

SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 1: EMISSION CREDIT PROGRAM
§§101.300 - 101.306, 101.309, 101.311
Effective June 25, 2015

§101.300. Definitions.

Unless specifically defined in the Texas Clean Air Act or in §3.2 or §101.1 of this title (relating to Definitions), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition, the following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise.

(1) Activity--The amount of activity at a facility or mobile source measured in terms of production, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the economic output and emission rate of the facility or mobile source.

(2) Actual emissions--The total emissions during a selected time period, using the facility's or mobile source's actual daily operating hours, production rates, or types of materials processed, stored, or combusted during that selected time period.

(3) Area source--Any facility included in the agency emissions inventory under the area source category.

(4) Baseline emissions--The facility's emissions, in tons per year, occurring before implementation of an emission reduction strategy calculated as the lowest of the facility's historical adjusted emissions or state implementation plan emissions.

(5) Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(6) Curtailment--A reduction in activity level at any facility or mobile source.

(7) Emission credit--An emission reduction credit or mobile emission reduction credit.

(8) Emission rate--The facility's rate of emissions per unit of activity.

(9) Emission reduction--An actual reduction in emissions from a facility or mobile source.

(10) Emission reduction credit--A certified emission reduction, expressed in tenths of a ton per year, that is created by eliminating future emissions and quantified during or before the period in which emission reductions are made from a facility.

(11) Emission reduction strategy--The method implemented to reduce the facility's or mobile source's emissions beyond that required by state or federal law, regulation, or agreed order.

(12) Facility--As defined in §116.10 of this title (relating to General Definitions).

(13) Generator--The owner or operator of a facility or mobile source that creates an emission reduction.

(14) Historical adjusted emissions--The facility's emissions occurring before implementation of an emission reduction strategy and adjusted for any local, state, or federal requirement, calculated using the following equation.

Figure: 30 TAC §101.300(14)

$$E_H = \frac{(A_1 \times ER_1) + (A_2 \times ER_2)}{2}$$

Where:

E_H = The historical adjusted emissions for a facility.

A_1 = The facility's activity during the first of any two consecutive calendar years selected in accordance with §101.303(b)(2) of this title (relating to Emission Reduction Credit Generation and Certification), not to exceed any applicable local, state, or federal requirement.

ER_1 = The facility's emission rate during the first of any two consecutive calendar years selected in accordance with §101.303(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

A_2 = The facility's activity during the second of any two consecutive calendar years selected in accordance with §101.303(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

ER_2 = The facility's emission rate during the second of any two consecutive calendar years selected in accordance with §101.303(b)(2) of this title, not to exceed any local, state, or federal requirement.

(15) **Mobile emission reduction credit**-- A certified emission reduction from a mobile source, expressed in tons per year, that is created by eliminating future emissions and quantified during and before the period in which reductions are made from that mobile source.

(16) **Mobile source**--On-road (highway) vehicles (e.g., automobiles, trucks, and motorcycles) and non-road vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).

(17) **Mobile source baseline activity**--The level of activity of a mobile source based on an estimate for each year for which the credits are to be generated. After the initial year, the annual estimates should reflect:

(A) the change in the mobile source emissions to reflect any deterioration in the emission control performance of the participating source;

(B) the change in the number of mobile sources resulting from normal retirement or attrition, and the replacement of retired mobile sources with newer and/or cleaner mobile sources;

(C) the change in usage levels, hours of operation, or vehicle miles traveled in the participating population; and

(D) the change in the expected useful life of the participating population.

(18) **Mobile source baseline emissions**--The mobile source's actual emissions, in tons per year, occurring prior to a mobile emission reduction strategy calculated as the product of mobile source activity and the mobile source emissions rate not to exceed all limitations required by applicable local, state, and federal rules and regulations.

(19) **Mobile source baseline emission rate**--The mobile source's rate of emissions per unit of mobile source baseline activity during the mobile source baseline emissions period.

(20) **Permanent**--An emission reduction that is long-lasting and unchanging for the remaining life of the facility or mobile source. Such a time period must be enforceable.

(21) Protocol--A replicable and workable method of estimating emission rate or activity level used to calculate the amount of emission reduction generated or credits required for facilities or mobile sources.

(22) Quantifiable--An emission reduction that can be measured or estimated with confidence using replicable methodology.

(23) Real reduction--A reduction in which actual emissions are reduced.

(24) Shutdown--The permanent cessation of an activity producing emissions at a facility or mobile source.

(25) Site--As defined in §122.10 of this title (relating to General Definitions).

(26) State implementation plan--A plan that provides for attainment and maintenance of a primary or secondary national ambient air quality standard as adopted in 40 Code of Federal Regulations Part 52, Subpart SS.

(27) State implementation plan (SIP) emissions--The emissions data in the state's emissions inventory (EI) required under 40 Code of Federal Regulations Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The SIP emissions may not exceed any applicable local, state, or federal requirement. A facility's SIP emissions are determined from the EI year that:

(A) was used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the United States Environmental Protection Agency (EPA) for the current National Ambient Air Quality Standard (NAAQS);

(B) if the SIP revisions identified in subparagraph (A) of this paragraph have not been submitted to the EPA, was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS;

(C) if the SIP revisions identified in subparagraphs (A) and (B) of this paragraph have not been submitted to the EPA, corresponds to the EI for the most recent EI SIP revision submitted to the EPA; or

(D) if the SIP revisions identified in subparagraphs (A) - (C) of this paragraph have not been submitted to the EPA, corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA.

(28) Strategic emissions--A facility's or mobile source's new allowable emission limit, in tons per year, following implementation of an emission reduction strategy.

(29) Surplus--An emission reduction that is not otherwise required of a facility or mobile source by any applicable local, state, or federal requirement and has not been otherwise relied upon in the state implementation plan.

(30) User--The owner or operator of a facility or mobile source that acquires and uses emission credits to meet a regulatory requirement, demonstrate compliance, or offset an emission increase.

Adopted June 3, 2015

Effective June 25, 2015

§101.301. Purpose.

The purpose of this division is to allow the owner or operator of a facility or mobile source to generate emission credits by reducing emissions beyond the level required by any applicable local, state, or federal requirement and to allow the owner or operator of a facility or mobile source to use these credits. Participation under this division is strictly voluntary.

Adopted June 3, 2015

Effective June 25, 2015

§101.302. General Provisions.

(a) Applicable pollutants.

(1) An emission reduction credit (ERC) may be generated from a reduction of a criteria pollutant, excluding lead, or a precursor of a criteria pollutant for which an area is designated nonattainment. An ERC generated from the reduction of one pollutant or precursor may not be used to meet the requirements for another pollutant or precursor, except as provided by §101.306(d) of this title (relating to Emission Credit Use).

(2) Reductions of criteria pollutants, excluding lead, or precursors of criteria pollutants for which an area is designated nonattainment, may qualify as mobile emission reduction credits (MERCs). MERCs generated from reductions of one pollutant may not be used to meet the requirements for another pollutant, unless urban airshed modeling demonstrates that one ozone precursor may be substituted for another, subject to executive director and United States Environmental Protection Agency (EPA) approval.

(b) Eligible generator categories. The following categories are eligible to generate emission credits:

(1) facilities, including area sources;

(2) mobile sources; and

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(c) Emission credit requirements.

(1) An ERC is a certified emission reduction that:

(A) must be enforceable, permanent, quantifiable, real, and surplus;

(B) must be surplus at the time it is created, as well as when it is used; and

(C) must occur after the year used to determine the state implementation plan (SIP) emissions for the facility.

(2) Mobile emission reduction credits are certified reductions that meet the following requirements:

(A) reductions must be enforceable, permanent, quantifiable, real, and surplus;

(B) the certified reduction must be surplus at the time it is created, as well as when it is used;

(C) in order to become certified, the reduction must have occurred after the most recent year of emissions inventory used in the SIP;

(D) the mobile source's annual emissions prior to the emission credit application must have been represented in the emissions inventory used in the SIP; and

(E) the mobile sources must have been included in the attainment demonstration baseline emissions inventory.

(3) Emission reductions from a facility or mobile source that are certified as emission credits under this division cannot be recertified in whole or in part as credits under another division within this subchapter.

(d) Protocol.

(1) All generators or users of emission credits shall use a protocol that has been submitted by the executive director to the EPA for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols must be used as follows.

(A) The owner or operator of a facility subject to the emission specifications under §§117.110, 117.310, 117.410, 117.1010, 117.1210, 117.1310, 117.2010, or 117.2110 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall use the testing and monitoring methodologies required under Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) to show compliance with the emission specification for that pollutant.

(B) The owner or operator of a facility subject to the requirements under Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) shall use the testing and monitoring methodologies required under Chapter 115 of this title to show compliance with the applicable requirements.

(C) The executive director may approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility or mobile source.

(D) Except as specified in subparagraph (C) of this paragraph, if the executive director has not submitted a protocol for the applicable facility or mobile source to the EPA for approval, the following requirements apply:

(i) the amount of emission credits from a facility or mobile source, in tons per year, will be determined and certified based on quantification methodologies at least as stringent as the methods used to demonstrate compliance with any applicable requirements for the facility or mobile source;

(ii) the generator shall collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the facility's or mobile source's activity level for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

(iii) the owner or operator of a facility with a continuous emissions monitoring system or predictive emissions monitoring system in place shall use this data in quantifying emissions;

(iv) the chosen quantification protocol must be made available for public comment for a period of 30 days and must be viewable on the commission's website;

(v) the chosen quantification protocol and any comments received during the public comment period must be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols may not be accepted for use with this division if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA adopts disapproval of the protocol in the *Federal Register*.

(2) If the monitoring and testing data specified in paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine the facility's emissions for the period of time the data is missing or unavailable using the most conservative method for replacing the data and these listed methods in the following order:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

(E) EPA Compilation of Air Pollution Emission Factors (AP-42), September 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator or user shall submit the justification for not using the methods in paragraph (1) of this subsection and submit the justification for the method used.

(e) Credit certification.

(1) The amount of emission credits in tons per year will be determined and certified to the nearest tenth of a ton per year.

(2) The executive director shall review an application for certification to determine the credibility of the reductions. Each ERC certified will be assigned a certificate number. A new number will be assigned when an ERC is traded or partly used. Reductions determined to be creditable and in compliance with all other requirements of this division will be certified by the executive director.

(3) The applicant will be notified in writing if the executive director denies the emission credit application. The applicant may submit a revised application in accordance with the requirements of this division. If a facility's or mobile source's actual emissions exceed any applicable local, state, or federal requirement, reductions of emissions exceeding the requirement may not be certified as emission credits. An application for certification of emission credit from reductions quantified under subsection (d)(1)(D) of this section may only be approved after the EPA's 45-day adequacy review of the protocol.

(f) Geographic scope. Except as provided in §101.305 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in nonattainment areas can be certified. An emission credit must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the executive director and the EPA; and

(1) a demonstration has been made and approved by the executive director and the EPA to show that the emission reductions achieved in another county or state provide an improvement to the air quality in the county of use; or

(2) the emission credit was generated in a nonattainment area that has an equal or higher nonattainment classification than the nonattainment area of use, and a demonstration has been made and approved by the executive director and the EPA to show that the emissions from the nonattainment area where the emission credit is

generated contribute to a violation of the national ambient air quality standard in the nonattainment area of use.

