

Regulation to Establish a Statewide Methodology To Calculate the Value of Emission Reduction Credits That Are Used Interchangeably

California Air Resources Board

The proposed regulation would be incorporated as new section 91500 through 91508 of Subchapter 5.6, Chapter 1, Division 3, Title 17, California Code of Regulations, to read as follows:

Subchapter 5.6 INTERCHANGEABLE AIR POLLUTION EMISSION REDUCTION CREDITS

Article 1. Scope and Policy; Definitions

91500. Purpose.

This regulation establishes a statewide methodology for use by air pollution control and air quality management districts (Districts) when calculating the value of emission reduction credits from stationary, mobile, or area sources. As such, this regulation (1) provides a uniform exchange mechanism for stationary, mobile, and area source credits; and (2) provides for the use of credits as a compliance alternative for meeting specified District control requirements. The regulation is intended to ensure that interchangeable credits represent verified emission reductions that are real, permanent, quantifiable, enforceable, and surplus to those emission reductions which are needed to comply with existing requirements and with District air quality plans.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39605, 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

91501. Definitions.

The following definitions shall apply in this sub-chapter.

(a) "Air quality plan" includes, but is not limited to, attainment, rate-of-progress, and maintenance plans adopted by Districts pursuant to State requirements specified in Chapter 10 (commencing with section 40910) of Part 3 of Division 26 of the Health & Safety Code (the California Clean Air Act), and federal requirements specified in the Clean Air Act governing the State Implementation Plan (SIP).

(b) "Certified" means an interchangeable credit has been evaluated by the air pollution control officer of the affected District pursuant to the requirements of this sub-chapter and found to comply with all applicable District, state, and federal requirements.

- (c) “Credit generation period” means the period of time, specified by year, in which interchangeable credits are generated.
- (d) “Emission reduction duration” means the length of time during which the action generating the emission reduction credit results in verifiable and surplus emission reductions.
- (e) “Hazard Index” means the ratio of the concentration of a toxic pollutant with non-cancer health effects and the reference exposure level for that pollutant.
- (f) “Interchangeable credit” means an emission reduction credit generated from a stationary, mobile, or area source that can be used, traded, or banked among programs and/or source categories as specified in this regulation and in accordance with state and federal law.
- (g) “Reference Exposure Level” means a concentration level at or below which no adverse health effects are anticipated.
- (h) “Registered” means that an interchangeable credit has been deposited, withdrawn, or transferred through the act of recording a transaction in a District’s banking register.
- (i) “Surplus” means that the reduction is not required or assumed throughout the time of the emission reduction duration by any local, state or federal permit, rule, regulation, law, ordinance or the most recent locally approved air quality plan, or control measure implementation date. If the control efficiency or emission standard in the most recent locally approved air quality plan is less stringent than the control efficiency or emission standard in the applicable SIP for a specific source category, then the federally approved SIP will be used for purposes of determining surplus reductions.
- (j) “Total Hazard Index” means the sum of hazard indices for pollutants with non-cancer health effects that have same or similar adverse health effects.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

Article 2. Credit Exchange Function

91502. Certified Credits

District certified credits that are generated pursuant to relevant district, state, and federal requirements and calculation protocols can be used interchangeably among programs and/or source categories to meet applicable district requirements to the extent provided by district rules.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

91503. Credit Denomination

Credits that are used interchangeably shall be certified and registered as pounds of pollutant in one year increments.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

91504. Banking

(a) Interchangeable credits shall comply with the requirements set forth in Health and Safety Code sections 40709 through 40714.5, and applicable federal requirements governing the creation, banking, and use of credits. Emission reductions proposed to offset simultaneous emissions increases within the same stationary source need not be banked prior to use as offsets, pursuant to section 40709(c).

(b) The District shall specify the earliest year in which an interchangeable credit can be used.

(c) An interchangeable credit cannot be used prior to its certification and registration, or in any instances in which the District determines such use would not comply with section 91506(d).

(d) Credits can be used interchangeably within the time period specified by the District or ARB, consistent with the air quality plan, applicable state and federal requirements and section 91507(b)(6).

(e) While banked, a certified and registered credit will retain its full value. At the time of use, credits will be subject to prevailing federal, state, and district requirements.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

Article 3. Criteria and Methodology for Generation and Use of Interchangeable Credits.

91505. Applicability.

(a) The provisions set forth in this subchapter shall apply to any District which adopts, implements, or amends a rule or regulation which provides for the generation and use of interchangeable credits from stationary, mobile, or area sources.

(b) Districts with existing interchangeable credit and trading rules and regulations shall make amendments as necessary to comply with this regulation within nine months of its effective date,

unless the District can demonstrate to the satisfaction of the Executive Officer that more time, not to exceed one year total, is necessary.

(c) Districts with market incentive programs authorized by Health and Safety Code sections 39616 and 40440.1 that propose to expand such programs to allow the use of interchangeable credits shall ensure compliance with the criteria set forth in section 39616(c), and this subchapter.

(d) Districts may maintain a separate account of emission reduction credits for new source review offset purposes consistent with sections 40709 et seq. and 40918 through 40920.5 of the Health and Safety Code without complying with the provisions of this subchapter.

(e) Credits that are used interchangeably must meet all applicable federal, state, and district requirements, including but not limited to the provisions of this subchapter, the adopted air quality plan, and those pertaining to the generation and use of emission reduction credits.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

91506. Generation and Use.

(a) Districts shall adopt rules which, at a minimum, comply with the provisions of this subchapter and with sections 40920.6(c) & (d) and 40709-40714.5 of the Health and Safety Code prior to allowing the use of interchangeable credits to meet District requirements other than the offset provisions of their new source review programs.

