a process of recognizing, quantifying, and certifying reductions as credits while explaining the guidelines for trading and using creditable reductions. The most recent submittal, of December 06, 2004, amended sections 101.370, 101.373, 101.373, and 101.376. The DERC program adoption and the subsequent revisions were submitted to EPA for approval into the SIP; however, 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.

The DERC program contains several features that EPA feels are important enough to discuss here. The DERC program provides at section 101.372(f) that emission reductions from another county, state, or nation may be used subject to certain conditions. The current wording of the rule is unclear as to when prior approval from EPA will be required. To improve this aspect of the rule, on completion of the condition outlined above the rule will more clearly require prior 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 101.372, in Appendix 16.16 of the 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 in section 101.372(f), as revised in accordance with EPA's conditions for approval, 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 increases in a nonattainment area and reductions from beyond that 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 DERC 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 DERC rule.

EPA is also approving a provision in section 101.372(d) that allows generators and users of DERCs 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 101.372(d)(1)(C), which include a requirement for EPA adequacy review of such alternate protocols. TCEQ has agreed to clarify the provisions of section 101.372(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 58157 for a description of the approval process for alternate quantification protocols.

EPA is also approving a provision in section 101.376 that allows DECs to be used as new source review (NSR) offsets. Section 101.376 outlines criteria for DEC usage and NSR permits that must be satisfied for DECs to be used as NSR offsets. With these restrictions and the environmental benefit provisions of the DERC program, we feel that the use of DECs as NSR offsets is consistent with sections 171 and 173 of the Clean Air Act and the EIP Guidance. See 70 FR 58160 for our more detailed discussion of DECs as NSR offsets.

Additionally, EPA is approving the use of DECs in lieu of allowances in the Houston/Galveston/Brazoria (HGB) MECT program for emissions of nitrogen oxides (NO_X). Section 101.376 of the DERC program enables the use of DECs in the MECT, but the rule language providing the detailed usage requirements for DECs under the MECT is in section 101.356(h) of the MECT program, which we are approving elsewhere in today's **Federal Register**. Because of the interaction between the DERC and MECT programs, the conditional approval commitments of the DERC program must be interpreted with respect to the use of DECs in the MECT. DECs can be used as allowances in the MECT subject to the requirements of section 101.356(h), and only if the DECs meet the conditions outlined above. Therefore, the TCEQ will not approve the use of any DERCs that were generated from shutdowns since September 30, 2002, and the use of banked shutdown DERCs generated before September 30, 2002, must occur within 5 years from the date of the commitment letter. In addition, with respect to all DECs that are to be used in the MECT programs, both generators and users of such DECs must certify to a waiver of the Federal statute of limitations. EPA approval is also required when DECs generated in another state or nation, and in either

attainment or nonattainment areas (other than the HGB nonattainment areas) are requested for use in the MECT program. Also, as provided in the MECT rule, the DECs used as allowances under the MECT program are not charged the 10 percent environmental contribution because of the use ratios implemented in section 101.356(h).

V. 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 DERC administrative record (EPA–R06–OAR–2005–TX–0029). In commenting on the DERC program, the commenters raise no concerns about pollutants other than VOCs (including highly reactive VOCs, or HRVOCs).[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 GHASP's 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 meet EPA's EIP Guidance for quantification.

Response to Comment 2: EPA disagrees. The proposed DERC rule, at 70 FR 58154, describes the basis for EPA's conclusion that the DERC 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 DERC 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 DERC 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 101.372(1)(C). Examples of the approved quantification methods for VOC DERC generation and use include:

- Test Methods 1–4 (40 CFR 60, Appendix A) for determining flow rates;
- Test Method 18 (40 CFR part 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 DERC 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 DERCs 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 VOC 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 DERC rule is appropriate notwithstanding the commenter's concern about emissions estimates, because the DERC program satisfies the EIP Guidance criteria for quantification. For example, sources generating and banking VOC DERCs must either use the approved quantification protocols in Chapter 115 or obtain EPA approval for an alternate quantification method. These protocols

[1] During the comment period, EPA did not receive comments regarding environmental justice and the DERC 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 DERC 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 DERC program does not raise environmental justice concerns.

will ensure that sources correctly calculate the emission reduction to be banked as a DERC. The source using the banked reduction also must calculate the amount of necessary VOC DERCs using the approved quantification protocols. The TCEQ Executive Director will review and approve each requested DERC use to ensure that sources using DERCs have enough credit to cover their use strategy. After the DERC use has occurred, sources must notify TCEQ of the number of DERCs actually used. Sources that do not have enough DERCs to cover their actual use will be in violation of the DERC program. Additionally, sources that do not obtain sufficient DERCs in advance will be in violation of the program and TCEQ has the authority to pursue enforcement actions. Therefore, EPA believes that sources using the approved quantification protocols will correctly estimate the amount of DERCs generated and used, and we also believe that the program is designed to minimize incorrect emissions estimates. Further, users of VOC DERCs must also purchase and retire an additional ten percent VOC DERCs 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 DERC is generated and used. The ten percent environmental benefit is not applicable to situations where VOC DECs are used in lieu of NO_X MECT allowances. In these situations, the ten percent environmental benefit is replaced with the stringent retirement ratios found in section 101.356(h).

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 DERC program and urges EPA to finalize its approval as soon as practicable.

Response: EPA acknowledges the support of TIP for our approval of the DERC program.

VI. 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.

VII. 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 conditionally approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new requirements. 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 conditionally 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 conditionally 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 under Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, by adding in numerical order a new centered heading ''Division 4—Emission Credit Banking and Trading'' followed by new entries for sections 101.370, 101.371, 101.372, 101.373, 101.374, 101.376, 101.378, and 101.379.

The additions reads 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
Chapter 101—General Air Quality Rules				
* *	*	*	*	*
Subchapter H—Emissions Banking and Trading				
* *	*	*	*	*
Division 4—Discrete Emission Credit Banking and Trading				
Section 101.370	Definitions	11/10/04	09/06/06 [Insert *FR* page number where document begins].	
Section 101.371	Purpose	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 101.372	General Provisions	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 101.373	Discrete Emission Reduction Credit Generation and Certification.	11/10/04	09/06/06 [Insert *FR* page number where document begins].	
Section 101.374	Mobile Discrete Emission Reduction Credit Generation and Certification.	11/10/04	09/06/06 [Insert *FR* page number where document begins].	
Section 101.376	Discrete Emission Credit Use	11/10/04	09/06/06 [Insert *FR* page number where document begins].	Subsection 101.376(c)(4) NOT in SIP
Section 101.378	Discrete Emission Credit Banking and Trading.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 101.379	Program Audits and Reports	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	*	*	*	*

[FR Doc. 06–7414 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P