

## EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Section 101.372 .....	General Provisions .....	7/25/2007	5/18/2010 [Insert FR page number where document begins].	
Section 101.373 .....	Discrete Emission Reduction Credit Generation and Certification.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
*	*	*	*	*
Section 101.375 .....	Emission Reductions Achieved Outside the United States.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
Section 101.376 .....	Discrete Emission Credit Use ....	7/25/2007	5/18/2010 [Insert FR page number where document begins].	
Section 101.378 .....	Discrete Emission Credit Banking and Trading.	10/4/2006	5/18/2010 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-11681 Filed 5-17-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2010-0147; FRL-9151-5]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading, referred to elsewhere in this notice as the Emission Reduction Credit (ERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The August 16, 2007, submittal amends two sections of the ERC program to

update cross-references to recently recodified 30 TAC Chapter 117 provisions. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

**DATES:** This final rule will be effective June 17, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2010-0147. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), 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 or Mr. Bill Deese at 214-665-7253 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:** If you have questions concerning today's final rule, please contact Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

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#### I. What final action is EPA taking?

We are fully approving severable portions of two revisions to the Texas SIP submitted by the Texas Commission on Environmental Quality (TCEQ) on

October 24, 2006, and August 16, 2007, specific to the ERC Program. The revisions we are approving amend existing sections and create a new section in the ERC Program at Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The severable portions of the August 16, 2007 submittal that we are approving non-substantively revise the ERC Program to correctly update the cross-references to the stationary source nitrogen oxide (NO<sub>x</sub>) rules found in the Texas SIP at 30 TAC Chapter 117 as a result of the non-substantive recodification of Chapter 117 approved by EPA as part of the Texas SIP on December 3, 2008 (see 73 FR 73562). Consequently, we are approving the revisions to the Texas SIP at 30 TAC sections 101.302(a), 101.302(d)(1)(C)(vi), 101.302(f), and 101.306(a)(5) and the creation of new section 101.305 submitted on October 24, 2006. Additionally, we are approving revisions to the Texas SIP at 30 TAC sections 101.302(d)(1)(A) and 101.306(b)(3) submitted on August 16, 2007, by the TCEQ.

EPA proposed the above action on March 30, 2010, at 75 FR 15645–15648. Today, we are approving the ERC program revisions as proposed and find that they comply with the CAA and EPA regulations, are consistent with EPA policies, and will improve air quality. This final approval is being taken under parts C and D of the CAA.

In a separate rulemaking, EPA is approving the severable Discrete Emission Credit Banking and Trading Program (referred to elsewhere in this notice as the Discrete Emission Reduction Credit (DERC) Program) revisions at 30 TAC sections 101.372, 101.373, 101.375, 101.376, and 101.378 submitted on October 24, 2006, and 30 TAC sections 101.372 and 101.376 submitted on August 16, 2007 (see EPA–R06–OAR–2010–0418).

At this time, EPA is not taking action on the revisions to the Emissions Banking and Trading of Allowances Program at 30 TAC sections 101.338 and 101.339 submitted on October 24, 2006. EPA is also not taking action at this time on the revisions to the general air quality definitions at 30 TAC Section 101.1 or the revisions to the System Cap

Trading Program at 30 TAC sections 101.383, and 101.385 submitted on August 16, 2007. These severable revisions remain under review by EPA and will be addressed in separate actions.

## II. What is the background for this action?

The ERC Program, SIP-approved by EPA on September 6, 2006, establishes a market-based trading program for the generation and use of emission credits (generated and used at a specified emission rate, tons per year) to provide flexibility for sources in complying with certain State and Federal requirements. Generally, emission reductions of criteria pollutants (excluding lead) or precursors of criteria pollutants for which an area is designated may be banked and used as emission credits. EPA's September 6, 2006, final approval of the ERC program addressed the original submission of the program on December 23, 1997, and the subsequent revisions on January 18, 2001; April 14, 2002; January 17, 2003; and December 6, 2004.

Since our September 6, 2006, final approval, TCEQ has revised the ERC program to address the commitments of the DERC conditional approval. Additionally, the TCEQ adopted revisions to the ERC program consistent with the requirements of Senate Bill 784, adopted during regular session, 2005, of the 79th Texas Legislature. Senate Bill 784 allows for greater flexibility in the generation and use of international emission reductions. These revisions were adopted by the TCEQ on October 4, 2006, and became effective on October 26, 2006. The adopted regulations were submitted to EPA as a SIP revision on October 24, 2006. TCEQ has also promulgated revisions to the ERC program that update the cross-references to the new numbering structure in 30 TAC Chapter 117. These revisions were adopted on July 25, 2007, and became effective on August 16, 2007. The adopted regulations were submitted to EPA as a SIP revision on August 16, 2007.

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

EPA received no comments on our proposed rulemaking.

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act.

Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does

it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 30, 2010.

**Lawrence E. Starfield**,  
*Acting 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" under Chapter 101 is amended by:
  - a. Revising the entries for Sections 101.302 and 101.306 under Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading.
  - b. Adding an entry for Section 101.305 under Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading, in numerical order.

The revisions and additions read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
<b>Chapter 101—General Air Quality Rules</b>				
*	*	*	*	*
<b>Subchapter H—Emissions Banking and Trading Division 1—Emission Credit Banking and Trading</b>				
*	*	*	*	*
Section 101.302 .....	General Provisions .....	7/25/2007	5/18/10 [Insert FR page number where document begins].	
Section 101.305 .....	Emission Reductions Achieved Outside the United States.	10/4/2006	5/18/10 [Insert FR page number where document begins].	
Section 101.306 .....	Emission Credit Use .....	7/25/2007	5/18/10 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-11683 Filed 5-17-10; 8:45 am]  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 222**

[Docket No. 0906181067-0167-02]

RIN 0648-XP96

**2010 Annual Determination for Sea Turtle Observer Requirements**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its final Annual Determination (AD) for 2010, pursuant to its authority under the Endangered Species Act (ESA). Through this AD, NMFS identifies commercial fisheries operating in state and Federal waters in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate existing measures to reduce or prevent prohibited sea turtle

takes, and to determine whether additional measures to implement the prohibition against sea turtle takes may be necessary. Fisheries identified through this process will remain on the AD, and therefore required to carry observers upon NMFS' request, for 5 years.

**DATES:** Effective June 17, 2010.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

**FOR FURTHER INFORMATION CONTACT:** Kristy Long, Office of Protected Resources, 301-713-2322; Ellen Keane, Northeast Region, 978-282-8476; Dennis Klemm, Southeast Region, 727-824-5312; Elizabeth Petras, Southwest