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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–133–1–7543; FRL–7092–3]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas Mass Emissions Cap and Trade Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is approving the Texas Mass Emissions Cap and Trade (MECT) program as a revision to the Texas State Implementation Plan (SIP). The program was submitted on December 22, 2000. The MECT program will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the HGA ozone nonattainment area. The EPA is approving these revisions to the Texas SIP to regulate emissions of NO_X in accordance with the requirements of the Federal Clean Air Act (the Act).

The EPA proposed approval of the Texas MECT program on July 23, 2001 on the condition that Texas resolve eight issues. The State revised the MECT rule to adequately address the EPA issues identified in the proposed rulemaking and submitted these revisions to EPA as a SIP revision which EPA is approving in this action by parallel processing. Comments were received on the proposed rulemaking from Environmental Defense, Inc. on September 22, 2001, from Baker and Botts L.L.P. representing the Business Coalition for Clean Air Appeal Group on August 13, 2001, and from Reliant Energy, Inc. on August 13, 2001. The major comments regarded the use of credits from other trading programs for MECT compliance, inflation of the cap, undermining of the attainment demonstration, emissions monitoring and program evaluations. After reviewing the comments and the State response to the eight issues raised in the proposed rulemaking, EPA has concluded that the Texas MECT program fully satisfies all relevant guidance and the Clean Air Act.

DATES: This final rule is effective on December 14, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Merrit H. Nicewander, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7519. (*nicewander.merrit@epa.gov*)

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

I. What action Is EPA Taking?

We are granting final approval of the nitrogen oxides (NO_X) Mass Emissions Cap and Trade program for the Houston/Galveston (HGA) one-hour ozone nonattainment area. The rule was adopted and submitted as a SIP revision by letters of the Governor dated December 22, 2000 and June 15, 2001. We proposed approval of the program at 66 FR 38231 on July 23, 2001 through parallel processing. Other than changes as referenced in the proposed approval, there were no significant changes between the version proposed on July 23, 2001 and the version submitted on October 4, 2001. On September 26, 2001 the State adopted as final rules amendments to 30 TAC Chapter 101 which were proposed on May 30, 2001 with certain revisions. On October 4, 2001 Texas Governor Rick Perry submitted a letter requesting EPA to process the September 26, 2001 final rule amendments to 30 TAC, Chapter 101, as a revision to the MECT SIP. The MECT rule is one element of the control strategy for the HGA nonattainment area to comply with the requirements of the Clean Air Act (CAA) and achieve attainment for ozone.

The HGA ozone nonattainment area is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007. The area will need to reduce nitrogen oxides (NO_X) to reach attainment with the one-hour standard. The MECT emissions banking rule was evaluated as an integral component of the HGA control strategy to reduce NO_X emissions. The rule submitted by the TNRCC is the Mass Emission Cap & Trade Program (30 Texas Administrative Code (TAC) Chapter 101, Subchapter H, Division 3). The MECT regulation is found at sections 101.350 through 101.363. As noted in our proposed approval, we are not approving sections 101.353(a)(3)(B) and (D). With the MECT rule revisions submitted on October 4, 2001, the State adopted definitions found at 30 TAC Section 101.1. These revisions to definitions were proposed on June 15, 2001. No comments were received on this section. We are also granting final approval of 30 TAC 101.1.

The MECT program is mandatory for stationary facilities that emit NO_X in the HGA ozone nonattainment area (at sites that have a collective design capacity of 10 tons per year or more) and which are subject to the TNRCC NO_X rules as found at 30 TAC Chapter 117. NO_X is a precursor gas that reacts with volatile organic compounds (VOCs) in the presence of sunlight to form ground-level ozone. The program sets a cap on NO_X emissions beginning on January 1, 2002 with a final reduction to the cap occurring in 2007. Facilities are required to meet NO_X allowances on an annual basis. Facilities may purchase, bank or sell their allowances. The program has a provision to allow a facility to use emission reduction credits (ERCs), discrete emission reduction credits (DERCs) and mobile discrete emission reduction credits (MDERCs) in lieu of allowances if they are generated in the HGA area.[1]

II. What Did EPA Propose?

EPA proposed to approve the Texas Mass Emission Cap and Trade program provided that TNRCC took eight specific steps. The EPA proposed approval of the MECT program was based upon the prerequisites that TNRCC must: (1) Specify the number of days of violation if an annual cap is exceeded, (2) revise the rule to require that deviation from monitoring protocols be approved by both the TNRCC Executive Director and EPA, (3) provide public access to production data necessary to calculate emissions, (4) provide for missing data provisions when monitoring equipment is not functioning properly, (5) clarify that allowances used for offsets will be obtained for the life of the new source, (6) commit to require notification of the

[1] As discussed subsequently in this notice, we are not acting on 30 TAC Chapter 101, Subchapter H, Division 4 and neither DERCs nor MDERCs can be utilized in the MECT program prior to our approval of the rule unless approved as a site-specific SIP revision.

Metropolitan Planning Organization (MPO) when MDERCs are used in the MECT program, (7) demonstrate that Alternative Emission Limitations (AELs) will not increase the allowances for a facility, and (8) revise the rule relating to the executive director discretion to deviate from allocation procedures in ''extenuating circumstances'' by either demonstrating that the allocations would not be inconsistent with the attainment demonstration and would comply with the Act, or by modifying the rule to eliminate executive director discretion or require EPA approval of allocations issued pursuant to the subsection.

III. What Comments Did EPA Receive?

EPA received one comment letter during the public comment period that closed on August 22, 2001. Environmental Defense submitted seven comments in a letter dated August 22, 2001. Two respondents to the HGA attainment demonstration SIP stated that their comments made on September 25, 2000 to TNRCC during the public comment period for the final State MECT rule were to be included by reference. The two respondents were Reliant Energy, Inc. (REI) and Baker and Botts L.L.P. on behalf of The Business Coalition for Clean Air Appeal Group (BCCA). BCCA and REI both in comments on our proposed approval of the attainment demonstration SIP incorporated by reference their comments submitted in response to the State's proposed MECT rule.

