

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §115.950, Emissions Trading. This amendment is also proposed as a revision to the Texas state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Section 115.950 currently refers to 30 TAC §101.29, Emissions Credit Banking and Trading, as a method of meeting emission requirements of Chapter 115. In concurrent rulemaking, §101.29 would be repealed and its requirements transferred and amended in new Chapter 101, Subchapter H, Divisions 1 and 4. This rulemaking would amend §115.950 to cite the correct cross-reference. The amended section would require the user of credits to obtain additional emission reduction credits or achieve lower actual emissions if new lower volatile organic compound (VOC) emission specifications are established by future amendments to this chapter.

The commission solicits comment on additional flexibilities relating to rule content and implementation which have not been addressed in this or other concurrent rulemakings. These flexibilities may be available for both mobile and stationary sources. Additional flexibilities may also be achieved through innovative and/or emerging technology which may become available in the future. Additional sources of funds for incentive programs may become available to substitute for some of the measures considered here.

SECTION BY SECTION DISCUSSION

Section 115.950 would be amended to change the title to “Use of Emissions Credits for Compliance” from “Emissions Trading” to more clearly reflect the language in §115.950, which discusses how to use emission reduction credits for alternative compliance, not how to trade emission reduction credits.

The proposed §115.950(a) removes the reference to §101.29 and corrects the reference to Chapter 101, Subchapter H, Division 1, Emission Reduction Credit Banking and Trading, or Division 4, Discrete Emission Reduction Banking and Trading. In addition, the amendment clarifies that emission reduction credits (ERCs), mobile emission reduction credits (MERCs), discrete emission reduction credit (DERCs), or mobile discrete emission reduction credit (MDERCs) may be used to meet any of the requirements of Chapter 115. The term "RC" refers to an ERC, MERC, DERC, or MDERC.

The proposed §115.950(b) adds language requiring that owners or operators using Chapter 101, Subchapter H, Division 1 or Division 4 to meet the emission control requirements of Chapter 115 must obtain additional RCs or reduce actual emissions if any lower VOC emission specification is established by future amendments to Chapter 115.

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal implications for any unit of state and local government as a result of administration or enforcement of the proposed amendment.

The proposed amendment will achieve administrative consistency with amendments to Chapter 101 proposed in concurrent rulemaking by correcting a cross-reference, and repealing and transferring requirements relating to Emission Credit Banking and Trading.

The proposed amendment does not add regulatory requirements, but is being proposed to allow compliance flexibility in meeting current or future VOC emission limitations. The proposed amendment clarifies that ERCs, MERCs, DERCs, or MDERCs may be used to meet any of the requirements for meeting emission requirements. Additionally, the proposed amendment adds language to describe how owners or operators using emission credit banking and trading to meet the emission control requirements must obtain additional emission credits or reduce actual emissions if any lower VOC emission specification is established by future amendments.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of implementing the amendment will be the increased compliance with VOC emissions limitations through increased rule flexibility.

There are no anticipated fiscal impacts to persons and businesses as a result of implementation of the proposed amendment, because the proposed action is administrative in nature. The proposed amendment will correct a cross-reference with Chapter 101, clarify the use of ERCs, MERCs, DERCs, and MDERCs, and will add language specifying that owners must obtain additional emission credits or lower actual emissions if stricter VOC requirements are implemented through future amendments.

SMALL AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of administration or enforcement of the proposed amendment. The proposed action is administrative in nature. The proposed amendment will correct a cross reference with Chapter 101, clarify the use of ERCs, MERCs, DERCs, and MERCs, and will add language specifying that owners must obtain additional emission credits or lower actual emissions if stricter VOC requirements are implemented through future amendments to Chapter 115.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225. The commission has determined that the proposed amendment to Chapter 115 does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission is proposing the amendment to achieve administrative consistency with amendments to Chapter 101 proposed in concurrent rulemaking. The proposed amendment to Chapter 115 does not add regulatory requirements, but is proposed to allow compliance flexibility in meeting current or future VOC emission limitations in Chapter 115. In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of

state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rule does not meet any of the four applicability requirements. Specifically, the emission banking and trading requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA under the Federal Clean Air Act (FCAA), §7409, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established those standards. Under the FCAA, §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through a control program directed to sources of the pollutants involved. This proposal is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS, as authorized under the TCAA, §382.012 (concerning State Air Control Plan). This proposal is intended to help bring the HGA ozone nonattainment area into compliance. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law unless specifically required by federal law, nor exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency, but were specifically developed to meet the air quality standards established under federal law as NAAQS. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the proposed rule. The following is a summary of that assessment. The commission is proposing the amendment to achieve administrative consistency with amendments to Chapter 101 proposed in concurrent rulemaking. The proposed amendment to Chapter 115 does not add regulatory requirements, but is proposed to allow compliance flexibility in meeting current or future VOC emission limitations in Chapter 115. The proposed amendment does not affect private real property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, the proposed section does not meet the definition of a takings under Texas Government Code, §2007.002(5).

