

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** January 22, 2010
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: *SM* Susana M. Hildebrand, P.E., Chief Engineer

Docket No.: 2008-0334-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 101, General Air Quality Rules
SB 1672: Federal Clean Air Interstate Rule Revision
Rule Project No. 2007-053-101-EN

Background and reason(s) for the rulemaking:

Senate Bill (SB) 1672, 80th Texas Legislature, 2007, requires the commission to incorporate revisions to the federal Clean Air Interstate Rule (CAIR) finalized by the United States Environmental Protection Agency (EPA). The adopted rulemaking will remove the allocation provisions for untimely state allowance allocation submittals and change the deadline to submit to the Texas Commission on Environmental Quality from July 1st to May 1st to comply with the EPA's April 28, 2006, final rulemaking action (71 FR 82).

SB 1672 also contains amendments to the allocation methodology prescribed in House Bill (HB) 2481 from the 79th Texas Legislature, Regular Session, 2005. HB 2481 specified readjusting the baseline heat input every five years using the highest three years' heat input data from periods one through five of the previous seven years. However, this seven-year period did not provide adequate time to accommodate the EPA's requirement of providing allocations approximately four years in advance of the applicable control period. Therefore, SB 1672 changes the number of control periods from seven to nine and shifts the initial baseline heat input adjustment from 2016 to 2018.

The adopted rulemaking will allow electric generating units (EGU) commencing operation on or after January 1, 2001, with five or more consecutive years of commercial operation to roll into the general pool, which is 90.5 percent of the Texas CAIR nitrogen oxides (NO_x) trading budget, in the years 2016 and 2017. This is consistent with how these units are handled for the 2015 control period under the federal CAIR program. Beginning in 2018, units in the general pool will have their baseline heat input adjusted based on the average of the highest three years from control periods one through five of the preceding nine control periods. In accordance with SB 1672, this baseline readjustment will happen every five years and the number of NO_x allowances will not fluctuate and remain consistent for five years at a time.

The adopted rulemaking and CAIR State Implementation Plan amendments will allow the EPA adequate time to review and approve the CAIR Phase II (2015 and thereafter) allocation methodology specified in SB 1672.

Scope of the adopted rulemaking:

A) Summary of what the rulemaking will do: The adopted rulemaking will amend the state CAIR rule to satisfy the requirements of SB 1672 by updating the allocation methodology and incorporating federal changes to CAIR.

B) Scope required by federal regulations or state statutes: As specified by SB 1672, the rulemaking will revise the initial baseline heat input adjustment to 2018, revise the adjusted baseline heat input calculation by using the data in periods one through five of the previous nine control periods, and incorporate any federal changes to CAIR. The adopted rulemaking will incorporate federal changes to CAIR by updating the timing

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requirements to submit allowance allocations to the EPA, updating the deadline for the regulated community to request allowances from July 1st to May 1st, and removing the provisions for untimely allowance allocation submittals.

C) Additional staff recommendations that are not required by federal rule or state statute: SB 1672 updated the initial baseline heat input adjustment from 2016 to 2018, but the bill did not include an allocation methodology for the 2016 and 2017 control periods. The adopted rulemaking allocation methodology for the 2016 and 2017 control periods will allow units commencing operation on or after January 1, 2001, with five or more consecutive years of commercial operation to roll into the general pool. This is consistent with how EGUs are handled for the 2015 control period under the federal CAIR program.

Statutory authority:

Texas Water Code,

- §5.103, Rules; and
- §5.105, General Policy.

Texas Health and Safety Code (THSC),

- §382.002, Policy and Purpose;
- §382.011, General Powers and Duties;
- §382.012, State Air Control Plan;
- §382.014, Emission Inventory;
- §382.016, Monitoring Requirements;
- §382.017, Rules;
- Act of May 10, 2007, 80th Legislature, 2007, SB 1672, §1 to be codified at THSC, §382.0173, Adoption of Rules Regarding Certain SIP Requirements and Standards of Performance for Certain Sources; and
- THSC, §382.054, Federal Operating Permit.

