EPA APPROVAL REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
* * * *	*	*	*	*
Section 117.510	Compliance Schedule for Utility Electric Generation in Ozone Nonattainment Areas.	09/26/2001	[Insert 11–14–01 Federal Register cite.]	
* * * *	*	*	*	*
Section 117.520	Compliance Schedule for Industrial, Commercial, and Institutional, Combustion Sources in ozone Nonattainment Areas.	09/26/2001	[Insert 11–14–01 Federal Register cite.]	
* * * *	*	*	*	*
Section 117.534	Compliance Schedule for Boilers, Process Heaters, Stationary Engines, and Gas Turbines at Minor Sources.	09/26/2001	[Insert 11–14–01 Federal Register cite.]	New.
* * * *	*	*	*	*
Section 117.570	Use of Emissions Credits for Compliance.	09/26/2001	[Insert 11–14–01 Federal Register cite.]	
* * * *	*	*	*	*

[FR Doc. 01–27584 Filed 11–13–01; 8:45 am]
BILLING CODE 6560–5–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 28–1–7538; FRL–7092–4]

Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Ozone Nonattainment Area Vehicle Miles Traveled Offset Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, the EPA is approving, as part of the Texas State Implementation Plan(SIP) for the Houston/ Galveston Ozone Nonattainment Area (HGA), the Vehicle Miles Traveled (VMT) Offset Plan to offset any growth in emissions from growth in VMT, or number of vehicle trips in the Houston/ Galveston severe ozone nonattainment area. This is part of the State's effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone. The State demonstrated that emissions from increases in VMT or numbers of vehicle trips within HGA will not rise above an established ceiling by 2007; thereby not requiring additional transportation control measure (TCM) offsets to prevent an increase in VMT above the ceiling. The requirements for the VMT Offset plan to be consistent with the State's demonstration of Reasonable Further Progress (RFP) and attainment are addressed in a corresponding action for the HGA area taken and published separately in this **Federal Register**. This action approves the proposed approval published on July 10, 2001 (66 FR 35920). Comments made on the direct final rule, published on July 10, 2001 (66 FR 35903) and withdrawn on September 4, 2001 (66 FR 46220), are addressed later in this action. This action is being taken under sections 110 and 182 of the Federal Clean Air Act, as amended (the Act, or CAA).

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

ADDRESSES: Copies of the relevant material for this action are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Brooke M. Ivener at (214) 665–7362 or Mr. Bill Deese at (214) 665–7253, Air Planning Section (6PD–L), EPA Region 6, Suite 700, 1445 Ross Avenue, Dallas, Texas 75202–2733.

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

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1. What Are We Approving?

The EPA is approving a new SIP revision for VMT Offset submitted by the State on May 17, 2000. Specifically, we are approving the VMT Offset SIP, submitted by the State on August 25, 1997 and with minor, non-substantive revisions submitted on May 17, 2000. For information regarding our analysis

of the State submittal, please refer to the Technical Support Document for this action.

Section 182(d)(1)(A) of the Act directs states containing ozone nonattainment areas classified as severe, pursuant to section 181(a) of the Act, to adopt transportation control strategies and TCMs to offset increases in emissions resulting from growth in VMT or numbers of vehicle trips, and to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's Reasonable Further Progress (RFP) milestones (CAA sections 182(b)(1) and 182(c)(2)(B)) and attainment demonstration requirements (CAA section 182(c)(2)(A)). The EPA General Preamble to Title I of the CAA (57 FR 13498, 13521–13523, April 16, 1992) explains our interpretation regarding how states may demonstrate that the VMT requirement is satisfied. (We incorporate that discussion by reference.)