(g) Recordkeeping. The generator shall maintain a copy of all notices and backup information submitted to the executive director for a minimum of five years. The user shall maintain a copy of all notices and backup information submitted to the executive director from the beginning of the use period and for at least five years after. The user shall make the records available upon request to representatives of the executive director, EPA, and any local enforcement agency. The records must include, but not necessarily be limited to:

(1) the name, emission point number, and facility identification number of each facility or any other identifying number for each mobile source using emission credits;

(2) the amount of emission credits being used by each facility or mobile source; and

(3) the certificate number of emission credits used for each facility or mobile source.

(h) Public information. All information submitted with notices, reports, and trades regarding the nature, quantity, and sales price of emissions associated with the use, generation, and transfer of an emission credit is public information and may not be submitted as confidential. Any claim of confidentiality for this type of information, or failure to submit all information, may result in the rejection of the emission credit application. All nonconfidential information will be made available to the public as soon as practicable.

(i) Authorization to emit. An emission credit created under this division is a limited authorization to emit the pollutants identified in subsection (a) of this section, unless otherwise defined, in accordance with the provisions of this section, 42 United States Code, §§7401 *et seq.*, and Texas Health and Safety Code, Chapter 382, as well as regulations promulgated thereunder. An emission credit does not constitute a property right. Nothing in this division may be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(j) Program participation. The executive director has the authority to prohibit a person from participating in emission credit trading either as a generator or user, if the executive director determines that the person has violated the requirements of the program or abused the privileges provided by the program.

(k) Compliance burden. A user may not transfer their compliance burden and legal responsibilities to a third-party participant. A third-party participant may only act in an advisory capacity to the user.

(l) Credit ownership. The owner of the initial emission credit shall be the owner or operator of the facility or mobile source creating the emission reduction. The executive director may approve a deviation from this subsection considering factors such as, but not limited to:

(1) whether an entity other than the owner or operator of the facility or mobile source incurred the cost of the emission reduction strategy; or

(2) whether the owner or operator of the facility or mobile source lacks the potential to generate 1/10 ton of credit.

Adopted June 3, 2015

Effective June 25, 2015

§101.303. Emission Reduction Credit Generation and Certification.

(a) Emission reduction strategy.

(1) An emission reduction credit (ERC) may be generated using one of the following strategies or any other method that is approved by the executive director:

(A) the permanent shutdown of a facility that causes a loss of capability to produce emissions;

(B) the installation and operation of pollution control equipment that reduces emissions below baseline emissions for the facility;

(C) a change in a manufacturing process that reduces emissions below baseline emissions for the facility;

(D) a permanent curtailment in production that reduces the facility's capability to produce emissions; or

(E) pollution prevention projects that produce surplus emission reductions.

(2) An ERC may not be generated from the following strategies:

(A) reductions from the shifting of activity from one facility to another facility at the same site;

(B) that portion of reductions funded through state or federal programs, unless specifically allowed under that program; or

(C) reductions from a facility without state implementation plan (SIP) emissions.

(b) ERC baseline emissions.

(1) The baseline emissions may not exceed the facility's SIP emissions.

(2) The activity and emission rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years selected from the ten consecutive years immediately before the emission reduction is achieved.

(3) For a facility in existence less than 24 months or not having two complete calendar years of activity data, a shorter period of not less than 12 months may be considered by the executive director.

(c) ERC calculation. The quantity of ERCs is determined by subtracting the facility's strategic emissions from the facility's baseline emissions, as calculated in the following equation.

Figure: 30 TAC §101.303(c)

$$ERC = BE - SE$$

Where:

ERC = The amount of emission reduction credits generated, in tenths of a ton per year.

BE = The facility's baseline emissions, which is the lowest of the historical adjusted emissions or the state implementation plan emissions.

SE = The facility's strategic emissions, which is the enforceable emission limit for the facility after implementation of the emission reduction strategy.

(d) ERC certification.

(1) The owner or operator of a facility with potential ERCs shall submit to the executive director an application for ERCs no more than two years after the implementation of the emission reduction strategy. Applications will be reviewed to determine the credibility of the reductions. Reductions determined to be creditable will be certified by the executive director and an ERC will be issued to the owner.

(2) ERCs must be quantified in accordance with §101.302(d) of this title (relating to General Provisions). The executive director shall have the authority to inspect and request information to assure that the emissions reductions have actually been achieved.

(3) An application for ERCs must include, but is not limited to, a completed application form specified by the executive director signed by an authorized representative of the applicant along with the following information for each pollutant reduced at each applicable facility:

(A) a complete description of the emission reduction strategy;

(B) the amount of ERCs generated;

(C) for volatile organic compound reductions, a list of the specific compounds reduced;

(D) documentation supporting the activity, emission rate, historical adjusted emissions, SIP emissions, baseline emissions, and strategic emissions;

(E) emissions inventory data for each of the years used to determine the SIP emissions and historical adjusted emissions;

(F) the most stringent emission rate and the most stringent emission level, considering all applicable local, state, and federal requirements;

(G) a complete description of the protocol used to calculate the emission reduction generated; and

(H) the actual calculations performed by the generator to determine the amount of ERCs generated.

(4) ERCs will be made enforceable by one of the following methods:

(A) amending or altering a new source review permit to reflect the emission reduction and set a new maximum allowable emission limit;

(B) voiding a new source review permit when a facility has been shut down; or

(C) for any facility without a new source review permit that is otherwise authorized by commission rule, certifying the emission reduction and the new maximum emission limit on a Certification of Emission Limits (Form APD-CERT) or other form considered equivalent by the executive director or an agreed order.

Adopted June 3, 2015

Effective June 25, 2015

§101.304. Mobile Emission Reduction Credit Generation and Certification.

(a) Methods of generation.

(1) Mobile emission reduction credits (MERC) may be generated by any mobile source emission reduction strategy that creates actual mobile source emission reductions under these rules and subject to the approval of the commission.

(2) MERCs may not be generated from the following strategies:

(A) that portion of reductions funded through a state or federal program, unless specifically allowed under that program;

(B) through the transfer of emissions from one mobile source to another mobile source within the same nonattainment area and under common ownership or control; or

(C) reduction strategies resulting in secondary emissions increases that exceed limits established under state or federal rules or regulations.

(b) MERC baseline emissions.

(1) Mobile source baseline emissions shall be calculated with either measured emissions of an appropriately sized sample of the participating mobile sources using a United States Environmental Protection Agency (EPA)-approved test procedure, or by estimating emissions of the participating mobile sources using the most recent edition of the EPA on-road or non-road mobile emissions factor models or other model as applicable.

(2) Mobile source baseline emissions for each year of the proposed mobile source reduction strategy must be the same as, or lower than, those used or proposed to be used in the state implementation plan (SIP) in which the reduction strategy is proposed.

(3) Baseline emissions for quantifying MERCs should include, but not be limited to, the following information and data as appropriate:

(A) the emission standard to which the mobile source is subject or the emission performance standard to which the mobile source is certified;

(B) the estimated or measured in-use emissions levels per unit of use from all significant mobile source emissions sources;

(C) the number of mobile sources in the participating group;

(D) the type or types of mobile sources by model year;

(E) the actual or projected activity level, hours of operation, or miles traveled, by type and model year; and

(F) the projected remaining useful life of the participating group of mobile sources.

(c) MERC calculation. The quantity of MERCs must be calculated from the annual difference between the mobile source baseline emissions and the projected emissions level after the MERC strategy has been put in place. The projected emissions must be based on the best estimate of the actual in-use emissions of the modified or substitute on-road or non-road vehicles or transportation system. Any estimate of a projected annual mobile source emissions level based on an assumption of reduced consumer service or transportation service would not be allowed without the support of a convincing analytical justification of the assumption.

(d) Emission offsets. Mobile source reduction strategies that reduce emissions in one criteria pollutant or precursor for which an area is designated nonattainment, yet result in an emissions increase of another criteria pollutant or precursor for which that same area is nonattainment and from the same mobile source, must be required to offset the resulting increase at a 1:1 ratio with ERCs or MERCs.

(e) MERC certification.

(1) Mobile sources with potential MERCs shall submit to the executive director an MEC-1 Form, Application for Mobile Emission Credits, within 180 days of implementation of the strategy. Upon approval of the application, the executive director shall issue a MERC certificate(s) to the person, company, business, organization, or public entity generating the mobile emission reduction. A MERC certificate will indicate

the total amount of certified emission credits, the quantity available on an annual basis, and the date upon which the last annualized emission reduction expires.

(2) MERCs will be determined and certified in accordance with §101.302(d) of this title (relating to General Provisions) using:

- (A) EPA methodologies, when available;
- (B) actual monitoring results, when available;
- (C) calculations using the most current EPA mobile emissions factor model or other model as applicable; or
- (D) calculations using creditable emission reduction measurement or estimation methodologies that satisfactorily address the analytical uncertainties of mobile source emissions reduction strategies.

(3) An application for MERCs must include, but is not limited to, a completed MEC-1 Form signed by an authorized representative of the applicant along with the following information for each pollutant reduced by each applicable mobile source:

- (A) the date of the reduction;
- (B) a complete description of the generation strategy;
- (C) the amount of emission credits generated;
- (D) documentation supporting the mobile source baseline activity, mobile source baseline emission rate, mobile source baseline emissions, and the mobile source strategy emissions;
- (E) a complete description of the protocol used to calculate the emission reduction generated;
- (F) the actual calculations performed by the generator to determine the amount of emission credits generated; and
- (G) a demonstration that the reductions are surplus to all local, state, and federal rules and to emission modeled in the SIP.

(4) MERCs will be made enforceable by obtaining an agreed order that sets a new maximum allowable mobile source emission limit.

Adopted November 10, 2004

Effective December 2, 2004

§101.305. Emission Reductions Achieved Outside the United States.

(a) A facility may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section.

(b) A facility may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants and substitute these reductions for reductions in other criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section; and

(1) the reduction is substituted for the reduction of another criteria pollutant and the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area; or

(2) a reduction of an air contaminant for which the area in which the facility is located has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment is substituted for any air contaminant for which the area has been designated as nonattainment or leads to the formation of any criteria pollutant for which the area has been designated as nonattainment.

(c) The use of reductions outside the United States must be approved by the executive director and the United States Environmental Protection Agency (EPA), and the user of the emission reduction must:

(1) demonstrate to the executive director and EPA that the reduction is real, permanent, enforceable, quantifiable, and surplus to any applicable Mexican, federal, state, or local law;

(2) demonstrate that the use of the reduction does not cause localized health impacts, as determined by the executive director and EPA;

(3) submit all supporting information for calculations and modeling, and any additional information requested by the executive director and EPA; and

(4) be located within 100 kilometers of the Texas - Mexico border.

(d) This section does not apply to reductions in emissions of lead.

Adopted October 4, 2006

Effective October 26, 2006

§101.306. Emission Credit Use.