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined 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 Resources 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 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed rule is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the

policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas.

The proposed amendment to Chapter 115 does not add regulatory requirements, but is proposed to allow compliance flexibility in meeting current or future VOC emission limitations in Chapter 115.

Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Sources that currently have §115.590 listed in their federal operating permit would not be required to amend the permit in response to this amendment. However those sources that wish to use RCs to comply with this chapter must revise their operating permit, consistent with the process in 30 TAC Chapter 122, to include the revised §115.590 requirements for each emission unit affected by §115.590 at their site.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations:

September 18, 2000, 10:00 a.m., Lone Star Convention Center, 9055 Airport Road (FM 1484),

Conroe; September 18, 2000, 7:00 p.m., Lake Jackson Civic Center, 333 Highway 332 East, Lake

Jackson; September 19, 2000, 10:00 a.m. and 7:00 p.m., George Brown Convention Center, 1001

Avenida de Las Americas, Houston; September 20, 2000, 9:00 a.m., VFW Hall, 6202 George Bush

Drive, Katy; September 20, 2000, 6:00 p.m., East Harris County Community Center, 7340 Spencer,

Pasadena; September 21, 2000, 10:00 a.m., Southeast Texas Regional Airport Media Room, 6000

Airline Drive, Beaumont; September 21, 2000, 2:00 p.m., Amarillo City Commission Chambers, City

Hall, 509 East 7th Avenue, Amarillo; September 21, 2000, 6:00 p.m., Charles T. Doyle Convention Center, 21st Street at Phoenix Lane, Texas City; September 22, 2000, 10:00 a.m., Dayton High School, 2nd Floor Lecture Room, 3200 North Cleveland Street, Dayton; September 22, 2000, 11:00 a.m., El Paso City Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso; September 22, 2000, 2:00 p.m., North Central Texas Council of Governments, 2nd Floor Board Room, 616 Six Flags Drive, Suite 200, Arlington; and September 25, 2000, 10:00 a.m., Texas Natural Resource Conservation Commission, 12100 North I-35, Building E, Room 201S, Austin. The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin one hour prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit will be established at each hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during each hearing; however, agency staff members will be available to discuss the proposal one hour before each hearing, and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearings, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Heather Evans, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-4808, or emailed to siprules@tnrcc.state.tx.us. All comments should reference Rule Log Number 1998-089-

101-AI. Comments must be received by 5:00 p.m., September 25, 2000. For further information, please contact Matthew R. Baker at (512) 239-1091 or Beecher Cameron at (512) 239-1495.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA, and 42 United States Code, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed amendment implements TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; and §382.012, relating to State Air Control Plan.

**CHAPTER 115: CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC
COMPOUNDS**

SUBCHAPTER J: ADMINISTRATIVE PROVISIONS

DIVISION 4: EMISSIONS TRADING

§115.950

§115.950. Use of Emissions Credits for Compliance [Emissions Trading].

(a) An owner or operator may meet the emission control requirements of this chapter, in whole or in part, by obtaining emission reduction credits (ERCs), mobile emission reduction credits (MERCs), [or] discrete emission reduction credits (DERCs), or mobile discrete emission reduction credits (MDERCs) in accordance with this section and Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading) or Chapter 101, Subchapter H, Division 4 of this title (relating to Discrete Emission Reduction Banking and Trading). For the purposes of this section, the term "RC" refers to an ERC, MERC, DERC, or MDERC, whichever is applicable. [§101.29 of this title (relating to Emission Credit Banking and Trading)].

(b) Any lower volatile organic compound (VOC) emission specification established under this chapter for the unit or units using RCs shall require the user of the RCs to obtain additional RCs in accordance with Chapter 101, Subchapter H, Division 1 of this title or Chapter 101, Subchapter H, Division 4 of this title and/or otherwise reduce emissions prior to the effective date of such rule change.

The owner or operator of the unit(s) currently using RCs shall calculate the necessary emission reductions per unit as follows.

Figure: 30 TAC §115.950(b)

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$$\Delta E = \left[LA \times (ER_{old} - ER_{new}) \times \frac{d}{2000} \right]$$

Where:

- ΔE = the differential of emissions
- LA = the maximum level of activity
- ER_{old} = the existing VOC emission rate for the affected unit in lb per unit of activity
- ER_{new} = the new VOC emission rate for the affected unit in lb per unit of activity
- d = (i) to calculate annual emission reductions, $d = 365$
(ii) to calculate emission reductions for the remainder of a control period, $d =$ the number of days remaining in the control period

