§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

DG Flugzeugbau GmbH and Glaser-Dirks Flugzeugbau GmbH: Docket No. FAA–2005–22157; Directorate Identifier 2005–CE–44–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 9, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following sailplane models and serial numbers that are certificated in any category:

Model	Serial numbers
DG–100	All Serial Numbers.
DG–400	All Serial Numbers.
DG–500 Elan Series	All Serial Numbers Through 5E23.
DG–500M	All Serial Numbers Through 5E23.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent the universal bearing of the lower rudder mounting from slipping out of the bearing support. The universal bearing slipping out could result in the rudder separating from its support. This failure could lead to loss of sailplane control during flight operations.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Modify or replace the complete rudder mounting assembly.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done.	Follow DG Flugzeugbau GmbH Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004
(2) Ensure that the securing washer, castellated nut, and split pins are installed as specified by the DG Flugzeugbau GmbH Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004.	Before further flight after the modification or replacement of the complete rudder mounting assembly required by paragraph (e)(1) of this AD.	Follow DG Flugzeugbau GmbH Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004.

Note: Until the actions of this AD are done, the FAA strongly recommends that an FAA-certified mechanic perform a daily pre-flight inspection to check the position of the outer bearing ring following the requirements of DG Flugzeugbau GmbH Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004. If the bearing is displaced, we recommend that you discontinue flight operations until you modify or replace the complete rudder mount assembly and ensure that the securing washer, castellated nut, and new split pins are installed.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2004–348R1, dated September 16, 2004, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: 011–49 7257–890; facsimile: 011–49 7257–8922. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. This is docket number FAA–2005–22157; Directorate Identifier 2005–CE–44–AD.

Issued in Kansas City, Missouri, on September 28, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19935 Filed 10–4–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0023; FRL–7981–3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Emissions Banking and Trading Revisions for the Mass Emissions Cap and Trade Program for the Houston/Galveston/Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) concerning the Mass Emissions Cap and Trade (MECT) program for emissions of nitrogen oxides (NO_X) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area. Additionally, EPA is proposing approval of several subsections of Chapter 116 of the Texas Administrative Code (TAC) (Control of Air Pollution by Permits for New

Construction or Modification) that provide cross-references to the MECT Program.

DATES: Comments must be received on or before November 4, 2005.

ADDRESSES: Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2005–TX–0023, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. David Neleigh at *neleigh.david@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), at fax number 214–665–6762.
- Mail: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R06–OAR–2005–TX–0023. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through RME, regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Guidance on preparing comments is given in the **SUPPLEMENTARY INFORMATION** section of this document under the General Information heading.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file, which is available at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal 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: Ms. Adina Wiley, Air Permitting Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2115; fax number 214–665–6762; e-mail address *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. Mass Emissions Cap and Trade Program
A. What is EPA proposing to approve?
B. Summary of MECT program revisions
1. What is the MECT program that has been Federally approved into the Texas SIP?
2. How has TCEQ revised the MECT program?
C. EPA's Analysis
1. How did EPA review the MECT program revisions?
2. What criteria did EPA use to analyze the MECT program revisions?
3. What is EPA's evaluation of the changes related to the switch from 90 percent control to 80 percent control of NO_X emissions from industrial sources?
4. What is EPA's evaluation of the changes in applicability in the MECT program?
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6. What is EPA's analysis of the other revisions to the MECT program?
7. What is EPA's analysis of the Chapter 116 rule language?
8. What is EPA's analysis of the MECT program with respect to section 110(l) of the Clean Air Act?
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II. General Information
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I. Mass Emissions Cap and Trade Program

A. What is EPA proposing to approve?

The EPA is proposing to approve revisions to the MECT program for NO_X emissions in the HGB ozone nonattainment area (consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) published at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H, Division 3, sections 101.350–101.354, 101.356–101.360, and 101.363. EPA is also proposing approval of the subsections in 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, which provide cross-references to the MECT program. The sections of Chapter 116 we are proposing to approve are sections 116.111(a)(2)(L), 116.115(b)(2)(C)(iii), 116.176, 116.610(a)(6), and 116.615(5)(C). These revisions were provided in SIP revisions

submitted to EPA on April 12, 2001; January 31, 2003; and December 6, 2004. The revisions make the following changes to the MECT:

- The revisions make changes necessary to accomplish the shift in attainment strategy from 90 percent control of industrial sources to 80 percent control in the HGB area. For a further discussion of this change in control strategy, please see the supporting record for our separate action on the attainment demonstration (RME Docket R06–OAR–2005–TX–0018).
- The revisions expand the applicability of the MECT to additional sources.
- The revisions provide for the use of discrete emission reduction credits (DERCs) and mobile source DERCs (MDERCs) in lieu of MECT allowances, subject to our separate action on the Discrete Emission Credit Banking and Trading program as explained below.
- The revisions include a variety of minor changes to correct grammar and reorganize the rule text for readability.
- The revisions to the Texas Commission on Environmental Quality's (TCEQ's) Chapter 116 permitting rules incorporate cross-references to the MECT program in Chapter 101.

The MECT program is a significant element of the control strategy for the HGB area to comply with the Clean Air Act (CAA) requirements to achieve the ozone attainment standard. As such, the revisions to the MECT and the corresponding sections in Chapter 116 must be evaluated as an integral component of the HGB control strategy to reduce NO_X emissions. We are proposing approval of these revisions to the rules that establish the MECT program, but because of the relationship of the rules to the attainment demonstration, we will not finalize approval of the rules until the revisions to the attainment demonstration are approved. Further revisions allowing DERC and MDERC use in the MECT program will not be fully approved until the rules for DERC and MDERC generation and use have been approved. The rules for DERC and MDERC use and generation and the attainment demonstration are being considered in separate **Federal Register** notices. If our separate actions on the DERC program and the attainment demonstration cannot be finally approved, the MECT program will continue to operate as outlined in our November 14, 2001, final approval of the program (66 FR 57252).

B. Summary of MECT program revisions

1. What is the MECT program that has been Federally approved into the Texas SIP?

The MECT program was adopted as a State regulation on December 6, 2000. The program is mandatory for stationary facilities that emit NO_X in the HGB area which are subject to emission specifications in TCEQ NO_X rules at 30 TAC Chapter 117.106, 117.206 and 117.475, and which are located at a site where they have a collective design capacity to emit 10 tons per year or more of NO_X. The program sets a cap on NO_X emissions beginning 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. An allowance is the authorization to emit one ton of NO_X during a control period; a control period is the calendar year. Facilities may purchase, bank or sell their allowances. The amount of NO_X allowances is determined by a formula which uses emission rates established in 30 TAC Chapter 117. These emission rates and resulting emission reductions were relied on in the HGB attainment demonstration submitted in 2000. The rules at that time were to reduce overall industrial NO_X emissions by approximately 90 percent. The MECT program has a provision to allow a facility to use emission reduction credits (ERCs) generated through the TCEQ Emission Credit Banking and Trading program to permanently increase the allowances for the individual facility subject to the MECT if the credits were generated for NO_X in the HGB area before December 1, 2000. The MECT also has a provision to allow a facility to use DERCs and MDERCs generated through the TCEQ Discrete Emission Credit Banking and Trading program in lieu of allowances if they are generated in the HGB area. EPA published a final rule approving the MECT program (except for the use of DERCs and MDERCs in the MECT, which we deferred acting on until our action on the DERC program) on November 14, 2001 (66 FR 57252). Texas has subsequently revised the MECT program in SIP submittals dated July 15, 2002, January 31, 2003, and December 6, 2004.

2. How has TCEQ revised the MECT program?

The TCEQ submitted a MECT revision to EPA on July 15, 2002, establishing a new section 101.357, to allow the use of emission reductions generated through the Texas Emission Reduction Program as MECT allowances. EPA is not reviewing or proposing to act on this revision to the MECT program in this document.

Today's action does address several revisions to the MECT that TCEQ submitted to EPA on January 31, 2003, and December 6, 2004. These revisions made changes to support the shift from 90 percent control of industrial sources to 80 percent control in the HGB ozone nonattainment area, expanded the applicability of the MECT, updated and revised the provision of the MECT allowing for the use of DERCs and MDERCs in lieu of MECT allowances, and included a variety of non-substantive changes to correct grammar and reorganize the rule text for readability.