In summary, the purpose of the VMT offset requirement is to prevent growth in motor vehicle emissions from cancelling out the emission reduction benefits of federally mandated programs in the Act. Sufficient measures must be adopted so projected motor vehicle volatile organic compound (VOC) emissions will stay beneath a ceiling level established through modeling of mandated transportation-related controls. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented by TCMs. If projected total motor vehicle emissions during the ozone season in one year are not higher than during the previous ozone season due to the control measures in the SIP, the VMT Offset requirement is satisfied.

For several years, we have consistently implemented this interpretation in response to several states' submissions of VMT SIPs under section 182(d)(1)(A) of the Act.[1] We first announced our intent to apply this longstanding interpretation to the HGA's SIP in 1997. See 62 FR 54598 (October 21, 1997) (proposed disapproval of HGA SIP). We similarly followed the General Preamble's approach in the July 10, 2001 direct final rule that would have approved the HGA SIP (see 66 FR at 35903, 35904).

The August 25, 1997 VMT SIP submittal from the State includes a projection of the mobile source emissions profile for HGA through 2007, the date by which the HGA area is to attain the NAAQS for ozone. The August 25,1997 submittal fulfills the first required element under CAA section 182(d)(1)(A)for a VMT Offset Plan in the HGA severe ozone nonattainment area. The second and third required elements under section 182(d)(1)(A) are fulfilled in the corresponding action addressing RFP and attainment for the HGA area taken and published separately in this **Federal Register.**

2. Response to Comments on the Direct Final Action

On July 10, 2001, the EPA published a direct final rule approving the Texas VMT Offset SIP, with the condition that if any adverse comments were received by the end of the public comment period on August 9, 2001 the direct final rule would be withdrawn, and that we would respond to the comments in taking final action on the proposal to approve the Texas VMT Offset SIP, published concurrently on July 10, 2001,(66 FR 35920). One set of comments was received from Environmental Defense (ED). The following summarizes the comments and EPA's response to these comments:

Comment 1: The comment argues that section 182(d)(1)(A) of the Act requires offsets for increased emissions attributable to all growth in VMT above 1990 levels, and that EPA is required by the House Report language (H. R. No. 101–490, Part I, 101st Cong., 2nd session at 242) to ensure emission reductions despite an increase in VMT. The comment states that EPA is acting inconsistently with the law by not applying ''the guidance provided by the House committee report in the review of VMT Offset SIPs[.]'' In other words, the comment challenges the longstanding interpretation of section 182(d)(1)(A) that we discussed in the General Preamble and in our other rulemaking actions approving states' VMT SIPs.

Response: As discussed in the General Preamble, EPA believes that section 182(d)(1)(A) of the Act requires the State to ''offset any growth in emissions'' from growth in VMT, but not, as the comment suggests, all emissions resulting from VMT growth. See 57 FR at 13522–23. As we explained in response to similar comments objecting to our application of the General Preamble's approach when approving Illinois' and Indiana's SIPs, the purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. See 60 FR at 48898; 60 FR at 38720–21. The baseline for emissions is the 1990 level of vehicle emissions and the subsequent reductions in emission levels required to reach attainment with the NAAQS for ozone. Thus, the anticipated benefits from the mandated measures such as the Federal motor vehicle pollution control program, lower Reid vapor pressure, enhanced inspection and maintenance and all other motor vehicle emission control programs are included in the ceiling line calculations used by Texas in the VMT Offset SIP. Appendix B, Table 2, in the Texas submittal shows how emissions will decline substantially and will not begin to turn up, nor does it reach the ceiling established by the mandated controls. Emission reductions are expected every year through the year 2007.

Our approach is consistent with the purposes Congress had in enacting section 182(d)(1)(A). The ceiling line level decreases from year to year as the state implements various control measures, and the decreasing ceiling line prevents an upturn in mobile source emissions. Dramatic increases in VMT that could wipe out the benefits of motor vehicle emission reduction measures will not be allowed and will trigger the required implementation of TCMs. This prevents mere preservation of the status quo, and ensures emissions reductions despite an increase in VMT or number of vehicle trips. To prevent future growth changes from adversely impacting emissions from motor vehicles, States are required under section 182(c)(5) of the Act to track actual VMT and to periodically demonstrate that the actual VMT is equal to or less than the projected VMT, with TCMs required to offset VMT that is above the projected levels.

