

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 21, 2014

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Steve Hagle, P.E., Deputy Director  
Office of Air

**Docket No.:** 2014-0234-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 101, General Air Quality Rules  
Emissions Banking and Trading Updates  
Rule Project No. 2014-007-101-AI

**Background and reason(s) for the rulemaking:**

This rulemaking would revise four divisions of the Emission Banking and Trading (EBT) Program rules. These programs are market-based and allow the certification, use, and trading of either allowances based on historical emissions or credits based on emission reductions for offsets in Nonattainment New Source Review permits and for compliance with various air rules.

The proposed rule changes include an amendment that would change the Discrete Emission Reduction Credit (DERC) limit in the Dallas-Fort Worth 1997 ozone nonattainment (DFW) area from an annually calculated value to a fixed value. This amendment is linked to revisions for the state implementation plan (SIP) for this area. The other revisions include amendments to increase the flexibility of using allowances as offsets, increase flexibility for the generation of credits, and better synchronizing the four divisions. Amendments for updated federal programs would be made to the emission reduction credit (ERC) and DERC Programs. The amendments would remove outdated and redundant language, improve clarity, and add, repeal, and amend definitions and provisions. If adopted, the rule revisions would be submitted to the United States Environmental Protection Agency (EPA) as a revision to the SIP.

**Scope of the rulemaking:**

The rulemaking would amend or repeal most sections in Chapter 101, Subchapter H, Divisions 1, 3, 4, and 6. Division 1 covers the ERC program; Division 3 is the Mass Emission Cap and Trade (MECT) Program; Division 4 is the DERC Program; and Division 6 is the Highly Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) Program.

**A.) Summary of what the rulemaking will do:**

The amendments for both ERC and DERC Programs would clarify how reductions are surplus to the SIP; update federal standard changes; repeal provisions for generating credits from area and mobile sources and for use by mobile sources; clarify provisions for substituting credits from one ozone precursor for another; remove the requirement to submit original certificates for trades and use; revise the equations for generating credits;

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and clarify that limitations on protocols apply to both generation and use. For the ERC Program only, the revisions would extend the deadline for applying to certify credits; amend rounding procedures for generation and use; and allow HECT sources to generate volatile organic compound ERCs from HRVOC reductions if HECT allowances are retired. For the DERC Program only, the revisions would make the limit for the DFW area a fixed value and clarify that it only applies to nitrogen oxides DERCs.

The amendments for both MECT and HECT Programs would clarify the use of allowances as offsets; allow sites to stop reporting when the authorizations for all applicable facilities are voided; clarify data substitution for reports when emissions are not determined per Chapter 115 or 117 and require deducting 10% more allowances if data substitution results from noncompliance; add procedures for changing site ownership; and revise equations for the allocation of allowances. For the MECT Program only, the revisions would provide a deadline for acquiring allowances to cover deficits; remove the equation for data substitution; and, for MECT compliance, clarify DERC use is limited to 10,000 tons each year (except DERCs previously generated from mobile sources) and that that use of volatile organic compound DERCs must meet the provisions for inter-pollutant use. For the HECT Program only, the revisions would correct an error by removing the requirement to report emission events and add deadlines for transferring allowance for compliance.

**B.) Scope required by federal regulations or state statutes:**

None of the changes are required by federal rules or state statutes.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

All the proposed revisions are staff recommendations. Although most of the sections would be substantially rewritten for clarity, most of the changes are not substantive. However, there are also substantive revisions proposed, as described above.

**Statutory authority:**

The rulemaking would be proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The rulemaking would also be proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable

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the commission to develop an emissions inventory; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The rulemaking would also be proposed under Federal Clean Air Act, 42 United States Code, §7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The proposed rulemaking will implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, and 382.017.

