

The commission proposes new §115.950, concerning Emissions Trading, in Subchapter J (Administrative Provisions), and revisions to the State Implementation Plan regarding the proposal.

EXPLANATION OF PROPOSED RULE

Emissions banking and trading is an innovative approach to regulatory compliance, allowing a source to meet emission control requirements by purchasing and using credits generated by another source in the same ozone nonattainment area which has reduced its emissions below the level required by rule or permit. Prior to this proposal, banking and trading were not an option to meet the Chapter 115 volatile organic compound (VOC) control requirements, with the exception of limited intrasource trading available under §§115.910-115.916, regarding Alternate Means of Control. This new §115.950 enables sources to meet the VOC emission control requirements of Chapter 115, in whole or in part, by obtaining reduction credits in accordance with §101.29 of this title, regarding Emissions Banking and Trading. Concurrent with the §115.950 proposal, existing §101.29 is being repealed and new §101.29 is being proposed. The new section retains provisions that allow emission reduction credits (ERCs) and mobile emission reduction credits (MERCs) to be used for purposes of nonattainment offsetting. The new section will expand uses of ERCs to include compliance with reasonably available control technology requirements and to allow for the creation and use of discrete emission reduction credits (DERCs) and mobile discrete emission reduction credits (MDERCs). Also, revisions to Chapter 117 of this title, concerning Control of Air Pollution from Nitrogen Compounds, are being proposed concurrent with this proposal which provide more flexible trading options for sources of nitrogen oxides.

New §115.950 allows sources to meet Chapter 115 VOC control requirements by applying ERCs, MERCs, DERCs, or MDERCs. Please refer to the §101.29 proposal for a more complete description of these types of credits, and the requirements for their generation and use.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section as proposed is in effect, there will be no significant fiscal implications anticipated for state and local governments as a result of administration or enforcement of the section. The proposal adds trading as an alternative means of compliance with the provisions of Chapter 115, thereby providing more flexibility and enabling sources to comply in a more cost-effective manner.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of implementing the section will be the ability to satisfy Federal Clean Air Act Amendments and the United States Environmental Protection Agency requirements, and potential early VOC emission reductions in ozone nonattainment areas. Also, proposed §101.29, concerning Emissions Banking and Trading, requires that 10% additional credits beyond the source's compliance obligation be retired as an environmental benefit. Therefore, the use of trading to comply with the requirements of Chapter 115 will result in additional VOC reductions which may be necessary for the timely attainment of the ozone standard. As the program is voluntary, there are no

economic costs anticipated for small businesses, persons, or businesses required to comply with this section as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the new rule is to provide an alternative, cost-effective method of complying with the VOC control requirements of Chapter 115. Promulgation and enforcement of this rule will not affect private real property.

COASTAL MANAGEMENT PLAN

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies. This proposal provides a flexible, cost-effective alternative approach to rule compliance by

allowing emissions banking and trading. If adopted, it will not authorize any new sources of air emissions. Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on July 8, 1997, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96158-101-AI. Comments must be received by 5:00 p.m., July 10, 1997. For further information, please contact Mike Magee, Air Policy and Regulations Division, (512) 239-1511.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The new section is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new section implements Health and Safety Code, §382.017.

SUBCHAPTER J : ADMINISTRATIVE PROVISIONS

EMISSIONS TRADING

§115.950. Emissions Trading.

An owner or operator may meet the emission control requirements of this chapter, in whole or in part, by obtaining emission reduction credits or discrete emission reduction credits in accordance with §101.29 of this title (relating to Emission Credit Banking and Trading).

The agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 28, 1997.