(a) Uses for emission credits. Unless precluded by a commission order or a condition or conditions within an authorization under the same commission account number, emission credits may be used as the following:

(1) offsets for a new source, as defined in §101.1 of this title (relating to Definitions), or major modification to an existing source;

(2) mitigation offsets for action by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans;

(3) an alternative means of compliance with volatile organic compound and nitrogen oxides reduction requirements to the extent allowed in Chapters 115 and 117 of this title (relating to Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds);

(4) reductions certified as emission credits may be used in netting by the original applicant, if not used, sold, reserved for use, or otherwise relied upon, as provided by Chapter 116, Subchapter B of this title (relating to New Source Review Permits); or

(5) compliance with other requirements as allowed in any applicable local, state, and federal requirement.

(b) Credit use calculation.

(1) The number of emission credits needed by the user for offsets shall be determined as provided by Chapter 116, Subchapter B of this title.

(2) For emission credits used in compliance with Chapter 115 or 117 of this title, the number of emission credits needed should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.

Figure: 30 TAC §101.306(b)(2)

$$EC = A \times (ER_p - ER_r)$$

Where:

EC = The amount of emission credits needed.

A = The maximum projected annual activity level during use period.

ER_p = The projected emission rate per unit of activity during use period.

ER_r = The emission rate per unit of activity required by Chapter 115 or 117 of this title (relating to Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds).

(3) For emission credits used to comply with §§117.123, 117.320, 117.323, 117.423, 117.1020, or 117.1220 of this title (relating to Source Cap; and System Cap), the number of emission credits needed for increasing the 30-day rolling average emission cap or maximum daily cap should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.

Figure: 30 TAC §101.306(b)(3)

$$ECs = \left[\sum_{i=1}^N (H_n \times R_n) - \sum_{i=1}^N (H_i \times R_i) \right] \times \frac{365}{2000}$$

Where:

ECs = The amount of emission credits needed.

N = The total number of emission units in the source cap.

i = Each emission unit in the source cap.

H_n = The maximum daily heat input, in million British thermal units (MMBtu) per day, expected for an emission unit during the use period.

R_n = The maximum emission factor, in pounds per MMBtu (lb/MMBtu), expected for an emission unit during the use period.

H_i = The actual daily heat input, in MMBtu per day, as calculated according to §§117.123(b)(1) or (2), 117.320(c)(1) - (3), 117.323(b)(1) or (2), 117.423(b)(1) or (2), 117.1020(c)(1) or (2), or 117.1220(c)(1) or (2) of this title.

R_i = The facility's emission factor, in lb/MMBtu, as defined in §§117.123(b)(1) or (2), 117.320(c)(1) - (3), 117.323(b)(1) or (2), 117.423(b)(1) or (2), 117.1020(c)(1) or (2), or 117.1220(c)(1) or (2) of this title.

(4) Emission credits used for compliance with any other applicable program should be determined in accordance with the requirements of that program and must contain at least 10% extra to be retired as an environmental contribution, unless otherwise specified by that program.

(c) Notice of intent to use emission credits.

(1) Application to use ERCs. The executive director will not accept an application to use ERCs before the ERC is available in the compliance account for the site where it will be used. If the ERC will be used for offsets, the executive director will not accept the ERC application before the applicable permit application is administratively complete.

(A) The user shall submit a completed application at least 90 days before the start of operation for an ERC used as offsets in a permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(B) The user shall submit a completed application at least 90 days before the planned use of an ERC for compliance with the requirements of Chapter 115 or 117 of this title or other programs.

(C) If the executive director approves the ERC use, the date the application is submitted will be considered the date the ERC is used.

(2) Application to use mobile emission reduction credits (MERCs).

(A) For MERCs which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title, the MERCs must be identified prior to permit issuance. Prior to construction, the offsets must be provided through submittal of a completed application form specified by the executive director.

(B) For emission credits that are to be used for compliance with the requirements of Chapter 115 or 117 of this title or other programs, the user must submit a completed application at least 90 days prior to the planned use of the MERC. MERCs may be used only after the executive director grants approval of the notice of intent to use. The user must also keep a copy of the notice and all backup in accordance with §101.302(g) of this title (relating to General Provisions).

(3) If the executive director denies the facility or mobile source's use of emission credits, any affected person may file a motion for reconsideration within 60 days of the denial. Notwithstanding the applicability provisions of §50.31(c)(7) of this title (relating to Purpose and Applicability), the requirements of §50.39 of this title (relating to Motion for Reconsideration) shall apply. Only an affected person may file a motion for reconsideration.

(d) Inter-pollutant use of ERCs. With prior approval from the executive director and the United States Environmental Protection Agency, a nitrogen oxides or volatile organic compound ERC may be used to meet the offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

Adopted June 3, 2015

Effective June 25, 2015

§101.309. Emission Credit Banking and Trading.

(a) The credit registry. All emission credit generators, users, and holders will be included in the commission's credit registry.

(1) All notices of generation, use, and transfer will be posted to the credit registry.

(2) The credit registry will assign a unique number to each certificate which will include the amount of emission reductions generated.

(3) The credit registry will maintain a listing of all credits available for each ozone nonattainment area.

(b) Life of an emission credit.

(1) If an emission credit is used before its expiration date, the emission credit is effective for the life of the applicable user facility or mobile source.

(2) Emission credits certified as part of an administratively complete application received after January 2, 2001 shall be available for use for 60 months from the date of the emission reduction.

(3) Notwithstanding paragraph (2) of this subsection, the executive director may invalidate a certificate or portion of a certificate if local, state, or federal

regulatory changes occur after the certification of the emission credit which would or would have affected the generating facility or mobile source.

(c) Creditability review of emission credits. Emission credits may be reviewed for creditability at any time during their banked life to ensure the reductions generating the emission credit are surplus to all current local, state, and federal requirements that would have affected the generating facility or mobile source.

(1) A request for a creditability review may be made by any interested party through the submittal of a completed application form specified by the executive director.

(2) If a creditability review identifies a regulatory change invalidating a certificate or portion of a certificate, the executive director shall void the emission credit certificate and, issue a new certificate with a unique number to the certificate owner in the amount of remaining surplus credit.

(d) Trading. Emission credits are freely transferable in whole or in part, and may be traded or sold to a new owner any time before the expiration date of the emission credit in accordance with the following.

(1) Before the transfer, the seller shall submit a completed application form specified by the executive director.

(2) The executive director will issue a new certificate number to the purchaser reflecting the emission credits purchased, and a new certificate number to the seller reflecting any remaining emission credits available to the original owner. A trade is considered final only after the executive director grants approval of the transaction.

(3) The trading of emission credits may be discontinued by the executive director in whole or in part and in any manner, with commission approval, as a remedy for problems resulting from trading in a localized area of concern.

(e) Emission credit voidance. Emission credits may be voided from the credit registry by the owner at any time prior to the expiration date of the credit and may be held by the owner. Reductions certified as emission credits may still be used by the original owner as an emission reduction for netting purposes after the emission credits have expired, as provided by Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

Adopted June 3, 2015

Effective June 25, 2015

§101.311. Program Audits and Reports.

(a) No later than three years after the effective date of this division, and every three years thereafter, the executive director will audit this program.

(1) The audit will evaluate the timing of credit generation and use, the impact of the program on the state's attainment demonstration and the emissions of hazardous air pollutants, the availability and cost of credits, compliance by the participants, and any other elements the executive director may choose to include.

(2) The executive director will recommend measures to remedy any problems identified in the audit. The trading of emission credits may be discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the United States Environmental Protection Agency (EPA) and made available for public inspection within six months of the date the audit begins.

(b) No later than February 1 of each calendar year, the executive director shall develop and make available to the general public and EPA a report that includes:

(1) the amount of emission credits generated under this division within each nonattainment area;

(2) the amount of emission credits used under this division within each nonattainment area; and

(3) a summary of all trades completed under this division.

Adopted November 10, 2004

Effective December 2, 2004

SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 2: EMISSIONS BANKING AND TRADING ALLOWANCES
§§101.330 - 101.339
Effective October 26, 2006

§101.330. Definitions.

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Allowance--The authorization to emit one ton of nitrogen oxides (NO_x) or sulfur dioxide (SO₂) during a control period.

(2) Authorized account representative--The responsible person who is authorized, in writing, to transfer and otherwise manage allowances.

(3) Banked allowance--An allowance which is not used to reconcile emissions in the designated year of allocation, but which is carried forward into future years and noted in the compliance or broker account as "banked."

(4) Broker--A person not required to participate in the requirements of this division who opens an account under this division for the purpose of banking and trading emissions allowances.

(5) Broker account--The account where allowances held by a broker are recorded. Allowances held in a broker account may not be used to satisfy compliance requirements for this division.

(6) Coal--All solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388 92 "Standard Classification of Coals by Rank" (as incorporated by reference in Title 40 Code of Federal Regulations, §72.13 (effective June 25, 1999)).

(7) Coal-fired--The combustion of fuel consisting of coal as defined in paragraph (6) of this section or any coal-derived fuel (except coal-derived gaseous fuels with a sulfur content no greater than natural gas), alone or in combination with any other fuel. The definition is independent of the percentage of coal or coal-derived fuel consumed during any control period.

(8) Compliance account--The account where allowances held by an EGF or multiple EGFs are recorded for the purposes of meeting the requirements of this division and Chapter 116, Subchapter I of this title (relating to Electric Generating

Facility Permits). EGFs not under common ownership or control may have separate compliance accounts.

(9) Control period--The 12-month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin May 1, 2003.

(10) East Texas Region--All counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio, and also including Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties.

(11) Electing EGF--An electric generating facility permitted under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) which is not subject to the requirements of Texas Utility Code, §39.264 and elects to comply with Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits).

(12) Electric generating facility (EGF)--A facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

(13) El Paso Region--All of El Paso County, Ciudad Juarez, Mexico, and Sunland Park, New Mexico.

(14) Grandfathered EGF--A facility that is not subject to the requirement to obtain a permit under TCAA, §382.0518(g), and that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

(15) Heat input--The heat derived from the combustion of any fuel at an EGF. Heat input does not include the heat derived from reheated combustion air, recirculated flue gas, or exhaust from other sources.

(16) NO_x allowance--An authorization to emit is valid only for the purposes of meeting the requirements of this division and Chapter 116, Subchapter I of this title.

(17) Person--For the purpose of initial issuance of permits under Chapter 116, Subchapter I of this title, and for the issuance of allowances under this division, a person includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(18) SO₂ allowance--An authorization to emit SO₂ valid only for the purposes for meeting the requirements of this division and Chapter 116, Subchapter I of this title.

(19) West Texas Region--All counties not contained in the East Texas Region or El Paso Region.

Adopted December 16, 1999

Effective January 11, 2000

§101.331. Applicability.

This division applies only to the following:

(1) electric generating facilities permitted under Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits); and

(2) brokers.

Adopted December 16, 1999

Effective January 11, 2000

§101.332. General Provisions.

(a) Allowances are valid only for the purposes of meeting the requirements of this division and for meeting the requirements of Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits), and cannot be used to meet or exceed the limitations of any annual emission limitation authorized under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) or any applicable rule or law.

(b) On June 1 after every control period, a grandfathered or electing electric generating facility (EGF) shall hold a quantity of allowances in its compliance account that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period. Compliance with the allowance system will begin with the control period beginning May 1, 2003.