Under the commenter's approach to section 182(d)(1)(A), Texas would have to offset VMT growth even while vehicle emissions are declining. Although the statutory language could be read to require offsetting any VMT growth, EPA believes that the language can also be read so that only actual emissions increases resulting from VMT growth need to be offset. The statute by its own terms requires offsetting of ''any growth in emissions from growth in VMT.'' It is reasonable to interpret this language as requiring that VMT growth must be offset only where such growth results in emissions increases from the motor vehicle fleet in the area. Our interpretation of the language of section

[1] See, e.g., 62 FR 23410, 23417 (Apr. 30, 1997) (proposed approval of New Jersey's SIP); 61 FR 53624, 53624–25 (Oct. 15, 1996) (direct final approval of New York's SIP); 61 FR 51214, 51216 (Oct. 1, 1996) (direct final approval of New York's SIP); 60 FR 48896, 48897 (Sept. 21, 1995) (final approval of Illinois' SIP); 60 FR 38718, 38719–20 (July 28, 1995) (final approval of Indiana's SIP); 60 FR 2565, 2566–67 (January 10, 1995) (proposed approval of Wisconsin's SIP).

182(d)(1)(A) is entitled to deference. *Chevron U.S.A., Inc.* v. *NRDC,* 467 U.S. 837, 842–44 (1984).

While it is true that the language in the House Committee Report could appear to support the ED's interpretation of the statutory language, such an interpretation would have drastic implications for Texas if the State were forced to impose such draconian control measures as mandatory no-drive restrictions to fully offset the effects of increasing VMT if the area were forced to ignore the beneficial impacts of all vehicle tailpipe and alternative fuel controls. Although the original authors of this provision and of the House Committee Report on this provision may in fact have intended this result, EPA does not believe that the Congress as a whole, or even the full House of Representatives, believed at the time it voted to pass the CAA Amendments that the words of this provision would impose such severe restrictions. There is no further legislative history on this aspect of the provision, nor was it discussed at all by any member of Congress during subsequent legislative debate and adoption.

Given the susceptibility of the statutory language to these two alternative interpretations, EPA believes it is the Agency's role in administering the statute to take the interpretation most reasonable in light of the practical implications of such interpretation, and the purposes and intent of the statutory scheme as a whole. In the context of the intricate planning requirements Congress established in title I to bring areas towards attainment of the ozone standard, and in light of the absence of any discussion of this aspect of the VMT Offset provision by the Congress as a whole (either in floor debate or in the Conference Report), EPA has consistently concluded that the appropriate interpretation of section 182(d)(1)(A) requires offsetting VMT growth only when such growth would result in actual emissions increases.[2]

Comment 2: The comment asserts that the VMT Offset SIP submitted by the State ''does not contain sufficient measures to limit motor vehicle emissions to the levels needed for attainment'' because ''the area has not adopted sufficient control measures to ensure that total area emissions will attain the NAAQS.'' The comment argues that EPA has not adequately assessed the VMT Offset SIP against the statutory requirement that the SIP provide adequate enforceable control measures. In effect the comment asserts that EPA may not approve the HGA's VMT SIP until the HGA is able to demonstrate that its entire SIP will attain the NAAQS.

Response: As an initial matter, EPA does believe the area has an approvable RFP and attainment demonstration SIP, and we refer you to that corresponding final action for the HGA area taken and published separately in this **Federal Register**. The inclusion of the RFP and attainment demonstration in the corresponding final action satisfies the second and third elements of VMT Offset in 182(d)(1)(A), as discussed below.