The shift from 90 percent to 80 percent control of industrial sources in the HGB nonattainment area is one of a number of changes made in Texas' mid-course review of the HGB ozone attainment plan. The current plan was approved on November 14, 2001, and called for approximately a 90 percent control of industrial NO_X emissions. As a result of a review of the modeling and data, including an intensive summer study in 2000, TCEQ has revised the plan to decrease the importance of NO_X reductions and to add controls on highly-reactive volatile organic compounds. The MECT, in section 101.353, has been revised to support the shift in attainment strategy from approximately 90 percent to approximately 80 percent NO_X reductions.

To determine the approvability of the change from 90 percent to 80 percent, EPA must consider its impact on the area's attainment plan, and whether it is consistent with section 110(l) of the Clean Air Act. We are examining these questions in our separate action on the revisions to the HGB attainment demonstration, which is being processed concurrently with this action. EPA will not take final action on the changes to the MECT related to the change from 90 percent to 80 percent until final approval of the attainment demonstration is published. Please note that although the MECT was developed as part of the one-hour ozone attainment demonstration, and EPA has revoked the one-hour ozone standard, the MECT remains a necessary component of the SIP under EPA's anti-backsliding provisions of the Phase I rule (40 CFR 51.905(a)(1)). For a further discussion and review of how the anti-backsliding provisions are being met and other issues related to the change in ozone attainment strategy from 90 percent to 80 percent NO_X control, please see the supporting record for our separate

action on the attainment demonstration (RME Docket R06–OAR–2005–TX–0018).

The next revisions we are addressing in this action involve the expansion of the applicability of the MECT to cover all facilities in the HGB ozone nonattainment area that are either at a site that meets the definition of major source at 30 TAC section 117.10, or at a site where they collectively have an uncontrolled design capacity to emit ten tons or more of NO_X per year. Additionally, once a source has become classified as a major source the source will always be subject to the MECT.

The final substantive revision to the MECT that we are considering in this action involves the sections of the MECT providing for the use of DERCs and MDERCs in lieu of MECT allowances. Under the Texas Discrete Emission Credit Banking and Trading program (referred to as the DERC program), a source can generate short-term emission credits by reducing its emissions. Reductions from stationary sources are generated as discrete emission reduction credits (DERCs), and reductions from mobile sources are generated as mobile discrete emission reduction credits (MDERCs). DERCs and MDERCs are quantified, banked and traded in terms of mass (tons) and may be generated and used statewide. Sources can certify reductions of all criteria pollutants, with the exception of lead, but the MECT rules only allow NO_X and VOC DERCs and MDERCs to be used in lieu of MECT allowances. The EPA and the TCEQ Executive Director must approve a demonstration that the use of VOC DERCs or MDERCs would be equivalent to the use of NO_X allowances in reducing ozone. In our November 14, 2001, **Federal Register** action, EPA deferred acting on these provisions until we proposed action on the DERC program. EPA is now considering action on the DERC program in a separate action (RME Docket R06–OAR–2005–TX–0029). TCEQ's revisions to section 101.356 of the MECT establish limits on the quantity of DERCs that can be used in a given control period and on the quantities that TCEQ can allow a given source to use for demonstrating compliance. The use of DERCs and MDERCs in the MECT program will not be Federally approved until the approval of both the revisions to section 101.356 being reviewed here and of the DERC program generally, which is being reviewed in a separate action.

C. EPA's Analysis

1. How did EPA review and evaluate the MECT program revisions?

Generally, SIP rules must be enforceable and must not relax existing requirements. See Clean Air Act sections 110(a), 110(l), and 193.

A guidance document that we used to define evaluation criteria is ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001) (EIP Guidance). This guidance applies to discretionary EIPs adopted to attain national ambient air quality standards (NAAQS) for criteria pollutants, but the EIP Guidance is not EPA's final action on discretionary EIPs. Final action as to any such EIP occurs when EPA acts on it after its submission as a SIP revision. Because the EIP Guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether potential approvability issues arise. A more detailed review of the MECT revisions as compared to the EIP Guidance is in the Technical Support Document (TSD) for the TCEQ Mass Emissions Cap and Trade Program for the HGB Nonattainment Area. The TSD is available at the location given in the **ADDRESSES** section of this document.