(c) Emission reductions used to satisfy the requirements of the Emissions Banking and Trading of Allowances (EBTA) program cannot be used to generate emission reduction credits or discrete emission reduction credits.

(d) Allowances cannot be used for netting requirements to avoid the applicability of federal and state new source review (NSR) requirements.

(e) Allowances cannot be used to satisfy offset requirements for new or modified sources subject to federal nonattainment NSR requirements.

(f) An allowance does not constitute a security or a property right.

(g) All allowances will be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances will be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(h) One compliance account shall be used for multiple EGFs permitted under Chapter 116, Subchapter I of this title located at the same property and under common ownership or control.

Adopted December 16, 1999

Effective January 11, 2000

§101.333. Allocation of Allowances.

Allowances will be allocated according to the requirements of this section.

(1) Except as provided in paragraphs (2) and (3) of this section, allowances will be calculated for grandfathered electric generating facilities (EGF) using the following equation:

Figure: 30 TAC §101.333(1)

$$A = \frac{ER * HI}{2000 \text{ lb / allowance}}$$

Where:

A = Number of allowances

HI = Total heat input (million British thermal units (MMBtu)) as listed in the 1997 Emissions Scorecard from EPA's Acid Rain Program, or if not listed in the 1997 Emissions Scorecard, by a method approved by the executive director, consistent with the emission reduction requirements of this division.

ER = Emission rate, as defined in subparagraphs (A) and (B) of this paragraph;

(A) In the East Texas Region:

(i) 0.14 pound nitrogen oxides (NO_x) per MMBtu;

(ii) 1.38 pounds sulfur dioxide (SO₂) per MMBtu only for coal-fired grandfathered EGFs.

(B) In the West Texas and El Paso Regions, 0.195 pounds NO_x per MMBtu.

(2) For electing EGFs, the amount of allowances is equal to emissions as listed in the 1997 Emissions Scorecard from EPA's Acid Rain Program, or if not listed in the 1997 Emissions Scorecard, by a method approved by the executive director, consistent with the emission reduction requirements of this division; and in both cases, shall not exceed any of the following:

(A) any annual emission limitation authorized under Chapter 116, Subchapter B of this title (relating to New Source Review Permits);

(B) an applicable state or federal requirement.

(3) The commission may invalidate any allowances allocated to an electing EGF that authorize emissions in excess of applicable state or federal requirements.

(4) If emissions of NO_x or, if applicable, SO₂, exceed the amount of allowances for a given control period, allowances for the next control period will be reduced in an amount equal to the emissions exceeding the allowances in the compliance account.

(5) Allowances will be allocated:

(A) initially, by:

(i) January 1, 2000, for grandfathered EGFs;

(ii) January 1, 2001, for electing EGFs; and municipal corporations, electric cooperatives, and river authorities that choose to obtain a permit under Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits) for any grandfathered or electing EGFs previously exempted under §116.910(d) of this title (relating to Applicability);

(B) subsequently, by May 1 of each year, beginning in 2004.

(C) allowances will be allocated:

(i) initially by commission order for all grandfathered and electing EGFs;

(ii) notwithstanding clause (iii) of this subparagraph, at the beginning of each control period, the commission will deposit the same amount of allowances into each grandfathered or electing EGF's compliance account;

(iii) for electing EGFs, the annual deposit for any control period may be adjusted to reflect new state or federal requirements.

(6) Allowances may be deducted from compliance accounts following the review of trading reports required under §101.336(b) of this title (relating to Emission Monitoring, Compliance, Demonstration, and Reporting.)

(7) The commission shall maintain a registry of the allowances in each compliance account. For each transfer, the registry shall include the price paid per allowance. The registry shall not contain proprietary information.

Adopted August 9, 2000

Effective September 4, 2000

§101.334. Allowance Deductions.

Allowances will be deducted from a grandfathered or electing electric generating facility's (EGF) compliance account for a control period based upon the following.

(1) The following will have deducted from their compliance accounts allowances equal to the number of tons of air contaminant emitted during the control period as reported in compliance with §101.336 (relating to Emission Monitoring, Compliance Demonstration, and Reporting).

(A) grandfathered EGFs; and

(B) electing EGFs whose heat input for the control period is equal to or greater than its heat input for 1997;

(C) electing EGFs whose heat input for the control period is less than its heat input for 1997 where the reduced utilization or shutdown has been replaced by another EGF permitted under Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits).

(2) For electing EGFs whose heat input for the control period is less than the heat input for 1997 and whose reduced utilization or shutdown has not been

replaced by another EGF, allowances will be deducted from the compliance account according to the following equation:

Figure: 30 TAC §101.334(2)

$$A = \frac{HI_{1997} \times EF_{CP}}{2000 \text{ lbs/ allowance}}$$

Where:

A = Allowances to be subtracted from the compliance account
HI₁₉₉₇ = Heat input from 1997
EF_{CP} = The emission factor for the control period in terms of lbs/MMBtu, or if an emission factor for the control period is not available, the most recently available emission factor for that EGF.

(3) For electing EGFs whose heat input for the control period is less than the heat input for 1997 and whose reduced utilization or shutdown has been replaced by another EGF not permitted under Chapter 116, Subchapter I of this title, allowances will be deducted from the compliance account according to the following equation:

Figure: 30 TAC §101.334(3)

$$A = \frac{(HI_{CP} \times EF_{CP}) + [(HI_{1997} - HI_{CP}) * EF_{new}]}{2000 \text{ lbs / allowance}}$$

Where:

A = Allowances to be subtracted from the compliance account
HI_{CP} = Heat input for the control period.
EF_{CP} = The emission factor for the control period in terms of lbs/MMBtu.
HI₁₉₉₇ = Heat input from 1997
EF_{new} = The emission factor in terms of lbs/MMBtu for the EGF that replaced the thermal energy from the reduced utilization or shutdown. If the specific EGF that replaced the thermal energy is

not identifiable, the emission factor shall be equal to the average emission factor for all EGFs in the state as listed in the 1997 Emissions Scorecard from EPA's Acid Rain Program.

Adopted December 16, 1999

Effective January 11, 2000

§101.335. Allowance Banking and Trading.

(a) Allowances not used for compliance during a control period may be banked for use in subsequent control periods. Allowances may only be used for the control period for which they were allocated or subsequent control periods, and may only be used within the same region where they were originally allocated.

(b) Allowances may be traded at any time during the control period.

(1) Only authorized account representatives may trade allowances.

(2) Notification of trades must occur within 30 days after the trade.

(c) Allowance trades are prohibited prior to May 1, 2003.

(d) Traded allowances held in compliance accounts must have originated from electric generating facilities in the same region.

(e) Allowances may be held only in compliance accounts for use by EGFs located in the region in which the allowances were originally allocated or in broker accounts.

Adopted December 16, 1999

Effective January 11, 2000

§101.336. Emission Monitoring, Compliance Demonstration, and Reporting.

(a) Emission monitoring and reporting shall be conducted in accordance with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(b) For each control period, grandfathered or electing electric generating facilities (EGF), must submit a report to the commission by June 30 of each year detailing the following:

(1) the amount of emissions of each allocated air contaminant during the preceding control period.

(2) a summary of all final trades for the preceding control period.

Adopted December 16, 1999

Effective January 11, 2000

§101.337. El Paso Region.

(a) A grandfathered or electing electric generating facility (EGF) in the El Paso Region may meet the emissions allowances by using credits from emissions reductions achieved in the City of Juarez, United States of Mexico and from EGFs located in Sunland Park, New Mexico. Emission reductions under this section must meet the following criteria.

(1) The emission reduction must be:

(A) enforceable by the commission;

(B) permanent, meaning that the emission reduction is unchanging for the remaining life of the source;

(C) quantifiable, so that the emission reduction can be measured or estimated with confidence using replicable techniques;

(D) surplus, such that the emission reduction is not otherwise required of a facility by a state or federal law, regulation, or agreed order; and

(E) a real reduction in which actual emissions are reduced.

(2) The emission reduction must be reviewed and approved by the executive director prior to converting the credits into allowances under this program.

(b) Grandfathered and electing EGFs in the El Paso Region are exempt from the requirements of this division if either EPA or the commission determines that reductions of nitrogen oxides in the El Paso Region that would otherwise be required under this division would result in an increased ambient ozone level in El Paso County.

Adopted December 16, 1999

Effective January 11, 2000

§101.338. Emission Reductions Achieved Outside the United States.

(a) A grandfathered or electing electric generating facility (EGF) may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants to meet the allowance holding requirements of this division if the facility meets the requirements of subsection (c) of this section.

(b) A grandfathered or electing EGF may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants and substitute these reductions for reductions in other criteria pollutants or precursors of criteria pollutants or to meet the allowance holding requirements of this division if the facility meets the requirements of subsection (c) of this section; and

(1) the reduction is substituted for the reduction of another criteria pollutant and the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area; or

(2) a reduction of an air contaminant for which the area in which the facility is located has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment is substituted for any air contaminant for which the area has been designated as nonattainment or leads to the formation of any criteria pollutant for which the area has been designated as nonattainment.

(c) The use of reductions outside the United States must be approved by the executive director and the United States Environmental Protection Agency (EPA), and the user of the emission reduction must:

(1) demonstrate to the executive director and EPA that the reduction is real, permanent, enforceable, quantifiable, and surplus to any applicable Mexican, federal, state, or local law;

(2) demonstrate that the use of the reduction does not cause localized health impacts, as determined by the executive director and EPA;

(3) submit all supporting information for calculations and modeling, and any additional information requested by the executive director and EPA; and

(4) be located within 100 kilometers of the Texas - Mexico border.

(d) This section does not apply to reductions in emissions of lead.

Adopted October 4, 2006

Effective October 26, 2006

§101.339. Program Audits and Reports.

(a) No later than three years after the effective date of this division, and every three years thereafter, the executive director will audit this program.

(1) The audit will evaluate the impact of the program on the state's ozone attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the executive director may choose to include.

(2) The executive director will recommend measures to remedy any problems identified in the audit. The trading of allowances may be discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the United States Environmental Protection Agency (EPA) and made available for public inspection within six months after the audit begins.

(b) No later than September 30 following the end of each control period, the executive director shall develop and make available to the general public and EPA, a report that includes:

(1) number of allowances allocated to each compliance account;

(2) total number of allowances allocated under this division;

(3) number of actual nitrogen oxides (NO_x) and sulfur dioxide (SO₂) allowances subtracted from each compliance account based on the actual NO_x and SO₂ emissions from the site; and

(4) a summary of all trades completed under this division.

Adopted October 4, 2006

Effective October 26, 2006

**SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 3: MASS EMISSIONS CAP AND TRADE PROGRAM
§§101.350 - 101.354, 101.356, 101.357, 101.359, 101.360, 101.363
Effective June 25, 2015**

§101.350. Definitions.

Unless specifically defined in the Texas Clean Air Act or in §3.2 or §101.1 of this title (relating to Definitions), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition, the following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise.

(1) Adjustment period--A period of time, beginning on the first day of operation of a facility and ending no more than 180 consecutive days later, used to make corrections and adjustments to achieve normal technical operating characteristics of the facility.