As described in the General Preamble and above, the purpose of section 182(d)(1)(A) of the Act is to prevent growth in motor vehicle emissions from cancelling out the emissions reduction benefits of the federally mandated programs in the Act. EPA believes it is appropriate to interpret the VMT Offset provisions of the Act to account for how States can practicably comply with each of the provision's elements, as discussed in detail below.

The VMT Offset provision requires that States submit by November 15, 1992 specific enforceable Transportation Control Measures (TCMs) and Strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, sufficient enough to allow total area emissions to comply with the RFP and attainment requirements of the Act. The EPA has observed that these three elements (i.e. offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone NAAQS) create a timing problem of which Congress was perhaps not fully aware.[3] The SIP submittals showing attainment of the 1996 15 percent Rate-of-Progress (ROP) and the post-1996 RFP and NAAQS attainment demonstration are broader in scope than growth in VMT or in numbers of vehicle trips in that they necessarily address emissions trends and control measures for non motor vehicle emissions sources and, in the case of attainment demonstrations, involve complex photochemical modeling studies. It was neither practicable nor reasonable to expect that the subsequently required submissions could be developed and implemented so far ahead of schedule as to effectively influence the VMT Offset submission.

The EPA does not believe that Congress intended the VMT Offset provisions to advance the dates for these broader submissions. Consequently, EPA believes it is appropriate to interpret the Act to provide for staged deadlines for submittal of the elements of the VMT Offset SIP.

Section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under EPA's interpretation, the three required elements of section 182(d)(1)(A) are separable, and could be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how EPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The EPA believes that this language delegates to EPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, EPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply within the 15 percent periodic reduction requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

Under this approach, the first element—the emissions growth offset element—was due on November 15, 1992. The EPA believes this element is not necessarily dependent upon the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the RFP or attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this particular offset element. The first element requires that a State submit a revision that demonstrates the trend in motor vehicle emissions from a 1990 baseline to the year for attaining the NAAQS for ozone, that year is 2007. As described in the General Preamble, and reiterated above, the purpose is to prevent growth in motor vehicle emissions from canceling out the emission reduction benefits realized from the federally mandated programs in the Act. The EPA interprets section

[2] As noted above, EPA has applied this interpretation since the enactment of the 1990 amendments to the Clean Air Act adding section 182(d)(1)(A), even in response to adverse comments submitted on other rulemaking actions. See, e.g., 60 FR 48898 (final approval of Illinois'' SIP) and 60 FR 39720–39721 (final approval of Indiana's SIP).

[3] See, e.g., 61 FR 53624–25; 61 FR 51215; 60 FR 48896; 60 FR 38719; 60 FR 22284, 22285 (May 5, 1995) (final approval of Wisconsin's SIP); and 60 FR 2565–2567.

182(d)(1)(A) to require that sufficient measures be adopted so that projected motor vehicle VOC emissions will never be higher during the ozone season in one year than during the ozone season the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline and is above and beyond the separate requirements for the RFP and attainment demonstration.

Comment 3. The comment argues that EPA is allowing emissions reduction credit for elements contributing to reduced VMT and reduced emissions ''without requiring that such measures be enforceable obligations of the SIP.'' The comment claims that EPA has allowed Texas to base its calculations for compliance ''on emissions expected from the implementation of all facilities and services included in the H–GAC regional transportation plan and TIP prior to the attainment date, and not based solely on the TCMs contained in the VMT SIP revision.''