Effect on the:

A) Regulated community: Electric utilities including investor-owned utilities, municipally owned utilities, independent power producers, electric cooperatives, and river authorities will be affected by the adopted rulemaking. Applicable sites will be required to submit the proper paperwork by the specified deadlines. No fiscal impact is anticipated with the adoption of this rulemaking.

B) Public: The public will realize public health and environmental benefits based on the reductions in NO_x and sulfur dioxide emissions. The EPA does not expect a significant impact to regional electricity prices because of CAIR.

C) Agency programs: The Chief Engineer's Office will allocate CAIR NO_x annual allowances to applicable sites.

Stakeholder meetings:

No stakeholder meetings were held.

Public comment:

The public comment period opened on September 25, 2009, and closed on October 26, 2009. No oral comments were received. One written comment was received by the EPA indicating inaccurate references in the rule when determining the total amount of allowances in the Texas NO_x trading budget.

Significant changes from proposal:

In response to the EPA's comment, the adopted rulemaking will reference the correct subsection in the rule when determining the total amount of allowances in the Texas NO_x trading budget.

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Potential controversial concerns and legislative interest remaining after proposal and public comment:
None.

Does this rulemaking affect any current policies or require development of new policies?
This rulemaking will not affect any current policies or require development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If this rulemaking does not go forward, Texas will not have an approvable CAIR SIP for Phase II that begins in 2015, with allowances due to the EPA in 2011, and therefore could not allocate CAIR NO_x allowances as directed by SB 1672.

Key points in adoption rulemaking schedule:

Texas Register proposal publication date: September 25, 2009

Anticipated Texas Register publication date: February 26, 2010

Anticipated effective date: March 4, 2010

Six-month Texas Register filing deadline: March 25, 2010

Agency contacts:

Brandon Greulich, Rule Project Manager, 239-4904, Air Quality Division

Terry Salem, Staff Attorney, 239-0469

Amy Browning, Staff Attorney, 239-0891

Jessica Rawlings, Texas Register Coordinator, 239-4808

Attachments:

SB 1672

cc: Chief Clerk, 5 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Kevin Patteson
Curtis Seaton
Daniel Womack
Office of General Counsel
Brandon Greulich
Jessica Rawlings

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data. The text also mentions that regular audits are necessary to identify any discrepancies or errors in the accounting process.

2. The second part of the document focuses on the classification of expenses. It provides a detailed list of categories, such as salaries, rent, utilities, and travel. Each category is further broken down into sub-categories to ensure that every expense is properly recorded. The document also discusses the importance of separating personal expenses from business expenses to avoid any confusion or misstatement.

3. The third part of the document covers the calculation of net income. It explains how to take total revenue and subtract all expenses to determine the final profit. The text also discusses the impact of taxes and other deductions on the net income. It provides a step-by-step guide on how to calculate these values and how to report them on the appropriate tax forms.

4. The final part of the document discusses the importance of keeping all financial records for a certain period of time. It mentions that these records are not only needed for tax purposes but also for legal and business reasons. The document provides a checklist of items that should be kept, such as receipts, invoices, and bank statements, and offers advice on how to store and organize these records effectively.

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AN ACT

relating to nitrogen oxide allowance allocation adjustments and the incorporation of modifications to federal rules under the state implementation plan.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (b), (c), and (e), Section 382.0173, Health and Safety Code, are amended to read as follows:

(b) The commission may require emissions reductions in conjunction with implementation of the rules adopted under Subsection (a) only for electric generating units. The commission shall make permanent allocations that are reflective of the allocation requirements of 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, at no cost to units as defined in 40 C.F.R. Sections [~~Section~~] 51.123 and 60.4102 using the United States Environmental Protection Agency's allocation method as specified by 40 C.F.R. Section 60.4142(a)(1)(1) [~~as issued by that agency on May 12, 2005,~~] or 40 C.F.R. Section 96.142(a)(1)(1) [~~as issued by that agency on May 18, 2005,~~] as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c). The commission shall maintain a special reserve of allocations for new units commencing operation on or after January 1, 2001, as defined by 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and

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1 40 C.F.R. Subpart HHHH of Part 60, as applicable, with the exception
2 of nitrogen oxides which shall be allocated according to the
3 additional requirements of Subsection (c).