(2) Affected facility--A facility subject to §§117.310, 117.1210, or 117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) that is located at a site that is subject to this division.

(3) Allowance--The authorization to emit one ton of nitrogen oxides, expressed in tenths of a ton, during a control period.

(4) Authorized account representative--The responsible person who is authorized, in writing, to trade and otherwise manage allowances.

(5) Broker--A person not required to participate in the requirements of this division who opens an account under this division for the purpose of banking and trading allowances.

(6) Broker account--The account where allowances held by a broker are recorded. Allowances may not be used to satisfy compliance requirements for this division while held in a broker account.

(7) Compliance account--The account where allowances held by the owner or operator of a site subject to this division are recorded for the purposes of meeting the requirements of this division for an affected facility at that site.

(8) Control period--The 12-month period beginning January 1 and ending December 31 of each year. The initial control period began January 1, 2002.

(9) Existing facility--A new or modified facility that either submitted an application for a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) that the executive director determined to be administratively complete before January 2, 2001, or qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and commenced construction before January 2, 2001.

(10) Houston-Galveston-Brazoria (HGB) ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(11) Level of activity--The amount of activity at a facility measured in terms of production, fuel use, raw materials input, or other similar units.

(12) Site--As defined in §122.10 of this title (relating to General Definitions).

(13) Uncontrolled design capacity to emit--The maximum capacity of a facility to emit nitrogen oxides without consideration for post-combustion pollution control equipment, enforceable limitations, or operational limitations. The owner or operator of a stationary diesel engine may use the lower of 876 hours or a federally enforceable limitation on total hours of operation to calculate uncontrolled design capacity to emit if the engine would otherwise be exempt under §117.2003(a)(2)(I) of this title (relating to Exemptions) except that the engine does not meet the emission standard requirements of §117.2003(a)(2)(I)(ii) of this title.

(14) Vintage allowance--An allowance that is not used for compliance during the control period in which it is allocated and remains available for use only in the control period following the one in which it was allocated.

Adopted June 3, 2015

Effective June 25, 2015

§101.351. Applicability.

(a) This division applies to a site, and each affected facility at that site, in the Houston-Galveston-Brazoria ozone nonattainment area that:

(1) is a major source, as defined in §117.10 of this title (relating to Definitions), with one or more affected facilities subject to §117.310 or §117.1210 of this title (relating to Emission Specifications for Attainment Demonstration); or

(2) is not a major source, as defined in §117.10 of this title, and has one or more affected facilities subject to §117.2010 of this title (relating to Emission

Specifications) with a collective uncontrolled design capacity to emit from these facilities of 10.0 tons or more per year of nitrogen oxides.

(b) A site that met the definition of major source as of December 31, 2000, is always classified as a major source for purposes of this division. A site that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2000, but that at any time after December 31, 2000, becomes a major source, is from that time forward always classified as a major source for purposes of this division.

(c) Once a site becomes subject to this division, the site will remain subject to this division until the site is permanently shut down.

(d) The banking and trading requirements of this division apply to a broker and a broker account.

Adopted June 3, 2015

Effective June 25, 2015

§101.352. General Provisions.

(a) An allowance may be used only for the purposes described in this division and only for an affected facility. An allowance may not be used for any purpose that is not described in this division or to meet or exceed the emission limitations authorized under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) or any other applicable requirement.

(b) No later than March 1 after each control period, the quantity of allowances in a site's compliance account must be equal to or greater than the total tons of nitrogen oxides (NO_x) emitted from all affected facilities at the site during the control period.

(c) The owner or operator of an affected facility may certify reductions from the facility as NO_x emission reduction credits (ERCs), provided that:

(1) an enforceable and permanent reduction of annual allowances is approved by the executive director at a ratio of 1.0 ton of allowances per year for each 1.0 ton per year of ERCs generated; and

(2) all applicable requirements of Division 1 of this subchapter (relating to Emission Credit Program) are met.

(d) An allowance cannot be used for netting requirements under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review).

(e) An allowance may be used to offset NO_x emissions from an affected facility if such use is authorized in a nonattainment new source review (NNSR) permit issued under Chapter 116, Subchapter B of this title with the following conditions.

(1) The owner or operator shall use a permanent allowance allocation equal to the amount specified in the NNSR permit to offset NO_x emissions from an affected facility. A vintage allowance or an allowance allocated based on allowable emissions in accordance with variable (B) (i) in the figure in §101.353(a) of this title (relating to Allocation of Allowances) cannot be used as an offset. An allowance used for offsets may not be banked, traded, or used for any other purpose except as allowed in §101.354(g) of this title (relating to Allowance Deductions).

(2) At least 30 days before the start of operation of an affected facility using allowances as offsets, the owner or operator shall submit an application form specified by the executive director.

(A) Except as provided in paragraph (3) of this subsection, the executive director shall permanently set aside in the site's compliance account an allowance used for the one-to-one portion of the offset ratio. If an allowance set aside for offsets devalues in accordance with §101.353(d) of this title, the owner or operator shall submit the application at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. At the end of each control period, the executive director shall deduct from the site's compliance account all allowances set aside as offsets.

(B) The executive director shall permanently retain an allowance used for the environmental contribution portion of the offset ratio. An allowance used for this purpose cannot be used for compliance with this division or devalued due to future regulatory changes.

(3) The owner or operator may submit a request to the executive director to release an allowance used for offsets. If approved, the executive director will release the allowances for use in the control period following the date that the request is submitted. Allowances will not be released retroactively for any previous control periods. A request may be submitted if the owner or operator:

(A) receives authorization in the NNSR permit to use an alternative means of compliance for any portion of the NO_x offset requirement equivalent to the amount of allowances the owner or operator requests to have released for the affected facility; or

(B) permanently shuts down the affected facility, except that an allowance used for the environmental contribution portion of the offset ratio does not qualify for release under this paragraph.

(f) An allowance does not constitute a security or a property right.

(g) An allowance will be allocated, traded, and used in tenths of a ton. The number of allowances will be rounded up to the nearest tenth of a ton when determining allowances used.

(h) The owner or operator shall use one compliance account for all affected facilities located at the same site and under common ownership or control.

(i) The executive director will maintain a registry of the allowances in each compliance account and broker account. The registry will not contain proprietary information.

(j) If there is a change in ownership of a site subject to this division, the new owner of the site is responsible for complying with the requirements of this division beginning with the control period during which the site was purchased. The new owner shall contact the executive director to request a compliance account for the site. The new owner must acquire allowances in accordance with §101.356 of this title (relating to Allowance Banking and Trading).

Adopted June 3, 2015

Effective June 25, 2015

§101.353. Allocation of Allowances.

(a) The executive director shall deposit allowances into a compliance account according to the following equation except as provided by subsection (b) or (g) of this section.

Figure: 30 TAC §101.353(a)

$$A = \frac{LA_{HA} \times EF_{FINAL}}{2000}$$

Where:

A= The number of allowances in tenths of a ton;

LA_{HA} = The historical average level of activity, which:

- (A) for a facility in operation on or before January 1, 1997, is the average level of activity, as certified by the executive director, for 1997, 1998, and 1999;
- (B) for an existing facility that began operation after January 1, 1997, is:
 - (i) the level of activity authorized by the executive director until two consecutive calendar years of actual level of activity data is available, beginning after the end of the adjustment period; or
 - (ii) when two complete consecutive calendar years of actual level of activity data is available, beginning after the end of the adjustment period, the level of activity becomes the average of the facility's actual level of activity over those two consecutive calendar years of actual level of activity data; or
- (C) for a facility using alternative emission specifications in §117.310(a)(17) or §117.2010(c)(6) of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications), is the lower of the level of activity as calculated in variable (A) or (B), or the level of activity limited by an enforceable limit or commitment necessary to qualify for an alternative emission specification in §117.310(a)(17) or §117.2010(c)(6) of this title.

EF_{final} = The emission factor, as listed in §§117.310, 117.1210, or 117.2010 of this title.

(b) The owner or operator of the following affected facilities shall acquire allowances for each control period or the annual allocation from a facility already participating under this division in accordance with §101.356 of this title (relating to Allowance Banking and Trading):

(1) a new or modified facility for which the owner or operator submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), an application that the executive director did not determine to be administratively complete before January 2, 2001;

(2) a new or modified facility that qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) for which the owner or operator did not commence construction before January 2, 2001;

(3) a facility in operation before January 1, 1997 located at a site defined on or before December 31, 2000 as a major source, as defined in §117.10 of this title (relating to Definitions), for which the owner or operator did not submit the application form specified by the executive director in accordance with §101.360(a)(1) of this title (relating to Level of Activity Certification) by March 30, 2010; and

(4) an existing facility located at a site defined before January 1, 2001, as a major source, as defined in §117.10 of this title, for which the owner or operator did not submit the application form specified by the executive director in accordance with §101.360(a)(2) of this title by March 30, 2010.

(c) The executive director will allocate and deposit allowances into each compliance account by January 1 of each year.

(d) The executive director may adjust the deposits for any control period to reflect new or existing state implementation plan requirements.

(e) The executive director may add or deduct allowances from compliance accounts based on the review of reports required under §101.359 of this title (relating to Reporting).

(f) The owner or operator of a facility may, due to extenuating circumstances, request a baseline period more representative of normal operation as determined by the executive director. Applications for extenuating circumstances must be submitted by the owner or operator of the facility to the executive director:

(1) no later than 90 days after completion of the baseline period to request up to two additional calendar years to establish a baseline period for a facility whose baseline as described by variable (B)(i) listed in the figure in subsection (a) of this section is not complete by June 30, 2001; or

(2) at any time as authorized by the executive director.

(g) An allowance calculated under subsection (a) of this section will continue to be based on historical level of activity, despite subsequent reductions in the level of activity. If an allowance is being allocated based on allowables and the facility does not achieve two complete consecutive calendar years of actual level of activity data, then the allowance will not continue to be allocated if the facility ceases operation or is not built.

Adopted June 3, 2015

Effective June 25, 2015

§101.354. Allowance Deductions.

(a) The executive director shall deduct allowances in tenths of a ton from a site's compliance account in an amount equal to the nitrogen oxides (NO_x) emissions from each affected facility during the previous control period. The amount of NO_x emissions must be quantified using the monitoring and testing protocols established in §§117.335, 117.340, 117.1235, 117.1240, and 117.2035 of this title (relating to Initial Demonstration

of Compliance; Continuous Demonstration of Compliance; and Monitoring and Testing Requirements).

(b) If the monitoring and testing data required under subsection (a) of this section is missing or unavailable, the NO_x emissions from an affected facility may be quantified for that period of time using the following methods in the following order: continuous monitoring data; periodic monitoring data; testing data; manufacturer's data, and *EPA Compilation of Air Pollution Emission Factors* (AP-42), September 2000.

(1) When quantifying NO_x emissions under this subsection, the owner or operator of the affected facility shall submit the justification for not using the methods in subsection (a) of this section and the justification for the method used.

(2) If NO_x emissions are quantified under this subsection due to non-compliance with the monitoring and testing required under subsection (a) of this section, the executive director shall deduct allowances from a site's compliance account in an amount equal to the NO_x emissions quantified under this subsection plus an additional 10%.