2. What criteria did EPA use to analyze the MECT program revisions?

As described in detail in the EIP Guidance, EPA has identified three fundamental principles that apply to all EIPs: integrity, equity, and environmental benefit. The integrity principle provides that emission reductions in EIPs must be surplus, enforceable, quantifiable, and permanent. The equity principle consists of both general equity and environmental justice. The third principle provides that all EIPs should show environmental benefit, whether through faster attainment, more rapid reductions, or greater emission reductions. In our previous approval action, EPA evaluated the MECT against these three principles, specific concerns applicable to multi-source cap-and-trade programs, and applicable CAA requirements. See 66 FR 38231 (July 23, 2001); 66 FR 57252 (Nov. 14, 2001). In the current action, to evaluate the MECT revisions EPA conducted a line-item comparison of the Federally approved and newly adopted state rule language. This comparison included a discussion of applicable EIP Guidance provisions and CAA requirements. Our complete analysis of the MECT revisions is contained in the TSD for this action.

3. What is EPA's evaluation of the changes related to the switch from 90 percent control to 80 percent control of NO_X emissions from industrial sources?

To support the shift from a 90 percent to an 80 percent NO_X control strategy, TCEQ revised the MECT at section 101.353 to include new emission reduction factors for the allocation of allowances. The changes to the reduction factors are based on the corresponding changes to the HGB attainment demonstration. The analysis behind the new reduction factors is evaluated in the TSD reviewing the revisions to the attainment demonstration (RME Docket R06–OAR–2005–TX–0018). EPA will not finally approve these changes until the attainment demonstration revisions including the relaxation of NO_X control to 80 percent are approved. Comments on the appropriateness of the changes from 90 to 80 percent should be directed to the attainment demonstration docket.

4. What is EPA's evaluation of the changes in applicability in the MECT program?

The revisions to MECT applicability at sections 101.350 and 101.351 are approvable because they are not inconsistent with the CAA and because they strengthen the SIP in two ways. First, applicability is now based on the uncontrolled design capacity. By basing the inclusion of facilities on the uncontrolled design capacity, TCEQ has strengthened the cap by preventing sources from installing control equipment to remain outside of the cap. Second, TCEQ has established that once a source is subject to the MECT it will always be subject to the MECT. Combined, these revisions will help ensure that the intended emission reductions will occur and also establish a more viable allowance trading market by increasing and maintaining the number of sources subject to the MECT.

5. What is EPA's evaluation of the use of DERCs and MDERCs in the MECT program?

In our initial MECT approval (66 FR 57252, Nov. 14, 2001), EPA deferred action on the use of DERCs and MDERCs for compliance with the MECT until our action on the DERC rule. In addition to the original MECT submission, TCEQ has submitted revisions to section 101.356 twice since EPA's approval of the MECT program. In this document and the corresponding TSD, we are reviewing and proposing to approve the use of DERCs and MDERCs in TCEQ's MECT program for the HGB area. We will review and act on TCEQ's

rules for generation and use of DERCs and MDERCs in a separate action (RME Docket R06–OAR–2005–TX–0029). The use of DERCs and MDERCs in the MECT program will not be Federally approved until the approval of both the revisions to section 101.356 being reviewed here and the DERC program in 30 TAC Chapter 101, Subchapter H, Division 4 being reviewed in a separate action. Here, EPA is only taking specific comment on the use of DERCs and MDERCs as allowances in the MECT program. Under the Texas program, DERCs and MDERCs can be used for a variety of other purposes. Comments on the generation of DERCs or MDERCs or on the use of DERCs or MDERCs for purposes other than as MECT allowances should be directed to the docket on the DERC rule (RME Docket R06–OAR–2005–TX–0029).

