

The commission adopts new §115.950, concerning Emissions Trading, in Subchapter J (Administrative Provisions), and revisions to the State Implementation Plan. New §115.950 is adopted without changes to the proposed text as published in the June 10, 1997 issue of the *Texas Register* (22 TexReg 5651) and will not be republished.

EXPLANATION OF ADOPTED 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 adoption, 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 Concurrent with the §115.950 adoption, existing §101.29 is repealed and new §101.29 is adopted. 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 expands 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 adopted concurrent with this adoption 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 adoption for a more complete description of these types of credits, and the requirements for their generation and use.

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 this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), 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 §505.22(a), 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 applicable CMP goals and policies. The commission has reviewed this rulemaking action for consistency, and has determined that it is consistent with the applicable CMP goals and policies because the action provides a flexible, cost-effective alternative approach to rule compliance by allowing emissions banking and trading. This rulemaking action will not authorize any new sources of air emissions.

PUBLIC HEARING AND COMMENTERS

A public hearing was held in Austin on July 8, 1997. Nine organizations and one individual submitted comments during the public comment period, which closed on July 10, 1997. Baker & Botts, Exxon Chemical Company, Houston Lighting & Power, and Texas Chemical Council supported the proposal. The United States Environmental Protection Agency generally supported the proposal, but submitted comments recommending various changes. Environmental Defense Fund, Sierra Club Lone Star Chapter, Texas Center for Policy Studies, and an individual generally opposed the proposal. No comments were received that specifically addressed provisions of Chapter 115. Evaluation of testimony regarding general banking and trading issues can be found in the Chapter 101 adoption, published concurrently with this adoption.

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code (Vernon 1992); 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; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

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 adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 19, 1997.