(c) If the protocol used to show compliance with this section differs from the protocol used by the executive director to establish the allocation of allowances under §101.353 of this title (relating to Allocation of Allowances), the executive director may recalculate the number of allowances allocated per year for consistency between the methods.

(d) When deducting allowances from a site's compliance account for a control period, the executive director will deduct the allowances beginning with the most recently allocated allowances before deducting vintage allowances.

(e) The executive director shall deduct allowances from a site's compliance account in an amount equal to the NO_x emissions increases from a facility not subject to an emission specification under §117.310 or §117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) that result from changes made after December 31, 2000, to a facility subject to this division and §117.310(e)(3) or §117.2010(f) of this title. The owner or operator shall submit detailed documentation on these increases in NO_x emissions with the annual compliance report.

(f) An allowance allocated based on allowable emissions in accordance with variable (B)(i) in the figure in §101.353(a) of this title may only be used by the facility for which it was allocated and may not be used by any other facility.

(g) The amount of allowances deducted from a site's compliance account under subsection (a) of this section will be reduced by the amount of allowances deducted in accordance with §101.352(e)(2)(A) of this title (relating to General Provisions).

(h) If the NO_x emissions from the affected facilities during a control period exceed the amount of allowances in the site's compliance account on March 1 following that control period, the executive director will reduce allowances for the next control period by an amount equal to the emissions exceeding the allowances in the site's compliance account plus an additional 10%.

(1) If the site's compliance account does not hold sufficient allowances to accommodate this reduction, the executive director shall issue a Notice of Deficiency requiring the owner or operator to obtain sufficient allowances within 30 days of the notice.

(2) These actions do not preclude additional enforcement action by the executive director.

Adopted June 3, 2015

Effective June 25, 2015

§101.356. Allowance Banking and Trading.

(a) An allowance not used for compliance in the control period it was allocated may be banked as a vintage allowance for use in the following control period in compliance with §101.354 of this title (relating to Allowance Deductions) or traded except as provided by subsection (g) of this section.

(b) An allowance that has not expired or been used may be traded at any time during a control period after it has been allocated except as provided by subsection (g) of this section.

(c) Only an authorized account representative may trade an allowance.

(d) At least 30 days before the allowances are deposited into the buyer's account, the seller shall submit the appropriate trade application to the executive director. The completed application must show the amount of allowances traded and, except for trades between sites under common ownership or control, the purchase price per ton of allowances traded.

(1) To trade a current allowance or vintage allowance for a single year, the seller shall submit the application form specified by the executive director. Trades involving allowances needed for compliance with a control period must be submitted on or before January 30 of the following control period.

(2) To permanently trade ownership of any portion of the allowances allocated annually to an individual facility, the seller shall submit the application form specified by the executive director.

(3) To trade any portion of the individual future year allowances to be allocated annually to an individual facility, the seller shall submit the application form specified by the executive director.

(e) All information regarding the quantity and sales price of allowances will be made available to the public as soon as practicable.

(f) The executive director will send letters to the seller and buyer if the trade is approved or denied. If approved, the trade is final upon the date of the letter from the executive director.

(g) Allowances that were allocated based on allowable emissions in accordance with variable (B)(i) in the figure in §101.353(a) of this title (relating to Allocation of Allowances) may not be banked for future use or traded.

(h) Nitrogen oxides (NO_x) discrete emission reduction credits (DERCs) or mobile discrete emission reduction credits (MDERCs) generated and acquired in accordance with Division 4 of this subchapter (relating to Discrete Emission Credit Program) may be used in place of allowances for compliance with this division in accordance with this subsection. Volatile organic compound (VOC) DERCs or MDERCs generated and acquired in accordance with Division 4 of this subchapter may be used in place of allowances for compliance with this division in accordance with this subsection if the user satisfies the inter-pollutant requirements in §101.376(g) of this title (relating to Discrete Emission Credit Use).

(1) MDERCs may be used in lieu of allowances at a ratio of one ton of MDERCs for one ton of allowances.

(2) DERCs generated by a stationary source before January 1, 2005 may be used in lieu of allowances at a ratio of ten tons of DERCs for one ton of allowances.

(3) DERCs generated after December 31, 2004 may be used in lieu of allowances at a ratio of one ton of DERCs for one ton of allowances.

(4) The 10% environmental contribution and the 5% compliance margin of Division 4 of this subchapter do not apply.

(5) To use DERCs or MDERCs for the purpose of compliance with this division, the required application must be submitted to the executive director on or

before October 1 of the control period for which the DERCs or MDERCs will be used. In addition, the required application must be submitted by March 31 with the site's annual compliance report.

(6) No more than 10,000 tons of DERCs generated from stationary sources may be used for compliance with this division in any combination totaled over all sites in the Houston-Galveston-Brazoria area during a single calendar year. DERCs may be approved for use with this division according to the following.

(A) The executive director may approve the use of 250 tons or less of DERCs per site, per control period, unless the 10,000 ton per year limit has been reached.

(B) If a site requests the use of more than 250 tons of DERCs in a control period, the amount in excess of 250 tons may be reduced so that the total amount of all DERCs used by all sites does not exceed 10,000 tons. For all requests greater than 250 tons, the excess DERCs up to the 10,000 ton DERC limit may be apportioned based on the percentage of DERCs greater than 250 tons requested for use by those sites relative to the total amount of DERCs available up to the 10,000 ton DERC limit.

Adopted June 3, 2015

Effective June 25, 2015

§101.357. Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP).

(a) An owner or operator of a site as defined in §122.10 of this title (relating to General Definitions) in the Houston/Galveston ozone nonattainment area may use nitrogen oxides (NO_x) emission reductions generated under the TERP in lieu of allowances for compliance with this division provided that:

(1) the owner or operator of the site contributes to the TERP fund \$75,000 per ton of NO_x emissions used, not to exceed 25 tons per year or 0.5 tons per day on a site-wide basis;

(2) the owner or operator of the site demonstrates to the executive director that the site will be in full compliance with the applicable emission reduction requirements of this division and Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) no later than the fifth anniversary of the date on which the emission reductions would otherwise be required;

(3) emissions from the site are reduced by at least 80% of the required reductions;

(4) the reductions accomplished under the TERP have not been previously used to meet reduction requirements under a state implementation plan attainment demonstration;

(5) the reductions accomplished under the TERP are used in the same nonattainment area in which they are generated; and

(6) the executive director approves a petition submitted by the owner or operator of the site that demonstrates that it is technically infeasible to comply with applicable emission reduction requirements of this division and Chapter 117 of this title above 80% of the required reductions. When considering technical infeasibility the executive director may consider, but will not be limited to:

- (A) current technology;
- (B) adaptability of technology to a particular source;
- (C) age and projected useful life of a source; and
- (D) cost benefits at the time of application.

(b) The emissions reductions funded under the TERP, and used to offset commission requirements, shall be used to benefit the community in which the site using the emissions reductions is located. If there are no eligible emissions reduction projects within the community, the commission may authorize projects in an adjacent community. For purposes of this section, a community means a Justice of the Peace precinct.

Adopted March 13, 2002

Effective April 4, 2002

§101.359. Reporting.

(a) No later than March 31 after each control period, the owner or operator of a site subject to this division shall submit a completed annual compliance report specified by the executive director to the executive director, which must include the following:

(1) the amount of actual nitrogen oxides (NO_x) emissions from applicable facilities at the site during the preceding control period;

(2) the method of determining NO_x emissions from applicable facilities, including, but not limited to, any monitoring protocol and results, calculation methodology, level of activity, and emission factor;

(3) a summary of all final trades for the preceding control period;

(4) detailed documentation supporting the reported level of activity and emission factor for each affected facility. It is acceptable to reference documentation supporting a level of activity or an emission factor if previously submitted with an annual compliance report or level of activity certification form; and

(5) detailed documentation on NO_x emissions from each facility not subject to an emission specification under §117.310 or §117.2010 of this title (relating to Emission Specifications for Attainment Demonstration and Emission Specifications) that result from changes made after December 31, 2000, to an affected facility as required in §101.354(e) of this title (relating to Allowance Deductions).

(b) For the owner or operator of a site failing to submit an annual compliance report by the required deadline in subsection (a) of this section, the executive director may withhold approval of any proposed trades from that site involving allowances allocated for the control period for which the report is due or to be allocated in subsequent control periods.

(c) The owner or operator of a site subject to this division that no longer has authorization to operate any affected facilities may request a waiver from the reporting requirements in this section. If approved, the annual compliance report will not be required until a new affected facility is authorized at the site.

Adopted June 3, 2015

Effective June 25, 2015

§101.360. Level of Activity Certification.

(a) The owner or operator of any site subject to this division shall certify the historical level of activity for each affected facility by submitting to the executive director a completed application along with any supporting information such as usage records, testing or monitoring data, emission factors, and production records. The historical level of activity must be determined as follows:

(1) for a facility in operation before January 1, 1997, the level of activity averaged over 1997, 1998, and 1999;

(2) for an existing facility the level of activity authorized by the executive director; and

(3) for a new or modified facility not in operation before January 1, 1997, that is subject to an emission specification under §§117.310, 117.1210, or 117.2010 of this

title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) first adopted after April 1, 2001, and either has submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) an application determined by the executive director to be administratively complete within 90 days of the effective date of this emission specification, or has qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and commenced construction within 90 days of the effective date of the emission specification, the level of activity authorized by the executive director.

(b) The owner or operator that certified a facility's allowable level of activity under subsection (a)(2) of this section shall:

(1) no later than 90 days after the end of the fifth year of operation, certify the actual level of activity and actual emission factors for the two complete consecutive calendar years chosen as a baseline by submitting to the executive director a completed application, along with any supporting information such as usage records, testing or monitoring data, and production records; and

(2) receive no benefit of allowances allocated based on actual operation until January 1 of the control period following the certification in paragraph (1) of this subsection.

(c) The owner or operator of a site or facility that becomes subject to this division after March 31, 2001 shall certify the level of activity, as determined by the executive director, in accordance with subsections (a) and (b) of this section. The certification must be submitted no later than 90 days after the date the site or facility becomes subject to this division.

Adopted June 3, 2015

Effective June 25, 2015

§101.363. Program Audits and Reports.

(a) No later than three years after the effective date of this division, and every three years thereafter, the executive director will audit this program.

(1) The audit will evaluate the impact of the program on the state's ozone attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the executive director may choose to include.

(2) The executive director will recommend measures to remedy any problems identified in the audit. The trading of allowances, discrete emission reduction credits (DERCs), and/or mobile discrete emission reduction credits (MDERCs) may be

discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the EPA and made available for public inspection within six months after the audit begins.

(b) No later than June 30 following the end of each control period, the executive director shall develop and make available to the general public and EPA, a report that includes:

- (1) number of allowances allocated to each compliance account;
- (2) total number of allowances allocated under this division;
- (3) number of actual nitrogen oxides (NO_x) allowances subtracted from each compliance account based on the actual NO_x emissions from the site; and
- (4) a summary of all trades completed under this division.