The DERC and MDERC program is what EPA describes as an open market trading (OMT) program. Section 4.1 of the EIP Guidance explains that certain types of EIPs may not be combined because their characteristics and requirements are incompatible. By way of example, it states that an OMT program and a multi-source cap-and-trade program are incompatible and thus should not be combined. Therefore, the fact that the MECT program provides for the use of DERCs and MDERCs in lieu of allowances at section 101.356(h), with corresponding provisions in the DERC rule at section 101.376(b), is contrary to the statement in the EIP Guidance.

The EIP Guidance discourages the use of OMT credits in a multi-source cap-and-trade program based on concerns that the use of OMT credits in the cap program could potentially undermine the integrity of the cap, thus preventing the goals that the cap was established to achieve. EPA is concerned that including OMT credits in a cap-and-trade system could lead to:

- The possibility that more OMT credits will be used in a given year than are generated;
- The possibility that sources will shift production from one source to another, generating credits at the reduced source while no real net benefit in air quality is achieved; and
- The possibility that reductions at unregulated sources will not be real reductions and that they will be used to offset increases at regulated sources.

When a program includes elements that are not consistent with the approaches outlined in our guidance, EPA may still approve the rule if it is consistent with CAA requirements and the rationales underlying the provisions in EPA guidance. In this case, we must determine whether the use of OMT credits (DERCs or MDERCs) in lieu of allowances will, because of the above concerns, undermine the goal of the MECT program, which is attainment of the one-hour ozone standard in the HGB area. EPA should also consider whether there are adequate safeguards to ensure that the additional flexibility provided by the interplay between the DERC and MECT programs will not undermine the HGB rate or progress (ROP) plan and attainment demonstration. We approved the HGB ROP plan on February 14, 2005 (70 FR 07407). The HGB area met its ROP target by a wide margin (over 100 tons per day) so the institution of DERCs in the MECT would not be expected to interfere with ROP.

The reduction in industrial NO_X emissions relied on in the attainment demonstration is achieved by the MECT program, which provides a finite cap on NO_X emissions. Beginning in 2005, the amount of allowances (the authorization to emit one ton of NO_X during a control period, which is the calendar year) under the cap decreases to the final cap level in 2007. The final 2007 cap level was established based on photochemical modeling and other evidence as necessary for the area to meet the one-hour ozone standard. Even after the change from 90 percent to 80 percent NO_X control strategy, the final MECT level is among the most stringent levels of NO_X controls on industrial emissions in the United States.

Because of the stringency of the needed NO_X controls, Texas linked the DERC and MECT programs, in an effort to provide additional flexibility to sites subject to the program while encouraging the development and use of cleaner technologies to reduce NO_X emissions from sources not covered by the cap-and-trade program. Only DERCs and MDERCs generated in the HGB area are available for use in lieu of allowances.

At the time the MECT rules were developed, the number of DERCs available for use in the HGB area totaled over 37,000 tons (all generated by stationary sources; no MDERCs had been generated). Additionally, sources had the ability to make early reductions and continue banking DERCs until the January 1, 2002, implementation date of the MECT. After implementation of the MECT, sources subject to the cap no longer had the ability to generate DERCs because those reductions would take the form of unused allowances. The potential for capped sites to hold these banked DERCs for use in 2005 and beyond was significant enough to negatively impact the HGB ROP plan and attainment demonstration. To guard against more DERCs being used in a given year than are being generated, which might affect the goal of attainment, Texas included the following provisions in the MECT rule limiting the use of NO_X DERCs in lieu of allowances.

First, beginning in 2005, annual use of DERCs within the MECT is limited to 10,000 DERCs collectively for all sites within the HGB area. This provision eliminates the potential for sites subject to the MECT to use a large quantity of DERCs in a single year and negatively impact the HGB ROP plan and attainment demonstration. All requests to use DERCs (or MDERCs) in the MECT must be made by October 1 of the control period for which the DERCs (or MDERCs) would be used. In terms of the 10,000 DERC limit, TCEQ will approve requests to use DERCs in the amount of 250 tons or less for a given control period. After October 1, when all requests to use DERCs have been received, TCEQ determines how to respond to any requests to use DERCs in an amount exceeding 250 tons. TCEQ may reduce any such request so that the total amount of all DERCs used collectively does not exceed 10,000. If all the requests to use DERCs in a given control period are less than the 10,000 limit, TCEQ will then address requests for more than 250 tons. For these requests, TCEQ determines the number of remaining DERCs under the 10,000 limit that were not approved in the requests of 250 tons or less. These extra DERCs may be apportioned based on the percentage of DERCs in excess of 250 requested for use by those sites relative to the total amount of extra DERCs available.