Environmental Defense commented that EPA must not defer action on the use of DERCs and MDERCs for MECT compliance. ED commented that EPA should not approve the MECT program as long as it allows the use of MDERCs in lieu of allowances. ED further stated that EPA may not approve the MECT without squarely addressing the issue of whether MDERCs can be used for MECT compliance.

ED questioned EPA's deferral of the decision to separately act on the MDERC rules (30 TAC 101 Subchapter H Division 4). However, they did indicate that it is an entirely separate question whether the MDERC portions of TNRCC's rules are approvable on their own (and used for purposes other than MECT compliance). ED questioned if EPA ultimately decides at some future date that it cannot approve the use of MDERCs for MECT compliance, after having approved the MECT program in this rulemaking, what the effect would be on the approval of the MECT, whether the approval of the MECT would become a disapproval, what the effect of disapproval would be on the proposed approval of the attainment demonstration, and whether a final approval of the attainment demonstration SIP would become a disapproval.

ED further commented that the use of DERCs and MDERCs will undermine the MECT program by allowing sources in the MECT program to use MDERCs, whereby actual emissions during any given control period could exceed the overall MECT cap without contemporaneous reductions having occurred to offset the excess emissions. ED further felt that allowing the use of MDERCs for MECT compliance was improper as there is a lack of a credible baseline to establish whether a reduction that might have been surplus at the time an MDERC was generated continues to be surplus at the time of use. ED commented that predicting results in the integrity element of quantifiable is compromised because it is impossible to predict for any control period what the balance between the generation and use of MDERCs for MECT compliance, and there is an issue of uncertainty in the integrity element of quantifiable by using reductions from one type of source at another type of source. Using emission reductions that generated MDERCs are not permanent ED commented because they took place at some point in the past. Finally, trading between economic incentive programs (EIPs) by allowing sources subject to the requirements of the mass cap and trade program to use credits generated by sources outside of the cap as a compliance option should not be allowed.

ED also commented that the method for determining the allocation of allowances to new sources creates an opportunity to inflate the cap and that additional allowances will further undermine the attainment demonstration. It further commented that requirements for emissions monitoring are inadequate, initial program evaluations should occur earlier than three years after program inception, and there appears to be a discrepancy in the amount of emissions that constitute an allowance.

Comments on the MECT rule were made in commenting on the attainment demonstration SIP by the BCCA and REI by reference to their comments to the TNRCC during the public comment period for the final State MECT rule.

BCCA commented that the MECT program should be strengthened by feasible reduction levels, and a five-year phase-in period. It additionally commented that the cap allocation methodology should be strengthened in a number of respects. The NO_X reductions required by the MECT rule are not technically or economically feasible, the phase-in time-frame should be for five years, the baseline activity level should be derived from a 12-month average, cap reductions should be weighted toward the target year, there is no reasoned justification for the rate of emission reductions, allowances should be allocated for 30 future years, not year-by-year, the additional definitions ''Account'' and ''NO_X Cap Plant'' should be incorporated, allocations should be fixed despite equipment shutdowns or changes, an opt-in mechanism should be incorporated for non-emission standards for the attainment demonstration (ESAD) sources, modified, as well as new, sources should be granted allocations at permitted levels, and the allocation methodology should be simplified. They feel that open-market credits should be fully incorporated, that ERCs should be creditable to allowances, and the 10% assessment should be dropped for credit use in the program. Further comments indicated that daily and 30-day limits should be dropped for sources participating in the MECT program, and an emission cap should be employed to meet new source review requirements. They commented that the true-up period should be extended to April 1, allowances should be divisible in tenth tons, enhanced monitoring should await the target year, VOC credits should be creditable against NO_X allocations upon an appropriate demonstration, and the Economic Incentive Program should be expanded and strengthened.

REI comments indicated generally that it supports a market-based cap and trade program as achieving overall NO_X reductions at the least cost. It contends that a viable cap and trade program depends on feasible reduction levels and that allowances should be allocated for a stream of years, not every year. Open Market Credits should be fully incorporated to preserve investments made to achieve early reductions, it commented. The cap and trade program should incorporate Plant-wide Applicability Limits to satisfy New Source Review requirements for changes in NO_X emissions. In addition, REI commented that the true-up date for the annual cap compliance should be extended to conform to the annual inventory deadline, daily and 30-day limits should be dropped for sources participating in the cap and trade, and VOC reductions should be creditable against NO_X allocations upon an appropriate demonstration.

Our response to these comments is included in Section V of this notice.

IV. How Did Texas Respond to Prerequisites for Approval?

As indicated by the responses below, Texas has satisfied all of EPA's prerequisites to approval.

Prerequisite: Our proposed approval requested the State to clarify in response to comments that the State has authority to impose penalties where every day of a long term violation is a separate violation.

Response: The State in the preamble to the final MECT rule responded that EPA's interpretation of these statutes is correct; each day of noncompliance is a separate violation. Thus, every day that the annual cap is exceeded may be considered as a separate violation.

Prerequisite: Our proposed approval requested the State amend the rules to provide that any use of monitoring protocols other than those specified in Chapter 117 will be approved by EPA.

Response: The State amended section 101.354(a) by adding language clarifying that established protocols in 30 TAC Chapter 117 must be used when quantifying actual emissions for facilities subject to the cap and trade program. The authority of the Executive Director to approve monitoring protocols other than those specified has been eliminated. The authority to quantify actual emissions by means other than those specified in 30 TAC 117 is now limited by section 101.353(b) to circumstances where required monitoring and testing data is missing or unavailable. (*See* subsequent response relating to missing data.)

