

Texas Commission on Environmental Quality

Interoffice Memorandum

Date: May 15, 2026

To: Kelly Keel, Executive Director

Thru: Richard C. Chism, Director *RCC*
Office of Air

From: Samuel Short, Division Deputy Director
Air Permits Division

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 101, General Air Quality Rules

Suggested short title: Emissions Banking and Trading Rule Updates

Introduction and reason(s) for the rulemaking:

In 2023, the Texas Commission on Environmental Quality (TCEQ or commission) conducted a review of 30 Texas Administrative Code (TAC) Chapter 101, General Air Quality Rules, in accordance with the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. During this review of Chapter 101, select portions of Subchapter H, Emissions Banking and Trading were identified as outdated or obsolete. The rules in Subchapter H address the generation, banking, and use of emission reduction credits (ERC) and discrete emission reduction credits (DERC); the banking and trading of emissions allowances for grandfathered electrical generating units; and the Mass Emissions Cap and Trade (MECT) Program and Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) Program in the HGB area. The subchapter also includes rules associated with the federal Clean Air Interstate Rule (CAIR).

Additionally, in early 2026, the Texas Regulatory Efficiency Office (TREO) tasked the commission with conducting a review of agency rules to identify outdated or redundant regulations that should be eliminated. One additional rule within Subchapter H was identified as obsolete during the 2026 review. It is recommended that the commission amend Chapter 101, Subchapter H to repeal rules that are no longer necessary or no longer serve their original purpose.

Scope of the proposed rule:

The rulemaking would repeal the following sections of 30 TAC Chapter 101, Subchapter H that have been found to be outdated or obsolete:

- The requirements in §101.303(d)(1)(D) and §101.304(e)(1)(C) in Division 1, Emission Credit Program are no longer necessary because the application deadline exceptions made in respect to area sources and mobile sources have all expired.
- The requirement in §101.335(c) in Division 2, Emissions Banking and Trading Allowances, is no longer necessary because the allowance trade prohibition date has passed. The requirement to include trade summaries in annual reports in §101.336(b)(2) is no longer needed because trade summaries are readily available in the agency database.
- In Division 3, Mass Emissions Cap and Trade Program, the provision in §101.354(c) is unnecessary because step downs in the MECT Program have occurred and the applicable deadlines have passed. Additionally, the requirement in §101.359(a)(3) to include trade summaries in annual reports is no longer needed because trade summaries are readily available in the agency database.

- Section 101.376(f)(1) of Division 4, Discrete Emission Credit Program is no longer needed because the limitation of 42.8 tons per day for use of NO_x DERCs in the affected counties only applied to the year 2015.
- In Division 6, Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program, the requirement in §101.400(a)(3) to include trade summaries in annual reports is unnecessary because trade summaries are readily available in the agency database. Additionally, §101.401 is unnecessary because the effective dates referenced in this section have passed.
- All the rules in Subchapter H, Division 7, Clean Air Interstate Rule are obsolete and can be repealed, because the U.S. Environmental Protection Agency replaced CAIR with the Cross-State Air Pollution Rule in 2011.

Once adopted, the amended rules will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan.

A.) Scope required by federal regulations or state statutes:

This rulemaking is necessary to implement the findings of the 2023 quadrennial rule review of Chapter 101, as established by Texas Government Code, §2001.039.

B.) Additional staff recommendations:

Staff recommends additional minor rule revisions to eliminate rules identified in the 2026 TREO review to maintain the most up to date rules. Staff also request authority to adjust rule numbering and correct cross references as needed to account for the repeal of the selected rules.

Potential controversial concerns and legislative interest:

None.

Potential alternatives:

TCEQ could elect not to do rulemaking to repeal the obsolete sections of Chapter 101, Subchapter H. This action would leave outdated rules in place as reference points for historical purposes, but that would not be consistent with state or agency policy to repeal unnecessary, outdated, or redundant rules.

Effect on the:

A.) Regulated community: There is likely no effect on the regulated community as many of the sections that will be repealed contain deadlines and provisions that are long outdated and likely not in use by many active facilities. However, there could be a potential interest in this rulemaking by the entities using the Emissions Banking and Trading program.

B.) Public: There is no anticipated effect on the public as the changes to these rules do not directly impact human health or air quality.

C.) Agency programs: There is no expected significant impact on the Emissions Banking and Trading (EBT) team. EBT forms could potentially need updates.

Proposed schedule and constraints:

Anticipated Proposal Date: November 18, 2026

Anticipated Public Comment Period: December 4, 2026 - January 6, 2027

Anticipated Adoption Date: May 12, 2027

Planned Stakeholder involvement:

This rulemaking is not expected to be controversial, so no stakeholder meeting is planned. The proposed rule changes will undergo the required 30-day public comment period, and a public hearing will be offered.

Public Involvement Plan

A Public Involvement Plan will be prepared for this rulemaking.

Alternative Language Requirements

The Plain Language Summary and Commission Agenda notices will be made available in English and Spanish. Newspaper notices of the public hearing will be published in English and Spanish in at least three major cities. If possible, the Spanish-language notices will be published in Spanish-language newspapers in the relevant cities. TCEQ will provide Spanish-language interpreters at the public hearing upon request.

Statutory authority:

The rulemaking would be proposed under Texas Health and Safety Code, Texas Clean Air Act:

- §382.002, Policy and Purpose;
- §382.011, General Powers and Duties;
- §382.012, State Air Control Plan;
- §382.014, Emission Inventory;
- §382.016, Monitoring Requirements; Examination of Records;
- §382.017, Rules;
- §382.0173, Adoption of Rules Regarding Certain State Implementation Plan Requirements and Standards of Performance for Certain Sources;
- §382.021, Sampling Methods and Procedures;
- §382.023, Orders;
- §382.036, Cooperation and Assistance;
- §382.051, Permitting Authority of Commission; Rules;
- §382.0518, Preconstruction Permit;
- §382.054, Federal Operating Permit; and
- §382.061, Delegation of Powers and Duties.

The amended sections would also be proposed under the commission’s general authority under Texas Water Code:

- §5.102, General Powers;
- §5.103, Rules;
- §5.105, General Policy; and
- §5.122, Delegation of Uncontested Matters to Executive Director.

The amended sections would also be proposed under the commission’s general authority under Texas Utilities Code:

- §39.264, Emissions Reductions of “Grandfathered Facilities.”

The amended sections would also be proposed under the commission’s general authority under the Federal Clean Air Act:

- 42 USC §§7401 *et. seq.*; and
- 42 USC §7410(a)(2)(A).

Direction and Guidance: [To be completed at ED briefing]

Rule Project number: 2026-022-101-AI

Electronic cc: Executive Director’s office

Executive Director
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Grant McLoughlin
Ryan Vise
Gwen Ricco
Richard C. Chism
Samuel Short
Grace Hosek
Beryl Thatcher
Amy Browning

Attachments: none

NOTE: *TR will submit electronic notice to the following after ED Briefing:*
Office of General Counsel
Office of Public Interest Counsel