4 (c) Additional requirements regarding NOx allocations:

5 (1) The commission shall maintain a special reserve of
6 allocations for nitrogen oxide of 9.5 percent for new units.
7 Beginning with the 2015 control period, units shall be considered
8 new for each control period in which they do not have five years of
9 operating data reported to the commission prior to the date of
10 allocation for a given control period. Prior to the 2015 control
11 period, units that commenced operation on or after January 1, 2001,
12 will receive NOx allocations from the special reserve only.

13 (2) Nitrogen oxide allowances shall be established for
14 the 2009-2014 control periods for units commencing operation before
15 January 1, 2001, using the average of the three highest amounts of
16 the unit's adjusted control period heat input for 2000 through
17 2004, with the adjusted control period heat input for each year
18 calculated as follows:

19 (A) if the unit is coal-fired during the year,
20 the unit's control period heat input for such year is multiplied by
21 90 percent;

22 (B) if the unit is natural gas-fired during the
23 year, the unit's control period heat input for such year is
24 multiplied by 50 percent; and

25 (C) if the fossil fuel fired unit is not subject
26 to Paragraph [~~Subparagraph~~] (A) or (B) of this subdivision
27 [~~paragraph~~], the unit's control period heat input for such year is

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1 multiplied by 30 percent.

2 (3) Before the allocation date specified by EPA for
3 the control period beginning January 1, 2018 [2016], and every five
4 years thereafter, the commission shall adjust the baseline for all
5 affected units using the average of the three highest amounts of the
6 unit's adjusted control period heat input for periods one through
7 five of the preceding nine [seven] control periods, with the
8 adjusted control period heat input for each year calculated as
9 follows:

10 (A) for units commencing operation before
11 January 1, 2001:

12 (1) if the unit is coal-fired during the
13 year, the unit's control period heat input for such year is
14 multiplied by 90 percent;

15 (11) if the unit is natural gas-fired
16 during the year, the unit's control period heat input for such year
17 is multiplied by 50 percent; and

18 (111) if the fossil fuel fired unit is not
19 subject to Subparagraph (1) or (11) [~~Subdivision (3)(A)(1) or~~
20 ~~(3)(A)(11)~~] of this paragraph [~~subparagraph~~], the unit's control
21 period heat input for such year is multiplied by 30 percent; and[-]

22 (B) for units commencing operation on or after
23 January 1, 2001, in accordance with the formulas set forth by USEPA
24 in 40 C.F.R. 96.142 with any corrections to this section that may be
25 issued by USEPA prior to the allocation date.

26 (e) In adopting rules under Subsection (a), the commission
27 shall incorporate any modifications to the federal rules cited in

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1 this section that result from:

2 (1) a request for rehearing regarding those rules that
3 is filed with the United States Environmental Protection Agency;

4 ~~or~~ (2) ~~or from~~ a petition for review of those rules that
5 is filed with a court; or

6 (3) a final rulemaking action of the United States
7 Environmental Protection Agency.

8 SECTION 2. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2007.

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See

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David Newburn
President of the Senate

Jim Caddick
Speaker of the House

I hereby certify that S.B. No. 1672 passed the Senate on April 12, 2007, by the following vote: Yeas 31, Nays 0.

Daisy Spaw
Secretary of the Senate

I hereby certify that S.B. No. 1672 passed the House on April 27, 2007, by the following vote: Yeas 133, Nays 0, two present not voting.

Robert Nancy
Chief Clerk of the House

Approved:

10 MAY '07

Date

RICK PERCY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
6:20 PM O'CLOCK

MAY 10 2007

Roger Whinnif