Prerequisite: Our proposed approval requested the State to clarify in response to comments that the confidentiality provisions will not prevent public disclosure of activity level data necessary to determine emissions under the cap program. We also requested that any exemptions from disclosure be noted in the annual compliance report.

Response: The State clarified that emissions data cannot be held confidential. The State clarification indicated that the Office of the Attorney General makes such a determination in specific cases. Attorney General Opinion No. H–539 (February 26, 1975) ruled that emissions data supplied to the state may not be treated as confidential. Emissions data has been interpreted to include information on the nature and amount of emissions from a facility. The State agreed to include any notice of exemptions from disclosure in the annual report.

Prerequisite: Our proposed approval requested the State amend the rules to specify missing data provisions as described in EIP guidance § 5.2(c).

Response: The State added a new section 101.354(b) that provides a procedure which may be followed to determine actual emissions in the event the data required under section 101.354(a) is missing or unavailable. The procedure establishes the order of missing data methods that must be used as follows: continuous monitoring; periodic monitoring; stack or vent testing data; manufacturer's emissions data; and EPA Compilation of Air Emission Factors (AP–42). These methods must be demonstrated to most accurately represent actual emissions.

Prerequisite: Our proposed approval requested the State to clarify that emissions offsets must be obtained for the life of the NSR source.

Response: The State agreed in the preamble to the final MECT rule that offsets must be provided by the owner or operator of a facility for the life of that facility. The State also agreed in the preamble that, in order for reductions from a facility which is subject to the cap and trade program to be used as offsets, the owner or operator must permanently retire the rights to the allowances associated with that facility. This, in effect, generates ongoing credits which can be used as offsets for the life of a facility. The State wished to clarify that Chapter 101 does not address permitting, and NSR permits issued under Chapter 116 that involve offsets must be issued with the requirement that offsets be obtained for the life of the permitted facility. This requirement is found in § 116.150, New Major Source or Major Modification in Ozone Nonattainment Areas. The banking rules do not modify or supersede that requirement. Chapter 101 does require that new facilities which are subject to Division 3 obtain allowances on an annual basis equal to their actual NO_X emissions in addition to obtaining offsets for the ratio portion of their allowable emissions. The State also wished to clarify that allowances which are obtained by these new facilities are not issued by the State, but are obtained from the existing number of allowances available to existing facilities. The total number of allowances under the cap would remain finite.

Prerequisite: Our proposed approval requested the State to provide notification of MDERC generation to the metropolitan planning organization (MPO).

Response: The State agreed in the preamble to the final MECT rule that MPOs should be made aware of MERC and MDERC generation projects because of the necessity to avoid double counting reductions that may be banked and also used for SIP credit under other programs.

Prerequisite: Our proposed approval requested the State to demonstrate how existing rule provisions will prevent the issuance of Alternate Emission Limits (AELs) that could increase a NO_X emissions cap.

Response: The State responded in the preamble to the final MECT rule that the cap and trade program uses ESADs as listed in sections 117.106 and 117.206, Emissions Specifications for Attainment Demonstrations, and 117.475, Emissions Specifications, when calculating the number of allowances to allocate. AELs may not be used or requested in lieu of ESADs as specified in 117.106(e) (3)–(4) and 117.206(f)(4). There is no provision in the State rules to allow for a variance from the Chapter 117 requirements. The State recognizes that facilities with a capacity factor of 0.0383 have an ESAD of 0.060 lb NO_X/MMBtu regardless of facility type, as allowed in sections 117.106(c)(4), 117.206(c)(17), or 117.475(c)(6). This ESAD is not an ''AEL'' but simply an assigned ESAD for facilities that are rarely utilized.

Prerequisite: Our proposed approval requested the State to modify, or make demonstrations relating to, subsection 101.353(g), stated that in ''extenuating circumstances'' the TNRCC executive director may deviate from the requirements for determining the amount of allowances to be issued to a facility. The FR notice said the state must either (1) demonstrate that the allocations that could be issued pursuant to that subsection would not be inconsistent with the attainment demonstration and would comply with the CAA, or (2) modify the rule to eliminate executive director discretion or require EPA approval of allocations issued pursuant to the subsection.

Response: The State revised section 101.353 of the rule by stating that the owner or operator of a facility may, due to extenuating circumstances, request up to two additional calendar years to establish a baseline period more representative of normal operation as determined by the executive director. The State response is consistent with the NSR definition of actual emissions which allows for an alternate period when the baseline period does not reflect normal operations. EPA's objection relating to Executive Director discretion has been resolved.

V. What Are EPA's Responses to Comments?

Environmental Defense Comment 1

Comment: EPA must not defer action on the use of DERCs and MDERCs for

MECT compliance. EPA should not approve the MECT program as long as it allows the use of MDERCs in lieu of allowances. EPA may not approve the MECT without squarely addressing the issue of whether MDERCs can be used for MECT compliance.

Response: The Clean Air Act does not prohibit EPA from determining at a later date whether or not DERCS or MDERCs may be utilized in the MECT program. The DERC and MDERC rules (30 TAC Chapter 101 Division 4) are separate and independent from the MECT rules since, unlike the MECT rules, the DERC and MDERC rules were not submitted by the state for emission credit in the attainment demonstration. In addition, the use of DERCs or MDERCs in the MECT program is not necessary for that program to achieve emission reductions needed for attainment, or for that program to comply with other applicable Clean Air Act requirements. The purpose of utilizing DERCs or MDERCs in the MECT program is to provide sources with a voluntary compliance option.

As we stated in the **Federal Register** Notice proposing action on the MECT rules, DERCS and MDERCs may not be used for compliance with the MECT rules unless the DERC and MDERC rules are approved by EPA for inclusion into the SIP. In addition, a source-specific SIP revision may be utilized to seek EPA approval for the use of DERCs or MDERCs in the MECT program on a case-by-case basis.