Adopted September 26, 2001

Effective October 18, 2001

SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 4: DISCRETE EMISSION CREDIT PROGRAM
§§101.370 - 101.376, 101.378, 101.379
Effective June 25, 2015

§101.370. Definitions.

Unless specifically defined in the Texas Clean Air Act or in §3.2 or §101.1 of this title (relating to Definitions), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition, the following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise.

(1) Activity--The amount of activity at a facility or mobile source measured in terms of production, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the economic output and emission rate of the facility or mobile source.

(2) Actual emissions--The total emissions during a selected time period, using the facility's or mobile source's actual daily operating hours, production rates, or types of materials processed, stored, or combusted during that selected time period.

(3) Area source--Any facility included in the agency emissions inventory under the area source category.

(4) Baseline emissions--The facility's emissions, in tons per year, occurring before implementation of an emission reduction strategy and calculated as the lowest of the facility's historical adjusted emissions or state implementation plan (SIP) emissions, except that the SIP emissions value is only considered for a facility in a nonattainment area.

(5) Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(6) Curtailment--A reduction in activity level at any facility or mobile source.

(7) Discrete emission credit--A discrete emission reduction credit or mobile discrete emission reduction credit.

(8) Discrete emission reduction credit--A certified emission reduction that is created by reducing emissions from a facility during a generation period, quantified after the generation period, and expressed in tenths of a ton.

(9) Emission rate--The facility's rate of emissions per unit of activity.

(10) Emission reduction--An actual reduction in emissions from a facility or mobile source.

(11) Emission reduction strategy--The method implemented to reduce the facility's or mobile source's emissions beyond that required by state or federal law, regulation, or agreed order.

(12) Facility--As defined in §116.10 of this title (relating to General Definitions).

(13) Generation period--The discrete period of time, not exceeding 12 months, over which a discrete emission reduction credit is created.

(14) Generator--The owner or operator of a facility or mobile source that creates an emission reduction.

(15) Historical adjusted emissions--The facility's emissions occurring before implementation of an emission reduction strategy and adjusted for any local, state, or federal requirement, calculated using the following equation.

Figure: 30 TAC §101.370(15)

$$E_H = \frac{(A_1 \times ER_1) + (A_2 \times ER_2)}{2}$$

Where:

E_H = The historical adjusted emissions for a facility.

A₁ = The facility's activity during the first of any two consecutive calendar years selected in accordance with §101.373(b)(2) of this title (relating to Discrete Emission Reduction Credit Generation and Certification), not to exceed any applicable local, state, or federal requirement.

ER₁ = The facility's emission rate during the first of any two consecutive calendar years selected in accordance with §101.373(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

A₂ = The facility's activity during the second of any two consecutive calendar years selected in accordance with §101.373(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

ER2 = The facility's emission rate during the second of any two consecutive calendar years selected in accordance with §101.373(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

(16) Mobile discrete emission reduction credit --A certified emission reduction from a mobile source that is created during a generation period, quantified after the period in which emissions reductions are made, and expressed in tons.

(17) Mobile source--On-road (highway) vehicles (e.g., automobiles, trucks, and motorcycles) and non-road vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).

(18) Mobile source baseline activity--The level of activity of a mobile source during the applicable mobile source baseline emissions period.

(19) Mobile source baseline emissions--The mobile source's actual emissions, in tons per year, occurring prior to a mobile emission reduction strategy calculated as the product of mobile source baseline activity and mobile source baseline emission rate not to exceed all limitations required by applicable local, state, and federal rules and regulations.

(20) Mobile source baseline emissions rate--The mobile source's rate of emissions per unit of mobile source baseline activity during the mobile source baseline emissions period.

(21) Ozone season--The portion of the year when ozone monitoring is federally required to occur in a specific geographic area, as defined in 40 Code of Federal Regulations Part 58, Appendix D, §2.5.

(22) Protocol--A replicable and workable method of estimating emission rates or activity levels used to calculate the amount of emission reduction generated or credits required for facilities or mobile sources.

(23) Quantifiable--An emission reduction that can be measured or estimated with confidence using replicable methodology.

(24) Real reduction--A reduction in which actual emissions are reduced.

(25) Shutdown--The cessation of an activity producing emissions at a facility or mobile source.

(26) Site--As defined in §122.10 of this title (relating to General Definitions).

(27) State implementation plan--A plan that provides for attainment and maintenance of a primary or secondary national ambient air quality standard as adopted in 40 Code of Federal Regulations Part 52, Subpart SS.

(28) State implementation plan (SIP) emissions--The emissions data in the state's emissions inventory (EI) required under 40 Code of Federal Regulations Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The SIP emissions may not exceed any applicable local, state, or federal requirement. A facility's SIP emissions are determined from the EI year that:

(A) was used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the United States Environmental Protection Agency (EPA) for the current National Ambient Air Quality Standard (NAAQS);

(B) if the SIP revisions identified in subparagraph (A) of this paragraph have not been submitted to the EPA, was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS;

(C) if the SIP revisions identified in subparagraphs (A) and (B) of this paragraph have not been submitted to the EPA, corresponds to the EI for the most recent EI SIP revision submitted to the EPA; or

(D) if the SIP revisions identified in subparagraphs (A) - (C) of this paragraph have not been submitted to the EPA, corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA.

(29) Strategy activity--The facility's or mobile source's level of activity during the discrete emission reduction credit generation period.

(30) Strategy emission rate--The facility's or mobile source's emission rate during the discrete emission reduction credit generation period.

(31) Surplus--An emission reduction that is not otherwise required of a facility or mobile source by any applicable local, state, or federal requirement and has not been otherwise relied upon in the state implementation plan.

(32) Use period--The period of time over which the user applies discrete emission credits to an applicable emission reduction requirement.

(33) User--The owner or operator of a facility or mobile source that acquires and uses discrete emission reduction credits to meet a regulatory requirement, demonstrate compliance, or offset an emission increase.

(34) Use strategy--The compliance requirement for which discrete emission credits are being used.

Adopted June 3, 2015

Effective June 25, 2015

§101.371. Purpose.

The purpose of this division is to allow the owner or operator of a facility or mobile source to generate discrete emission credits by reducing emissions beyond any applicable local, state, or federal requirement and to allow the owner or operator of another source to use these credits. Participation under this division is strictly voluntary.

Adopted June 3, 2015

Effective June 25, 2015

§101.372. General Provisions.

(a) Applicable pollutants.

(1) A discrete emission reduction credit (DERC) may be generated from a reduction of a criteria pollutant, excluding lead, or a precursor of a criteria pollutant. A DERC generated from the reduction of one pollutant or precursor may not be used to meet the requirements for another pollutant or precursor, except as provided in §101.376 of this title (relating to Discrete Emission Reduction Credit Use).

(2) Reductions of volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂) and particulate matter with an aerodynamic diameter of less than or equal to a nominal ten microns (PM₁₀) may qualify as mobile discrete emission reduction credits (MDERCs) as appropriate. Reductions of other criteria pollutants are not creditable. Reductions of one pollutant may not be used to meet the reduction requirements for another pollutant, unless urban airshed

modeling demonstrates that one may be substituted for another subject to approval by the executive director and the United States Environmental Protection Agency (EPA).

(b) Eligible generator categories. Eligible categories include the following:

(1) facilities (including area sources);

(2) mobile sources; or

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(c) Discrete emission credit requirements.

(1) A DERC is a certified emission reduction that:

(A) must be real, quantifiable, and surplus at the time the DERC is generated;

(B) must occur after the year used to determine the state implementation plan (SIP) emissions for a facility in a nonattainment area; and

(C) must occur at a facility with SIP emissions reported before implementation of the emission reduction strategy for a facility in a nonattainment area.

(2) To be creditable as an MDERC, an emission reduction must meet the following:

(A) the reduction must be real, quantifiable, and surplus at the time it is created;

(B) the reduction must have occurred after the most recent year of emissions inventory used in the SIP for all applicable pollutants;

(C) the mobile source's emissions must have been represented in the emissions inventory used for the SIP; and

(D) the mobile sources must have been included in the attainment demonstration baseline emissions inventory. If a mobile reduction implemented is not in the baseline for emissions, this reduction does not constitute a discrete emission reduction.

(3) Emission reductions from a facility or mobile source which are certified as discrete emission credits under this division cannot be recertified in whole or in part as emission credits under another division within this subchapter.

(d) Protocol.

(1) All generators or users of discrete emission credits must use a protocol which has been submitted by the executive director to the EPA for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols shall be used as follows.

(A) The owner or operator of a facility subject to the emission specifications under §§117.110, 117.310, 117.410, 117.1010, 117.1210, 117.1310, 117.2010, 117.2110, or 117.3310 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall use the testing and monitoring methodologies required under Chapter 117 of this title (relating to Control of Air Pollution for Nitrogen Compounds) to show compliance with the emission specification for that pollutant.

(B) The owner or operator of a facility subject to the control requirements or emission specifications under Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) shall use the testing and monitoring methodologies required under Chapter 115 of this title to show compliance with the applicable requirements.

(C) The executive director may approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility.

(D) Except as specified in subparagraph (C) of this paragraph, if the executive director has not submitted a protocol for the applicable facility or mobile source to the EPA for approval, the following applies:

(i) the amount of discrete emission credits from a facility or mobile source, in tons, will be determined and certified based on quantification methodologies at least as stringent as the methods used to demonstrate compliance with any applicable requirements for the facility or mobile source;

(ii) the generator shall collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the

facility's or mobile source's activity level for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

(iii) the owner or operator of a facility with a continuous emissions monitoring system or predictive emissions monitoring system in place shall use this data in quantifying emissions;

(iv) the chosen quantification protocol must be made available for public comment for a period of 30 days and must be viewable on the commission's website;

(v) the chosen quantification protocol and any comments received during the public comment period must, upon approval by the executive director, be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols may not be accepted for use with this division if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA proposes disapproval of the protocol in the *Federal Register*.

(2) If the monitoring and testing data specified in paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine the facility's emissions for the period of time the data is missing or unavailable using the most conservative method for replacing the data and these listed methods in the following order:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

(E) *EPA Compilation of Air Pollution Emission Factors (AP-42)*, September 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator or user shall submit the justification for not using the methods in paragraph (1) of this subsection and submit the justification for the method used.

(e) Credit certification.

(1) The amount of discrete emission credits must be rounded down to the nearest tenth of a ton when generated and must be rounded up to the nearest tenth of a ton when used.

(2) The executive director shall review an application for certification to determine the credibility of the reductions and may certify reductions. Each DERC certified will be assigned a certificate number. Reductions determined to be creditable will be certified by the executive director.

(3) The applicant will be notified in writing if the executive director denies the discrete emission credit notification. The applicant may submit a revised application in accordance with the requirements of this division.

(4) If a facility's or mobile source's emissions exceed any applicable local, state, or federal requirement, reductions of emissions exceeding the requirement may not be certified as discrete emission credits.

(f) Geographic scope. Except as provided in paragraph (7) of this subsection and §101.375 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in the State of Texas may be creditable and used in the state with the following limitations.

(1) VOC and NO_x discrete emission credits generated in an ozone attainment area may be used in any county or portion of a county designated as attainment or unclassified, except as specified in paragraphs (4) and (5) of this subsection and may not be used in an ozone nonattainment area.