Response: EPA allowed Texas to calculate compliance with the emissions ceiling line using only the TCMs contained in the VMT SIP revision as further described below. The only TCMs EPA allowed Texas to receive credit for are those included in the 15 Percent ROP Plan submitted on July 24, 1996. See the corresponding final action for the HGA area taken and published separately in this **Federal Register**, *see also* the Final Conditional Interim Rule (63 FR 62943) and the Proposed Conditional Interim Rule (62 FR 37175, 37180). These TCMs have been included in the VMT Offset SIP as measurable emission reduction credits. As is stated in the direct final rule to which this comment applies (66 FR 35903), the TCMs approved for emission reduction credit are as follows in Table 1, with their associated emission benefits, as submitted in the VMT Offset SIP State submittal and as corresponds to Appendix 7K of the 15 Percent ROP Plan submittal:

TABLE 1.—TRANSPORTATION CONTROL MEASURES APPROVED FOR VMT OFFSETS

TCM	Quantity	Emissions benefit in 1996
High Occupancy Vehicle Lanes	14.7 miles	Approximately 424 pounds of VOC per day.
Park-and-Ride Lots	3,745 parking spaces	Approximately 69 pounds of VOC per day.
Arterial Traffic Management Systems	41 miles	Approximately 77 pounds of VOC per day.
Computer Transportation Management Systems	22.2 miles	Approximately 169 pounds of VOC per day.
Signalization	2.9 miles	Approximately 3 pounds of VOC per day.
		Total: approximately 742 pounds per day = 0.36 tons per day.

These emission benefits are enforceable, as they are approved in the 15 Percent ROP SIP and all TCMs included in the SIP are enforceable by rule. The direct final rule also stated that no credit is taken in the SIP for any additional TCMs. Thus the lower curve, depicting the mandated controls, the Motorist Choice I/M Program, and TCMs, includes only the enforceable TCMs through FY 1996 described above. The TCMs for FY 1999 and FY 2007, although explained, are not credited for the VMT Offset SIP demonstrations. In addition, although the State chose to include the five 1996 TCMs as enforceable measures, the analysis shows that even these measures are not necessary to offset emissions from growth in VMT.

Modeling of the lower curve in Graph 1 of the Technical Support Document, at no time, shows the emission estimates meeting or exceeding the lowest point in the upper curve, reached in 2007. The upper curve reached its lowest point in 2007, so there is no upward turn demonstrated in this instance. Usually the low point establishes the ceiling, but no true ceiling is established because there is no upward turn of the curve by which to identify the lowest point. Since the curve does not turn upward (indicating the control programs are efficiently offsetting increases from growth in VMT) no TCMs would be necessary to offset emissions from growth in VMT. The State included the five TCMs, although they are not necessary for this plan to be approved.

Three comments were also received in response to the proposed disapproval (referenced above) of the 1993 and 1994 submittals which comprised the VMT Offset requirement. Two comments supported the proposed disapproval because the SIP relied upon the repealed I/M and ETR Programs. The SIP submittal being acted upon in this action does not rely on those two programs. A third comment supported approval of the August 1997 VMT Offset submittal.

3. Final Action

The EPA has determined that Texas has adequately demonstrated that emissions from growth in VMT and number of vehicle trips will not rise above the ceiling, or low point shown as the effects of required reductions from mandatory programs. Therefore, based on the State's submittal and in consideration of the comments received in response to the proposal, we are approving the VMT Offset SIP, submitted by the State on August 25, 1997 and with minor, non-substantive revisions submitted on May 17, 2000, under sections 110 and 182 of the Act, as meeting the requirements of the first element of section 182(d)(1)(A). Please see the corresponding final action for the HGA area on RFP and attainment taken and published separately in this **Federal Register** for EPA's conclusions regarding the State's satisfaction of the second and third elements of section 182(d)(1)(A).

4. 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, I hereby certify 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).

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 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 ''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 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. 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. section 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. section 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 January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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, paragraph (e), in the table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP,'' one entry is added to the end of the table to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Comments
* *	*	*	* *	*
Vehicle Miles Traveled Offset Plan	Houston/Galveston Ozone nonattainment area.	05/09/2000	[Insert 11/14/2001 Federal Register cite.].	Originally submitted 11/12/93 and revised 11/06/94, 8/25/97, and 05/17/00.

[FR Doc. 01–27585 Filed 11–13–01; 8:45 am]
BILLING CODE 6560–50–P

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.