The DERC and MDERC rules, and any individual trades, will be fully evaluated for approvability as a SIP revision when EPA proposes action on them. This evaluation will determine whether or not those rules or trades comply with all applicable Clean Air Act requirements, considering the interaction of the use of DERCs or MDERCs with existing SIP provisions, including the MECT program. The public will be provided an opportunity to comment on the approvability of the DERC and MDERC rules and any individual trades as a SIP revision at the time EPA proposes action on those rules or trades.

If at some future date, EPA determines that the DERC or MDERC rules or an individual trade cannot be approved, MECT facilities would not have the flexibility of using such credits for compliance. Such facilities would, however, still have to achieve all emission reductions required by the MECT program, all other provisions of the MECT program would continue to function, and approval of the MECT program—and the SIP—would remain in effect.

Comment: If EPA ultimately decides at some future date that it can not approve the use of MDERCs for MECT compliance, after having approved the MECT program in this rulemaking, what would be the effect on the approval of the MECT?

Response: As stated above, if at some future date, the MDERC rule cannot be approved, the MECT program could not use MDERCs for compliance with the allowance cap. The use of MDERCs for MECT compliance is for source flexibility. Should the MDERC program be determined to not be approveable at some point in the future, the MECT facilities would no longer have the flexibility of using MDERCs for compliance. All other provisions of the MECT program would continue to function as they were designed, and the approval of the MECT program would not be affected.

Comment: Would the approval become a disapproval?

Response: As stated above, the approval of the MECT program and the SIP would remain in effect.

Comment: What would be the effect of converting the MECT approval to a disapproval on the proposed approval of the attainment demonstration?

Response: Since there would be no conversion of the MECT approval to a disapproval, there would be no effect on the proposed approval of the attainment demonstration. As indicated above, should the MDERC program be disapproved, the MECT program would be required to achieve the required compliance with the allowance cap, but without source flexibility of using MDERCs for cap compliance.

Comment: Since EPA has already stated that it cannot finalize approval of the attainment demonstration SIP until (among other things) it has finalized action on the NO_X MECT program since it is relied upon in the attainment demonstration, then would a final approval of the attainment demonstration SIP thus become a disapproval if EPA later disapproves the MECT program?

Response: Again, as stated above, once the MECT program and the attainment demonstration are SIP approved, a subsequent disapproval of the MDERC program would not change the approval status of the attainment demonstration. The emission reductions relied upon by the implementation of the control technology measures contained in the MECT would be achieved without the source flexibility of MDERC use as provided for in the MDERC rule.

Environmental Defense Comment 2

Comment: ED made a number of comments specific to the DERC and MDERC rules as they relate to the MECT. Generally, ED commented that the use of DERCs and MDERCs will undermine the MECT program by allowing sources in the MECT program to use MDERCs, whereby actual emissions during any given control period could exceed the overall MECT cap without contemporaneous reductions having occurred to offset the excess emissions. ED further felt that allowing the use of MDERCs for MECT compliance was improper as there is a lack of a credible baseline to establish whether a reduction that might have been surplus at the time an MDERC was generated continues to be surplus at the time of use. ED commented that predicting results in the integrity element of quantifiable is compromised because it is impossible to predict for any control period what the balance will be between the generation and use of MDERCs for MECT compliance, and there is an issue of uncertainty in the integrity element of quantifiable by using reductions from one type of source at another type of source. Using emission reductions that generated MDERCs are not permanent, ED commented, because they took place at some point in the past. Finally, trading between economic incentive programs (EIPs) by allowing sources subject to the requirements of the mass cap and trade program to use credits generated by sources outside of the cap as a compliance option should not be allowed.

Response: These issues do not arise unless EPA approves a SIP revision allowing the use of DERCs or MDERCs in the MECT program. EPA is not at this time taking action on the DERC or MDERC rules, or any individual DERC or MDERC trades.

As we stated in the **Federal Register** Notice proposing action on the MECT rules, DERCS and MDERCs may not be used for compliance with the MECT rules unless the DERC and MDERC rules are approved by EPA for inclusion into the SIP. In addition, a source-specific SIP revision may be utilized to seek EPA approval for the use of DERCs or MDERCs in the MECT program on a case-by-case basis.

The DERC and MDERC rules, and any individual trades, will be fully evaluated for approvability as a SIP revision when EPA proposes action on them. This evaluation will determine whether those rules or trades comply with all applicable Clean Air Act requirements, considering the

interaction of the use of DERCs or MDERCs with existing SIP provisions, including the MECT program. The public will be provided an opportunity to comment on the approvability of the DERC and MDERC rules and any individual trades as a SIP revision at the time EPA purposes action on those rules or trades.

EPA will respond to these comments at the time the agency acts on a SIP revision including the DERC and MDERC rules, or any individual trades, if they are submitted in connection with such action.

Until EPA completes its evaluation of the DERC and MDERC rules or an individual trade, the agency has no basis to take final action disapproving the use of DERCs or MDERCs in the MECT program. The acquisition and use of credits generated under one (EIP) to meet the requirements of another EIP is not prohibited by the Clean Air Act, and is specifically contemplated by the EPA EIP guidance document, Improving Air Quality with Economic Incentive Programs (EPA–452/R–01–001) January 2001, as long as certain criteria are met.

Environmental Defense Comment 3

Comment: Environmental Defense's third comment was that the method for determining the allocation of allowances to new sources creates an opportunity to inflate the cap. ED commented that the number of allowances issued to certain new sources lacking a historic emissions baseline will be based on allowable emissions for two years, but only until an actual emission baseline is established. ED contended that these new sources have the incentive to maximize production and/or emissions to establish a baseline that is close to the allowable emissions limit. ED commented that once the artificially high baseline is established, the source can return to normal production and/or emission levels and be left with a windfall of surplus allowances that it would then be free to trade to other sources in the MECT program. ED contended that EPA's review of the MECT program fails to address this possibility.