Second, depending on when the DERCs were generated, the MECT rule requires the use of DERCs at specified ratios. Beginning in 2005, DERCs generated before January 1, 2005, are required to be used at a ratio of four DERCs to one allowance. The ratio of DERCs to allowances increases to a 10 to 1 ratio for DERCs generated before 2005 and used in the 2007, or subsequent, control periods. By way of example, if DERC usage equaling the full 10,000 limit is approved for use in the 2007 control period, the overall cap would be increased by 1,000 allowances. Any DERCs generated after January 1, 2005, are available for use within the MECT at a one to one ratio, but are still included in the 10,000 DERC collective limit. We believe these ratios guard against the possibility that the availability of historic reductions would permit the use of more DERCs in a year than are generated, which could

interfere with attainment or reasonable further progress.

As a further safeguard against the possibility of undermining the attainment demonstration by allowing the use of more DERCs in any given year than are generated, TCEQ added an additional 2.7 tons per day into the attainment model beyond the emissions that would be allowed based on source allocations. This additional 2.7 tons per day represents the maximum amount of pre-2005 DERCs available for use in the attainment year 2007. To arrive at this number, TCEQ divided the 10,000 DERC limit by 10 to yield a total of 2.7 tons per day that could be reintroduced into the cap. DERCs generated after 2005 by sources outside of the cap could not be quantified as those reductions would be generated through voluntary measures. TCEQ therefore assumed that all DERCs that would be used in the 2007 control period were pre-2005 DERCs. Including these added emissions in the attainment modeling is analogous to cap-and-trade programs that set aside a percentage of the modeled emissions for new source growth or other purposes.

The MECT program also provides that MDERCs can be used in lieu of allowances at a ratio of one MDERC to one allowance. MDERCs are not included in the 10,000 DERCs limit in any given control period. TCEQ incorporated MDERCs into the MECT to provide incentives for mobile reductions. Although there is no set limit for MDERC usage under the MECT, from our experience with open market trading programs, we can reasonably predict that a relatively small quantity of MDERCs will be generated. Consistent with our prediction, we note that only 60 tons of MDERCs have been banked as of August 1, 2005.

TCEQ has also committed to making certain revisions to the DERC program to ensure that the DERCs used are real, surplus, and consistent with the assumptions in the attainment demonstration. These revisions will include:

- Prohibiting the generation of DERCs from permanent shutdowns (See RME Docket R06–OAR–2005–TX–0029);
- Ensuring that reductions can only come from process changes or the installation of control equipment that result in less emissions per unit of production, thus preventing reductions from production shifting as a method of DERC generation;
- Clarifying the provisions that allow for public comment and EPA approval of quantification protocols to ensure that the reductions used for DERC generation are quantifiable.

A more complete description of the criteria for DERC generation is included in the supporting documents for the DERC rule.

Additionally, section 101.363 requires TCEQ to audit the MECT program every three years. If the use of DERCs or MDERCs is shown to negatively impact attainment, TCEQ will remove this flexibility from the program.

With the restrictions outlined above, we believe that permitting the use of DERCs and MDERCs in lieu of allowances provides additional flexibility in compliance with the MECT program without undermining the goal of attaining the one-hour ozone standard in the HGB area. EPA also believes that the restrictions placed on the use of DERCs and MDERCs in the MECT will prevent such use from damaging the integrity of the MECT program and the HGB attainment demonstration. Because the basis for the use of DERCs and MDERCs in the MECT is, in part, the modeling and attainment demonstration for the HGB area, EPA cannot grant a final approval of this provision of the MECT program until EPA issues a final approval of the attainment modeling provided as a mid-course review SIP revision. The attainment demonstration and DERC program are being concurrently proposed for approval (RME Dockets R06–OAR–2005–TX–0018 and R06–OAR–2005–TX–0029).