**Effect on the:**

**A.) Regulated community:**

The rule amendments would increase flexibility of the programs overall but make some provisions more stringent. The proposed rules are rewritten for clarity and to better reflect how the programs operate. The revisions may increase the certification of credits, but would also help ensure that the certification and use of credits improve air quality. Certifying credits from emission reductions by area and mobile sources would no longer be allowed. Emissions from these sources are normally not reported to the Emissions Inventory (EI). Use by mobile sources would no longer be allowed because rules allowing such use have been repealed. Increased flexibility for using allowances as offsets would be provided. Inter-pollutant use of credits would be clarified to be consistent with current guidance. In the DFW 1997 ozone nonattainment area, a fixed limit would allow better planning of future use of nitrogen oxides DERCS. The additional 10% penalty for data substitution because of noncompliance would help ensure that the reported emissions are not less than the actual emissions based on monitoring and testing requirements of Chapters 115 and 117. No significant fiscal impact is expected from the revisions, and cost savings may result from some. Some fiscal impact may arise from some changes, such as the additional 10% deduction of allowances in the HECT and MECT Programs if data substitution is used because of noncompliance with Chapter 115 or 117, reduced times to locate HECT allowances, the change in the rounding procedures for ERCs, etc.

**B.) Public:**

These programs historically have contributed to improved air quality in Texas. The increased flexibility should increase the utility of the programs, while certain increases in stringency would provide increased benefits to air quality. The increased flexibility for the generation and use of credits would allow companies more options for meeting compliance requirements, which may provide economic benefits in the nonattainment areas.

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**C.) Agency programs:**

No significant impact is expected for agency programs for the rules as proposed. Although workloads may increase and certain processing times would be shortened, program staff should be able to meet the proposed changes. Changes to the EBT database would likely be needed for the use of allowances as offsets and to implement the additional 10% allowance deductions when using alternative data in the HECT and MECT Programs because of noncompliance with Chapter 115 or 117.

**Stakeholder meetings:**

Seven open-participation stakeholder meetings were held in Houston, Fort Worth, and Austin between February 27 and March 5, 2014. The initial concepts for the rulemaking were discussed and stakeholder input was requested, especially on how credits could be generated by area and mobile sources. A total of 49 persons from industry, government, and consulting firms participated. In the month after the meetings, stakeholders (including several who did not attend a meeting) provided comments and suggestions for rule changes. Different stakeholders suggested various potential changes, some of which are included in the revisions. Most of the stakeholders that commented were opposed to deleting ERC and DERC generation by area sources, but no one provided input on how the emission reductions could be surplus to the SIP. Some stakeholders indicated that no rule changes should be made other than those they supported, while the EPA suggested significant changes throughout the divisions. Stakeholder concerns were addressed in several rule revisions, but practical ways to incorporate others were not found.

**Potential controversial concerns and legislative interest:**

Historically, there has been legislative interest on increasing the flexibility of credit generation, but no specific legislative interest was expressed concerning the proposals. Based on stakeholder input, repealing specific provisions for credit generation by area sources is likely the most controversial change proposed. The change is proposed because of the significant regulatory and financial responsibility associated with implementing an area source program consistent with federal requirements. The changes would not prevent small sources from certifying reductions from reported emissions but would make it clearer that the specific emissions must be reported to be eligible. Additionally, some stakeholders were concerned with amending provisions outside of the changes they supported because of possible risk of the EPA not approving the provisions. However, staff believes that the provisions would be improved by the changes.

**Will this rulemaking affect any current policies or require development of new policies?**

The rulemaking would incorporate existing guidance for the inter-pollutant use of credits and the use of allowances for offsets into the rules but would have no impact on any policies.

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

This rulemaking is not required by federal regulation or state statute, so the proposed changes are not mandatory. However, the proposed changes should make the rules clearer and the programs more efficient. The only part of the rulemaking that would have a direct consequence if not proposed is the revision of the DERC limit for the DFW 1997 ozone nonattainment area. This change is reflected in the SIP revisions that are also being proposed at the same time.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** December 10, 2014

**Anticipated *Texas Register* publication date:** December 26, 2014

**Anticipated public hearings dates:** January 15, 2015 and January 20, 2015

**Anticipated public comment period:** December 26, 2014 to January 30, 2015

**Anticipated adoption date:** June 3, 2015

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**Attachments**

None

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