ED commented that new sources without an established, actual baseline can be viewed as sources that are not covered, because their emissions baselines have not yet been established. ED was concerned that the increment between actual emissions during normal operating conditions and the permit allowables represents a pool of excess allowances that can be captured by these new sources. If new sources can successfully capture this windfall, the overall emissions budget for the MECT program will end up higher than it otherwise would have been.

Response: The attainment demonstration modeling inventory for new sources without a historical baseline consisted of the allowable emissions for these sources. These sources were included in the allowance cap at their allowable level. The State's attainment demonstration for HGA used this level of emissions. Accordingly. we have no basis to challenge this part of the method for allocating allowances. Further, the establishment of a baseline for these sources at actual emission levels below their allowables will reduce or shrink the cap.

Environmental Defense Comment 4

Comment: Environmental Defense's fourth comment was that additional allowances issued under MECT section 101.353(g) will further undermine the attainment demonstration. ED contended that the TNRCC issuance of additional allowances would further undermine the SIP. ED states that they are uncertain how TNRCC can demonstrate that additional allocations ''are not inconsistent with the attainment demonstration.'' Section 101.353(g) in the December 2000 regulation stated that ''in extenuating circumstances, the executive director may deviate from the requirements of this section to determine the amount of allowances allocated to a facility.''

Response: The State revised section 101.353(g) in the October 4, 2001 submittal. The final rule states that ''(t)he owner or operator of a facility may, due to extenuating circumstances, request up to two additional calendar years to establish a baseline period more representative of normal operation as determined by the executive director.'' This revision of the regulation for determination of baseline emissions is consistent with the new source review definition of actual emissions and actual baseline emissions used to determine surplus emission reductions from other trading programs.

Environmental Defense Comment 5

Comment: Environmental Defense's fifth comment was that the requirements for emissions monitoring are inadequate. ED commented that EPA fails to provide any factual basis for its conclusion that TNRCC's selection of emission measurement protocols are adequate. ED stated that they can find no evidence of the TNRCC's adoption of specific monitoring requirements in Chapter 117 to ensure compliance with the MECT. Instead, it appears to ED that monitoring consists of whatever methods were already in place prior to the adoption of ESADs in Chapter 117. ED commented that the creation of a cap and trade program should be accompanied by additional monitoring requirements to ensure the program's success. ED commented that the TNRCC should require monitoring requirements no less stringent than those of the Acid Rain Program and the NO_X SIP Call.

The MECT rules at section 101.354(a) describe the method for determining how many allowances will be deducted from a compliance account. This deduction should be based, to the maximum extent possible, on the measured mass of NO_X emissions and should require Texas to measure and track mass emissions instead of emissions rates and activity levels, the product of which is only a surrogate for mass emissions. Measuring mass emissions will improve the transparency and environmental integrity of the MECT program.

Response: The State submitted the monitoring requirements of Chapter 117 to fulfill the monitoring protocol requirements of the MECT. For electric utility facilities the Chapter 117 monitoring requirements consist of the continuous emission monitoring requirements of the Acid Rain program at 40 CFR part 75 and 40 CFR part 60 Appendix A. Thus the MECT monitoring requirements are the same as those in the Acid Rain program and NO_X SIP Call. The State has estimated that approximately 90% of the total allowances in the MECT program are allocated to sources that are required to have CEMs. EPA can find no basis for the ED statement that the MECT monitoring requirements are less stringent than those of the Acid Rain Program and the NO_X SIP Call.

Environmental Defense Comment 6

Comment: Environmental Defense's sixth comment was that the initial program evaluations should occur earlier than three years after program inception. ED was pleased that the TNRCC included an explicit requirement to perform an audit of the program after three years to ensure that it is achieving the target NO_X emission reduction throughout the control period. The EPA and TNRCC should emphasize that this audit may result in the imposition of additional restrictions (weekly or monthly caps, geographic trading restrictions, e.g.) to ensure the program's integrity. This would encourage capped sources to account for this possibility up front when making investments, trading, or banking decisions. The FR notice refers to the EIP guidance expectation that annual

evaluation of the program is appropriate for at least two years, until the projected emissions have been adequately confirmed (66 FR 38237). Despite this expectation, EPA concluded that MECT program meets the expectations of the EIP guidance, even though TNRCC's audit will only occur triennially. This conclusion is unjustified.

Response: Although the MECT audit will occur triennially as required by the MECT regulation, a review will be conducted in 2002 as a result of the settlement reached in BCCA Appeal Group v. Texas Natural Resource Conservation Commission, No. GN1–00210 (250th Dist. Ct.)(filed on January 19, 2001). The attainment demonstration SIP requires a mid course correction evaluation in 2004. The degree of control technology and implementation schedules are an integral part of both of these audits. EPA believes that with these two audits in 2002 and 2004 plus the triennial MECT audits, the audit frequency is adequate to help assure that the reductions will lead to attainment. The EPA EIP guidance, which in any event is not binding, did not assume the additional audits requested above.

Environmental Defense Comment 7

Comment: Environmental Defense's seventh comment was that there appears to be a discrepancy in the amount of emissions that constitute an allowance. According to section 101.352(g) allowances will be allocated, transferred, or used in tenths of tons. On the other hand, the equations for calculating the number of allowances to be deposited into an account at section 101.353(a) and the allowances to be deducted from an account at section 101.354(a) appear to yield allowances in tons. There is thus an error of a factor of ten in the calculations that needs to be corrected.

Response: The MECT rule defines one MECT allowance to equal one ton of NO_X emissions. The level of accuracy in section 101.352(g) for allocation, transfer or use is in tenths of tons which is consistent with the requirements of sections 101.353(a) and 101.354(a). As in a bank account, the currency denomination is in dollars but the account itself is debited and credited in dollar amounts with an accuracy of two decimal places, i.e. dollars and cents. Thus, there is not an error of a factor of ten but rather an accuracy of allowances to one decimal place.

