

Petitions to Change the List of Inelastic Area Sources For the Purpose of Generating Emissions Credits September 20, 2017

Statutory Requirements

30 Texas Administrative Code (TAC) Chapter 101, Subchapter H

§101.303. Emission Reduction Credit Generation and Certification.

(a) Emission reduction strategy.

(2) An ERC may not be generated from the following strategies:

(D) reductions from the shutdown of specific types of inelastic area sources that are driven by population needs. The executive director shall maintain a public list of area source categories determined to be inelastic categories.

(i) The list of inelastic area source categories will be made available to the public on the commission's website.

(ii) Any person may submit a written petition requesting that the executive director add or remove a category from the list.

(iii) Within 60 days of receiving a petition under clause (ii) of this subparagraph, the executive director shall prepare a draft revised list or propose denial of the petition by preparing a draft denial statement supporting denial of the petition.

(iv) The executive director may on its own motion propose revisions to the list by preparing a draft revised list.

(v) The executive director's draft revised list, or draft denial statement, under clauses (iii) and (iv) of this subparagraph shall be made available for public comment for 30 days.

(vi) Within 30 days of the public comment period ending, the executive director shall issue a proposed final list or a proposed final denial statement for consideration and approval by the commission.

(vii) The commission shall approve, modify, or deny the proposed revisions to the list of inelastic area sources categories made by the executive director under clauses (iii) and (iv) of this subparagraph.

(viii) The commission shall approve, modify, or remand to the executive director for further consideration a recommendation to deny a petition submitted by the executive director under clause (iii) of this subparagraph.

(ix) The shutdown of an area source category that falls into one of the categories on the list under clause (i) of this subparagraph is ineligible for emissions reduction credit generation.

Background

The initial list of inelastic area source categories was established via the notice and comment rulemaking for 30 TAC Chapter 101, Subchapter H as adopted on September 20, 2017. The list established by this rulemaking is made available to the public on the agency's website at <https://www.tceq.texas.gov/airquality/banking/banking.html>.

Parties who wish to be assured of notification regarding potential changes to the inelastic source list should register for “Gov Delivery” notifications at <https://public.govdelivery.com/accounts/TXTCEO/subscriber/new>. “Gov delivery” notifications will be sent to those registered for the Emissions Banking and Trading listserv whenever any changes to the inelastic source list are available for public review or are finalized after commission review.

Process for Future List Revisions

Any person may petition the executive director to request a change to the list of inelastic area source categories.

Petitions requesting that the executive director add or remove a category from the list of inelastic area source categories must:

1. be submitted in writing to: The Emissions Banking and Trading Program, Mail Code 206, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087;
2. state the name and address of the petitioner; and
3. include a brief explanation of the proposed change to the list, a statement of the rationale or reasoning for the proposed change; and an allegation of injury or inequity that could result from the failure to adopt the proposed change.

A petition may be denied for failure to comply with the requirements of this process.

Upon receipt of a petition requesting a change to the list of inelastic area source categories, the following will occur:

1. Within 60 days after receipt of a petition, the executive director will prepare a draft revised list or a draft petition denial statement.
2. The executive director will make the draft revised list or draft petition denial statement available for public comment for 30 days at <https://www.tceq.texas.gov/airquality/banking/banking.html>.
3. Within 30 days of the public comment period ending, the executive director will present a proposed final list or a proposed final denial statement for consideration and approval by the commission. The proposed final list or denial statement will be scheduled for commission consideration at a commission agenda and made available to the public via normal commissioner agenda back-up procedures.
4. The commission will approve, modify, or deny the executive director’s proposed revisions to the list of inelastic area sources categories.
5. The official list of inelastic area source categories at <https://www.tceq.texas.gov/airquality/banking/banking.html> will be updated following any commission action regarding this list.

The executive director may propose revisions to the list of inelastic area source categories. Should this occur, the public comment and commission review process described in steps (2) through (5) above will occur.