(b) Interchangeable credits must be certified by the District in which the generation occurs and registered in that District's emission reduction credit bank prior to use. Districts within the same nonattainment area may establish a multi-district banking program.

(c) Districts, in consultation with the Air Resources Board, shall adopt enforceable technical protocols that define how emission reductions will be calculated for purposes of certifying them as interchangeable credits.

(d) Use of interchangeable credits must, in the aggregate, result in no greater annual pollutant-specific emissions than would have occurred in lieu of trading, consistent with the District's portion of the air quality plan. The assessment of equivalency shall take into account the exceedance season for each affected nonattainment pollutant.

(e) Districts shall ensure compliance with federal, state and District requirements governing credit generation and use through permit conditions or other enforceable instruments.

(f) Districts shall not allow the use of emission reduction credits to comply with the "best available control technology" requirements of sections 40405 and 40918-40920.5 of the Health

and Safety Code, or with any technology-based requirements of sections 111, 169, 171 and 173 of the federal Clean Air Act (42 U.S.C. 7411, 7479, 7501, 7503).

(g) Districts may authorize the use of interchangeable credits consistent with any federal, state, or local requirements applicable to toxic air contaminants, only if allowed by regulations established pursuant to section 39665 et seq. of the Health and Safety Code, and section 112 of the federal Clean Air Act (42 U.S.C. 7412).

(h) Surplus emission reductions that meet the requirements of Health and Safety Code section 40714.5 can be used to create interchangeable credits. If not already accounted for in District air quality plans, baseline emissions from qualifying sources must be included and accounted for in the next update to the plan.

(i) Emission reduction credits from permitted stationary sources that were certified and banked solely for use in a District's new source review program must be included and accounted for in the air quality plan prior to use in an interchangeable credit trading program.

(j) Emission reduction credits or market-based trading instruments generated under programs authorized by Health and Safety Code sections 39616 and 40440.1 may be used interchangeably outside the market incentive program only upon a determination by the District, based upon a study conducted by the District that, in the aggregate, such credits represent real reductions, and provided that:

(1) The District submits its request and the above study to the ARB at least 120 days prior to the intended interchangeable use of those credits outside of the original market incentive program.

(2) ARB concurs in writing that the District's submittal regarding the interchangeable use of such credits complies with all applicable requirements including the criteria in Health and Safety Code section 39616(c); as it pertains to this program. ARB shall provide a written response containing its finding within 90 days of receipt of the District's submittal.

(k) District rules shall provide for assessment and consideration of potential localized impacts that use of interchangeable credits may have on the public's exposure to air pollution.

(l) In no case shall the generation and use of credits result in a total facility-wide health risk from toxic air contaminants identified pursuant to Health and Safety code section 39657 that exceeds a district established significance threshold applicable to emissions trading. Health risk shall be assessed using cancer potency values and reference exposure levels established by the Office of Environmental Health Hazard Assessment, pursuant to section 44360(b)(2) of the Health & Safety Code. District programs shall provide for public disclosure of any increase in emissions of toxic air contaminants which results in a total facility-wide cancer health risk above ten in one million or a total facility hazard index greater than 1.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

91507. Calculation Methodology.

(a) Interchangeable credits shall be calculated based on a District's adopted calculation protocol. The calculation protocol shall include the elements specified in subparagraph (b) and shall be consistent with the following criteria:

(1) Emission reductions used to generate interchangeable credits shall be real, permanent for the term of credit generation, enforceable, surplus, and quantifiable.

(2) Emission reductions shall be calculated using the most stringent of historic actual emissions, applicable requirements, the District's air quality plan, the federally approved SIP, or, where applicable, other more stringent levels as established in an implementing rule or regulation.

(b) Districts shall provide for enforceable credit calculation protocols and procedures that contain the following elements:

(1) Calculation methods to determine the amount of reductions being generated as credits, including formulae accounting for emissions rate, operating period, activity level, and technical uncertainty.

(2) Procedures for calculating, certifying, and registering credits in one year increments when credits are generated from multi-year emission reductions.

(3) Procedures for certifying that emission reductions are surplus and available for use as interchangeable credits.

(4) Procedures to incorporate emission inventory updates and changes in source category baselines, air quality plans, and applicable regulatory requirements into the credit calculation protocols.

(5) Methodologies used to determine the time period in which a banked credit is available for use, consistent with the air quality plan.

(6) Provisions for the use of ARB calculation methodologies, emission factors, certification standards, emission baseline data, and timeframes for credit use for mobile sources and for products under ARB regulatory authority.

(7) Provisions for monitoring, recordkeeping, and reporting requirements to verify and enforce credit generation at the specified value over the full generation period.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

91508. Program Reporting

(a) Districts shall prepare an annual report on their interchangeable credit trading programs that document the following:

(1) Quantity of interchangeable credits generated and used, by pollutant;

(2) Extent to which emission reduction credits were used, by rule and source category, to comply with Best Available Retrofit Control Technology and how they were accounted for in the air quality plan;

(3) Summary of changes made affecting the calculation methodology elements defined in section 91507(b); and,

(4) Actions taken to comply with applicable credit generation and use requirements contained in section 91506.

(5) A finding as to whether use of interchangeable credits complied with section 91506(d) requirements.

(b) As part of the triennial progress assessment of the air quality plan, Districts with interchangeable credit trading programs shall evaluate the performance of the program as an alternative compliance approach to meet applicable District requirements. The evaluation shall include the results of the annual reports and identify what, if any, changes were incorporated into the emission inventory update as a result of program implementation.

Authority cited: Sections 39600, 39601, and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5, and 40920.6(c), Health and Safety Code.

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May 22, 1997