EPA responses to BCCA and REI comments made on September 25, 2000, are as follows:

Comment: BCCA commented that the proposed NO_X reductions intended to be implemented under MECT rule are not technologically or economically feasible and will not result in an economic incentive under the cap and trade rule because there will be insufficient surplus allowances. The cap and trade system should be based on current California point source controls, which are the most stringent achieved in practice.

Response: This comment is not relevant to our decision whether to approve the MECT rule. We are not authorized to review control requirements for their economic or technological feasibility. In any event, the State made no changes to the MECT rule in response to these comments. EPA notes, however, that combined use of combustion modification and flue gas controls on the majority of large combustion units result in point source NO_X reductions in the range of 90%. Combustion modification capabilities and flue gas controls are well documented in the EPA Alternative Control Technology (ACT) documents, the NO_X control literature, and papers presented at numerous meetings of research and trade organizations for industry, NO_X control vendors, constructors, and the government. These documents report combustion-based reductions from minimal to over 90%, and flue gas controls in the range of 75% to 95%. We agree with the State that both combustion modifications and flue gas cleanup are established technologies. We agree with the State that the market-based approach embodied in the adopted rules give nearly complete freedom on how to achieve the goals and based on experience from California, will stimulate the development of new and innovative reduction technologies and strategies.

Comment: BCCA commented that the rule should afford a five-year phase-in period. In the proposed rule the final, target allocations would be issued in 2005 and remain fixed thereafter. In other words, the necessary controls must be in place by year-end 2004 in order to meet the target allocations under the Proposal. This timeframe is neither practical nor feasible. The Proposal should be amended to incorporate a five-year phase-in period, beginning in 2002 and ending in 2007.

Response: The State revised the rules submitted on December 22, 2000 and October 4, 2001 based on these comments. The State accepted the notion that phasing in compliance with these rules is critical to the success of the program for many reasons including availability of equipment needed to make reductions as well as the need to satisfy the SIP requirement that reductions are made as soon as practicable. The new schedule contained in section 101.353 will ensure that NO_X emission from stationary facilities will be reduced to a level necessary to reach attainment.

Comment: BCCA commented that a consecutive 12-month period would more accurately reflect activity levels and would reduce requests for case-by-case reviews. The TNRCC had proposed the use of an entire 3-year average (1997–1999) to determine baseline activity level. BCCA believes that a 12 month baseline activity period will dramatically reduce the number and complexity of petitions for case-by-case review.

Response: We recognize that the baseline period utilized to establish the cap should be representative of normal source operations. The State took the view that the 1997, 1998, and 1999 period is the most recent and should best represent the emissions of facilities currently in operation. The State did not revise the rule based upon this comment. The State's view is reasonable and we see no basis to disapprove based on the commenter's concerns.

Comment: Both BCCA and REI commented that there is no reasoned justification for the rate of NO_X emission reductions in one-third increments and this rate of reduction is not needed to meet rate-of-progress requirements.

Response: The State revised the rules submitted on December 22, 2000 and October 4, 2001 based on these comments. Phasing in compliance with these rules is critical to the success of the program. Availability of equipment needed to make reductions must be balanced with the SIP requirement that reductions are made as soon as practicable. We concluded that a less rapid reduction of NO_X from affected facilities influenced by equipment availability can be phased in between 2002 and 2007. The State revised the rule with a new schedule contained in section 101.353. We agree with the State that the new schedule will ensure that NO_X emission from stationary facilities will be reduced on the appropriate time frame to a level necessary to reach attainment.

Comment: Both REI and BCCA commented that allowances should be allocated for a stream of 30 years or more rather than allocated yearly to allow for more fluid trading and a defined period, greater than one year, of over-control or under-control for participating sites. This methodology would also simplify allocations.

Response: The State made no revisions to the rule based upon this comment. The State seemed to adopt the view that the allocation of allowances on an annual basis, with an annual compliance report by the State to EPA and the public, is necessary to record and track a successful cap and trade program. The provision for audits and necessary corrective action every three years can best be accomplished by the annual allocation of allowances. The State responded that allocation of allowances on a yearly basis enhances the ability to plan and anticipate effects on air quality and that it also provides an enforcement mechanism for facilities whose actual emissions exceed the allowances in their compliance account through the reduction of subsequent yearly allocations. As the State noted, nothing would prohibit facilities from entering private agreements for the sale of future allocations or rights to allocations. We see no basis to disapprove based on the commentor's concerns.

Comment: BCCA commented that the term ''source'' is used to denote an overall site over the ten-ton applicability trigger but is also used to denote a single emitting unit. BCCA and REI commented that sources not subject to emission specification for attainment demonstration (ESAD) rates under the SIP that can make cost effective reductions should have the option to participate in the cap and trade program and its allowances allocated in the same manner for current ESAD sources.

Response: The State adopted a rule revision on May 23, 2001 which clarified that the applicability of the cap and trade program is determined by the collective emissions at a site and that the ten-ton per year applicability requirement does not apply to individual facilities. The rule revision was effective on June 13, 2001. The State did not create a new definition of '' NO_X Cap Plant'' as requested by this comment. We agree with the State that facilities not subject to the cap and trade program may eventually be able to trade with MECT facilities under the current rule without compromising the attainment demonstration.

Comment: BCCA commented that the State should clarify that target allocation based on 1997–1999 activity will not change despite shutdowns, replacements or changes to equipment.

Response: The State revised the rules submitted on October 4, 2001 by adding section 101.353(h) which clarifies that allowances will not change despite subsequent reductions in activity levels assuming the allowances are based on historical activity levels. These subsequent reductions in activity levels could result from shutdowns, replacements, or changes to equipment. We believe that the clarification by the State in response to this comment maintains the integrity of the program.

Comment: BCCA commented that an opt-in mechanism should be incorporated for non-ESAD sources. An opt-in provision for sources not subject to ESAD rates under the SIP would provide an effective incentive to accomplish surplus reductions.