6. What is EPA's Analysis of the Other Revisions to the MECT Program?

The additional revisions to the MECT at sections 101.352, 101.354, 101.359, and 101.360 are also approvable because they are consistent with the EIP Guidance and meet the requirements of section 110(l) of the Clean Air Act as explained below. In section 101.352(b), the TCEQ changed the date for the true-up period from February 1st following the control period to March 1st, beginning with the first control period of January 1, 2003. This revision corrected a typographical error in the Federally approved MECT that ended the true-up period on February 1st and determined compliance with the cap on March 1st. Section 7.4 of the EIP Guidance also recommends a true-up period of 60 days for control periods up to a year. The revision to section 101.352(e) further refines the group of facilities that can use MECT allowances for the correlating one to one portion of NSR offsets as only new or modified facilities that are not considered existing facilities under section 101.350(e). The majority of the revisions to section 101.354 are corrections to grammar and section numbering. The new section 101.354(e) is a measure to strengthen the SIP by discouraging demand shifting. If a facility subject to the MECT shifts production or activity to a facility not subject to the MECT, the TCEQ will deduct allowances from the MECT facility equal to the increase in emissions that resulted from the demand shifting. The revisions to section 101.359 establish expanded reporting requirements for facilities subject to the MECT and provide for the imposition of penalties on facilities that miss reporting deadlines. The revisions to section 101.360 provide more detail on the requirements for level of activity reporting. Our full review of these revisions can be found in the TSD.

7. What is EPA's Analysis of the Chapter 116 Rule Language?

The new subsections of Chapter 116, sections 116.111(a)(2)(L), 116.115(b)(2)(C)(iii), 116.176, 116.610(a)(6), and 116.615(5)(C), submitted by TCEQ on April 12, 2001, are approvable. These subsections establish the permitting requirements for the facilities subject to the MECT. Collectively, these subsections reinforce the requirements of the MECT program by stating that facilities must possess allowances before operation and that an owner or operator of a new facility must identify the source of allowances it will rely on in the permit.

8. What is EPA's Analysis of the MECT Program With Respect to Section 110(l) of the Clean Air Act?

Section 110(l) of the Clean Air Act states:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

As a general matter, the satisfaction of the environmental benefit principle and the other integrity principles applicable to trading programs will tend to demonstrate that a trading program will be consistent with section 110(l). Here, however, as previously noted, the revisions to the MECT are a part of a revised ozone attainment strategy for the HGB area. In addition, we are reviewing the limited use of DERCs in the MECT. The revised strategy's reduced level of industrial NO_X control and the effect of the use of DERCs in the MECT are being evaluated separately in the HGB attainment demonstration for the 1-hour ozone standard. The section 110(l) analysis for our action on the MECT

therefore relies on the analysis conducted for the HGB attainment demonstration.

D. Conclusion

EPA reviewed the MECT program revisions with respect to the expectations of the EIP Guidance document and the requirements of the Clean Air Act. EPA has concluded after review and analysis that the revisions to the MECT program are approvable. EPA is proposing to approve the revisions to sections 101.350–354, and 101.360 submitted by TCEQ on January 31, 2003, for rule log number 2002–044–101–AI; and the revisions to sections 101.356 and 101.359 submitted by TCEQ on December 6, 2004, for rule log number 2003–064–101–AI. EPA has also reviewed the subsections in 30 TAC Chapter 116 which provide cross-references to the MECT program, and has concluded that these subsections are necessary for the implementation of the MECT program. We are proposing to approve sections 116.111(a)(2)(L), 116.115(b)(2)(C)(iii), 116.176, 116.610(a)(6), and 116.615(5)(C) submitted by TCEQ on April 12, 2001, for rule log number 2000–047–116–AI.

We will not take final action on these rules, however, until we finally approve the attainment demonstration. In addition, revisions allowing DERC use in the MECT program will not be fully approved until the rules for DERC generation and use have been approved. The rules for DERC generation and use and the attainment demonstration are being considered in separate actions.

II. General Information

A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by File ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official file. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposed 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 27, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

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