Response: The rule provides for surplus reductions accomplished by non-ESAD sources to be traded for allowances for each compliance period. Such trades would provide the non-ESAD source with the same economic incentive to obtain surplus emission reductions as if the source had the ability to elect to be in the program. Any such trades would require reductions beyond what was relied upon in the attainment demonstration and could contain DERCs or MDERCs after we act on the DERC and MDERC rules.

Comment: BCCA and REI commented that the rule allows sources newly authorized by permit application or permit by rule to receive allowances based on their permitted or actual activity levels. BCCA and REI support this concept but commented that newly modified sources should be treated identically.

Response: The State revised the rules submitted on December 22, 2000 based on this comment at section 101.353(a) to refer to new and modified facilities. By ''modified facilities'' the State referred to the modification itself. For example if an existing facility is modified to double its capacity in 1998, the emissions from the original facility will be allocated in the same way as facilities existing before 1997. The increase in emission allowable associated with the modification will be treated as a facility which did not exist before 1997. We agree with the State approach to the extent that the attainment demonstration modeling included the actual emissions for the facility, and that for modified facilities that have not begun normal operations, the emissions relied upon in the attainment demonstration are the allowable emissions.

Comment: BCCA commented that the allocation methodology should be simplified. The allocation methodology language in proposed Section 101.353 is overly complicated and confusing. The methodology is based on a complete re-allocation in each of the initial four years, and is structured to revisit allocations for new sources several times. As noted in an earlier comment, the methodology should allow all allocations for 2002 through 2032 to be issued in a single action before program commencement.

Response: The State made no revisions to the rule based upon this comment. The State appeared to accept the view that the allocation of allowances on an annual basis, with an annual compliance report by the State to EPA and the public, is necessary to record and track a successful cap and trade program. The provision for audits and necessary corrective action every three years can best be accomplished by the annual allocation of allowances. The ability to plan and anticipate effects on air quality and to provide an enforcement mechanism for facilities whose actual emissions exceed the allowances in their compliance account through the reduction of subsequent yearly allocations are necessary elements of the program. We see no basis to disapprove based on the commentor's concerns. The allocation methodology is sufficient to achieve the program objectives and we are concerned that any further simplification could lead to a compromise of the program objectives.

Comment: BCCA and REI commented that emission reduction credits should be convertible to allowances and the rule lacks reasoned justification why this is not allowed. By definition all recognized emission credits are real, quantifiable, and surplus to the SIP.

Response: The State revised the rule submitted on October 4, 2001 by adding a new section 101.356(h) which provides that ERCs may be converted into a yearly allocation of allowances if the ERCs were generated prior to December 1, 2000 and were evaluated and included in the HGA attainment demonstration. We proposed to approve and are in this action approving this revision to the rule. We agree that these ERCs, if converted into a stream of allowances would not increase emissions beyond those levels modeled that demonstrated compliance with the NAAQS for ozone.

Comment: REI and BCCA commented that the existing discrete emission reduction credit trading rules require a 10% environmental contribution and a 5% compliance margin. This requirement has been extended to the use of DERCs in lieu of allowances. They stated that there is not a reasoned justification for this requirement and that it is not necessary to meet a region wide cap.

Response: The State revised section 101.356 of the rule submitted on October 4, 2001 based on this comment. Although EPA has not yet acted on

those rules, we note that the requirement of retiring an additional 10% of DERCs and MDERCs for an environmental contribution and an additional 5% for a compliance margin is not required when using DERCs and MDERCs in lieu of allowances under the HGA cap and trade program. In any event, in today's action, we are not taking action on the DERC/MDERC rules.

Comment: REI and BCCA objected to the daily and monthly NO_X limits for utility sources in addition to the annual MECT cap. These limits render the cap and trade flexibility meaningless.

Response: The 30-day average system cap emission limit functions as a flexible but controlling limit which ensures that a specified emission level is achieved during a typical peak ozone season day. The State's actions are consistent with the view that the much less stringent daily maximum limit ensures that the 30-day average is not manipulated to allow higher NO_X emissions on a single day when ozone may be a problem. We see no basis to disapprove based on the commentor's concerns.

Comment: REI and BCCA commented that the rule should be modified to allow compliance with an emission cap to satisfy both nonattainment new source review and prevention of significant deterioration.

Response: The nonattainment new source review and prevention of significant deterioration permitting are requirements of the Act. We agree with the State that any facility having major increases of NO_X should undergo a nonattainment/prevention of significant deterioration review to ensure it is meeting BACT or LAER as applicable, regardless of whether the facility operates under the cap.

Comment: REI and BCCA believe that one month is an inadequate period to calculate a control period's emissions and compare those emissions to cap and trade activity for the control period to balance the account. They recommend April 1 of the succeeding year as the deadline for reconciling accounts.

Response: The facilities have one month for trading allowances after December 31 of the compliance year. Allowance trades must be approved by the State within thirty days. Section 359 of the rule requires a facility to submit the allowance compliance report by March 31. This reporting parallels the State's emission inventory reporting guidelines and we agree with the State that the rule need not be revised. We see no basis to disapprove based on the commentor's concerns.

Comment: REI and BCCA commented that the requirement to trade allowances in whole tons lacks reasoned justification. The number of allowances is rounded up or down whichever provides the holder or buyer less credit. Some credits have been traded with a value of $80,000 per ton and rounding can result in the taking of considerable value. They recommend that trading occur in one-tenth tons. This is consistent with ERC trading. During the years of target allowances, rounding down can result in zero allowances.

Response: The State revised section 101.350(1) by the submission of October 4, 2001 to divide allowances into tenths of a ton. The rounding methodology was not changed from the normal mathematical rounding procedures. However, by allocating, transferring, and using allowances in tenths of tons, the impact of rounding will be reduced. We agree with the State that the incorporation of rounding allowances to a tenth of a ton will provide a more realistic and workable program.

Comment: REI and BCCA commented that the installation of enhanced monitoring equipment should be delayed until the cap and trade target allocation year of 2005, and there is no reasoned justification for advancing the monitoring requirement to 2001, well ahead of the substantive reductions needed for attainment.

Response: The State revised the rules submitted on December 22, 2000 in response to this comment to take into account the practicalities identified by the comments. Both PEMS and CEMS vendors indicated that the number of monitors required in one year would strain their abilities to provide the equipment. The owners identified clear benefits of installing the monitors in conjunction with the control equipment. We agree with the State that since the rules have been revised to require that the monitors will be phased over a four-year period, at the earlier of installing emission controls or December 31, 2004, this phase-in will achieve the end result benefits of specified emissions reduction by 2005. Because the first reduction period has been extended to 2004, the greater uncertainty about NO_X emissions in the first two years of the program (compared to monitors in place by 2002) will be of less consequence. Phasing in CEMS/PEMS with the emission control equipment is a more rational and cost effective approach and remains consistent with attainment needs.

Comment: REI and BCCA commented that the rule should contain a provision allowing volatile organic compound reductions in the place of NO_X allowances where the VOC reductions are demonstrated to reduce ozone an equal amount.

Response: The State modified section 101.356 of the rule submitted on December 22, 2001 based on the comment. EPA is not taking action on the DERC or MDERC rules. Generally, however, EPA agrees that if a demonstration has been made and approved by the executive director and the EPA to show that the use of VOC DERCs or MDERCs is equivalent to the use of NO_X allowances in reducing ozone then we support the State allowing VOC use in place of a NO_X reduction.

Comment: BCCA supports an additional incentive program that would provide funds for use by a wide range of source categories to assist compliance with SIP required reductions. Such a fund would be competitive and, if funded by private sources, would provide appropriate credit or benefit to the parties providing the funding. The plan should incorporate broad executive director authority to approve credits on a case-by-case basis.

Response: The State's actions are consistent with the view that the establishment of a private fund for pollution control projects is outside the scope of the adopted rules and will be left to the discretion of affected industries. This comment is not relevant for EPA's action on this SIP submittal.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not

significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (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 Clean Air Act. 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 Clean Air Act. 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. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings.'' 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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. In § 52.2270 the table in paragraph (c) is amended under Chapter 101 by:

a. Revising the heading immediately above the entry for section 101.1 to read ''Chapter 101—General Air Quality Rules'' followed on a separate line by the heading ''Subchapter A—General Rules.''

b. Revising the entry for section 101.1.

c. At the end of Chapter 101 following the entry for ''Section 101. Rule 19'' by adding new heading ''Subchapter H—Emissions Banking and Trading'' followed on a separate line by the heading ''Division 3—Mass Emissions Cap and Trade Program'' followed by individual entries for Sections 101.350, 101.351, 101.352, 101.353, 101.354, 101.356, 101.358, 101.359, 101.360, and 101.363.

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
Chapter 101—General Air Quality Rules,				
Subchapter A—General Rules				
Section 101.1	Definitions	09/26/2001	11/14/01 [Insert [Federal Register citation]	
*	* * * * * *			
Subchapter H—Emissions Banking and Trading				
Division 3—Mass Emissions Cap and Trade Program				
Section 101.350	Definitions	09/26/2001	11/14/2001 [Insert Federal Register citation.]	
Section 101.351	Applicability	05/23/2001	11/14/2001 [Insert Federal Register citation.]	
Section 101.352	General Provisions	09/26/2001	11/14/2001	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/submittal date	EPA approval date	Explanation
Section 101.353	Allocation of allowances	09/26/2001	11/14/2001 [Insert Federal Register citation.]	Subsections 101.353(a)(3)(B) 101.353(a)(3)(D) NOT IN SIP.
Section 101.354	Allowance deductions	09/26/2001	11/14/2001 [Insert Federal Register citation.]	
Section 101.356	Allowance Banking and Trading.	09/26/2001	11/14/2001 [Insert Federal Register citation.]	
Section 101.358	Emissions Monitoring and Compliance Demonstration.	12/09/2000	11/14/2001 [Insert Federal Register citation.]	
Section 101.359	Reporting	12/09/2000	11/14/2001 [Insert Federal Register citation.]	
Section 101.360	Level of activity certification	09/26/2001	11/14/2001 [Insert Federal Register citation.]	
Section 101.363	Program audits and reports	09/26/2001	11/04/2001 [Insert Federal Register citation.]	
*	*	*	*	* * *

[FR Doc. 01–27586 Filed 11–13–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–134–3–7528; FRL–7092–9]

Approval and Promulgation of Air Quality State Implementation Plans; Texas: Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Texas on establishing a Vehicle Inspection and Maintenance (I/M) Program for the Dallas/Fort Worth (DFW), Houston-Galveston Area (HGA), and El Paso (ELP) nonattainment areas. EPA proposed approval of the DFW I/M SIP revision on January 22, 2001, and the HGA I/M SIP revision on June 11, 2001. The revisions replace the two-speed idle test in Dallas, Tarrant, and Harris Counties with ASM–2, expand the upgraded I/M program to cover the entire DFW nonattainment area plus five additional counties, and the eight county HGA nonattainment area. The revisions also implement On-Board Diagnostic (OBD) testing in the DFW and HGA testing areas, and El Paso County.

The I/M SIP revisions are part of the DFW and HGA Attainment Demonstrations.

DATES: This final rule is effective on December 14, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

What action is EPA taking today?

We are granting final approval of Texas' Motorist Choice (TMC) vehicleI/M program. The program applies to the HGA and ELP nonattainment areas, and the DFW nonattainment area plus five adjoining attainment counties. EPA proposed approval of the DFW I/M SIP revision on January 22, 2001 (66 FR 6521), and the HGA I/M SIP revision on June 11, 2001 (66 FR 31199).