(2) VOC and NO_x discrete emission credits generated in an ozone nonattainment area may be used either in the same ozone nonattainment area in which they were generated, or in any county or portion of a county designated as attainment or unclassified.

(3) VOC and NO_x discrete emission credits generated in an ozone nonattainment area may not be used in any other ozone nonattainment area, except as provided in this subsection.

(4) VOC discrete emission credits are prohibited from use within the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), if generated outside of the covered attainment counties. VOC discrete emission credits

generated in a nonattainment area may be used in the covered attainment counties, except those generated in El Paso.

(5) NO_x discrete emission credits are prohibited from use within the covered attainment counties, as defined in §115.10 of this title, if generated outside of the covered attainment counties. NO_x discrete emission credits generated in a nonattainment area, except those generated in El Paso, may be used in the covered attainment counties.

(6) CO, SO₂, and PM₁₀ discrete emission credits must be used in the same metropolitan statistical area (as defined in Office of Management and Budget Bulletin Number 93-17 entitled "Revised Statistical Definitions for Metropolitan Areas" dated June 30, 1993) in which the reduction was generated.

(7) VOC and NO_x discrete emission credits generated in other counties, states, or emission reductions in other nations may be used in any attainment or nonattainment county provided a demonstration has been made and approved by the executive director and the EPA, to show that the emission reductions achieved in the other county, state, or nation improve the air quality in the county where the credit is being used.

(g) Ozone season. In areas having an ozone season of less than 12 months (as defined in 40 Code of Federal Regulations Part 58, Appendix D) VOC and NO_x discrete emission credits generated outside the ozone season may not be used during the ozone season.

(h) Recordkeeping. The generator must maintain a copy of all forms and backup information submitted to the executive director for a minimum of five years, following the completion of the generation period. The user shall maintain a copy of all forms and backup information submitted to the executive director for a minimum of five years, following the completion of the use period. Other relevant reference material or raw data must also be maintained on-site by the participating facilities or mobile sources. The user must also maintain a copy of the generator's notice and backup information for a minimum of five years after the use is completed. The records must include, but not necessarily be limited to:

(1) the name, emission point number, and facility identification number of each facility or any other identifying number for mobile sources using discrete emission credits;

(2) the amount of discrete emission credits being used by each facility or mobile source; and

(3) the certificate number of each discrete emission credit used by each facility or mobile source.

(i) **Public information.** All information submitted with notices, reports, and trades regarding the nature, quantity of emissions, and sales price associated with the use, or generation of discrete emission credits is public information and may not be submitted as confidential. Any claim of confidentiality for this type of information, or failure to submit all information may result in the rejection of the discrete emission reduction application. All nonconfidential notices and information regarding the generation, use, and availability of discrete emission credits may be obtained from the registry.

(j) **Authorization to emit.** A discrete emission credit created under this division is a limited authorization to emit the specified pollutants in accordance with the provisions of this section, the Federal Clean Air Act, and the Texas Clean Air Act, as well as regulations promulgated thereunder. A discrete emission credit does not constitute a property right. Nothing in this division should be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(k) **Program participation.** The executive director has the authority to prohibit a person from participating in discrete emission credit trading either as a generator or user, if the executive director determines that the person has violated the requirements of the program or abused the privileges provided by the program.

(l) **Compliance burden and enforcement.**

(1) The user is responsible for assuring that a sufficient quantity of discrete emission credits are acquired to cover the applicable facility or mobile source's emissions for the entire use period.

(2) The user is in violation of this section if the user does not possess enough discrete emission credits to cover the compliance need for the use period. If the user possesses an insufficient quantity of discrete emission credits to cover its compliance need, the user will be out of compliance for the entire use period. Each day the user is out of compliance may be considered a violation.

(3) A user may not transfer its compliance burden and legal responsibilities to a third-party participant. A third-party participant may only act in an advisory capacity to the user.

(m) **Credit ownership.** The owner of the initial discrete emission credit certificate shall be the owner or operator of the mobile source creating the emission reduction. The

executive director may approve a deviation from this subsection considering factors such as, but not limited to:

(1) whether an entity other than the owner or operator of the mobile source incurred the cost of the emission reduction strategy; or

(2) whether the owner or operator of the mobile source lacks the potential to generate one tenth of a ton of credit.

Adopted June 3, 2015

Effective June 25, 2015

§101.373. Discrete Emission Reduction Credit Generation and Certification.

(a) Emission reduction strategy.

(1) A discrete emission reduction credit (DERC) may be generated using one of the following strategies or any other method that is approved by the executive director:

(A) the installation and operation of pollution control equipment that reduces emissions below the baseline emissions for the facility; or

(B) a change in the manufacturing process, other than a shutdown or curtailment, that reduces emissions below the baseline emissions for the facility.

(2) A DERC may not be generated using the following strategies:

(A) a shutdown or curtailment of an activity at a facility, either permanent or temporary;

(B) a modification or discontinuation of any activity that is otherwise in violation of a local, state, or federal requirement;

(C) an emission reduction required to comply with any provision under 42 United States Code (USC), Subchapter I regarding tropospheric ozone, or 42 USC, Subchapter IV-A regarding acid deposition control;

(D) an emission reduction of hazardous air pollutants, as defined in 42 USC, §7412, from application of a standard promulgated under 42 USC, §7412;

(E) an emission reduction from the shifting of activity from one facility to another facility at the same site;

(F) an emission reduction credited or used under any other emissions trading program;

(G) an emission reduction occurring at a facility that received an alternative emission limitation to meet a state reasonably available control technology requirement, except to the extent that the emissions are reduced below the level that would have been required had the alternative emission limitation not been issued;

(H) an emission reduction from a facility authorized in a flexible permit, unless the reduction is permanent and enforceable or the generator can demonstrate that the emission reduction was not used to satisfy the conditions for the facilities under the flexible permit;

(I) that portion of an emission reduction funded through a state or federal program, unless specifically allowed under that program;

(J) an emission reduction from a facility subject to Division 2, 3, or 6 of this subchapter (relating to Emissions Banking and Trading Allowances; Mass Emissions Cap and Trade Program; and Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program); or

(K) an emission reduction from a facility without state implementation plan (SIP) emissions if the facility is located in a nonattainment area.

(b) DERC baseline emissions.

(1) For a facility located in an area designated as nonattainment for a criteria pollutant, and the pollutant being reduced is either the same criteria pollutant or a precursor of that criteria pollutant, the baseline emissions may not exceed the facility's SIP emissions. If the pollutant being reduced is not the same criteria pollutant for which the area is designated nonattainment or a precursor of that criteria pollutant, then baseline emissions are limited as specified in paragraph (3) of this subsection.

(2) The activity and emission rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years, selected from the ten consecutive years immediately before the emission reduction is achieved.

(3) For a facility located in an area that is not designated nonattainment for the criteria pollutant being reduced, or the pollutant being reduced is not a precursor of that criteria pollutant, the historical adjusted emissions must be determined from two consecutive calendar years that include or follow the 1990 emission inventory.

(4) For emission reduction strategies that exceed 12 months, the baseline emissions are established after the first year of generation and are fixed for the life of each unique emission reduction strategy. A new baseline must be established if the commission adopts a SIP revision for the area where the facility is located.

(5) For a facility in existence less than 24 months or not having two complete calendar years of activity data, a shorter period of not less than 12 months may be considered by the executive director.

(c) DERC calculation.

(1) DERCs are calculated according to the following equation.

Figure: 30 TAC §101.373(c)(1)

$$DERC = [SA \times (BER - SER)]$$

Where:

DERC = The number of discrete emission reduction credits generated in tenths of a ton.

SA = Strategy activity, which is the facility's level of activity during the discrete emission reduction credit generation period.

BER = The facility's baseline emission rate, which is the lowest of the emission rate used in the historical adjusted emissions or the state implementation plan emissions.

SER = The facility's emission rate during the discrete emission reduction credit generation period.

(2) For a facility located in an area designated nonattainment for a criteria pollutant, and the pollutant being reduced is either the same criteria pollutant or a precursor of that criteria pollutant, the sum of the reduction generated under paragraph (1) of this subsection and the total strategy emissions must not be greater than the facility's historical adjusted emissions or SIP emissions, whichever is less.

(3) For a facility located in an area that is not designated nonattainment for the criteria pollutant being reduced, or the pollutant being reduced is not a precursor of that criteria pollutant, the sum of the reduction generated under paragraph (1) of this subsection and the total strategy emissions must not be greater than the facility's historical adjusted emissions.

(d) DERC certification.

(1) The application form designated by the executive director must be submitted to the executive director no later than 90 days after the end of the generation period and no later than 90 days after completing each 12 months of generation.

(2) A DERC must be quantified in accordance with §101.372(d) of this title (relating to General Provisions). The executive director shall have the authority to inspect and request information to assure that the emission reductions have actually been achieved.

(3) An application for DERCs must include, but is not limited to, a completed application form signed by an authorized representative of the applicant along with the following information for each pollutant reduced at each applicable facility:

- (A) the generation period;
- (B) a complete description of the generation activity;
- (C) the amount of DERCs generated;
- (D) for volatile organic compound reductions, a list of the specific compounds reduced;
- (E) documentation supporting the activity, emission rate, historical adjusted emissions, SIP emissions, strategy emission rate, and strategy activity;
- (F) emissions inventory data for each of the years used to determine the SIP emissions and historical adjusted emissions;
- (G) the most stringent emission rate for the facility, considering all applicable local, state, and federal requirements;
- (H) a complete description of the protocol used to calculate the DERC generated; and
- (I) the actual calculations performed by the generator to determine the amount of DERCs generated.

Adopted June 3, 2015

Effective June 25, 2015

§101.374. Mobile Discrete Emission Reduction Credit Generation and Certification.

(a) Method of generation.

(1) Mobile discrete emission reduction credits (MDERC) may be generated by any mobile source emission reduction strategy that creates actual mobile source emission reductions under this division (relating to Discrete Emission Credit Banking and Trading), and is subject to the approval of the commission.

(2) MDERCs may not be generated from the following strategies:

(A) that portion of reductions funded through a state or federal program, unless specifically allowed under that program;

(B) through the transfer of emissions from one mobile source to another mobile source within the same nonattainment area and under common ownership or control; or

(C) reduction strategies resulting in secondary emissions increases that exceed limits established under state or federal rules or regulations.

(b) MDERC baseline emissions.

(1) Mobile source baseline emissions must be calculated with either measured emissions of an appropriately sized sample for the participating mobile sources using a United States Environmental Protection Agency (EPA)-approved test procedure, or estimated emissions of the participating mobile sources using the most recent edition of the EPA on-road or non-road mobile emissions factor model or other model as applicable.

(2) Mobile source baseline emissions for each year of the proposed mobile source reduction strategy must be the same as, or lower than, those used or proposed to be used in the state implementation plan (SIP) in which the reduction strategy is proposed.

(3) Baseline emissions for quantifying MDERCs should include, but not be limited to, the following information and data as appropriate:

(A) the emission standard to which the mobile source is subject or the emission performance standard to which the mobile source is certified;

(B) the estimated or measured in-use emissions levels per unit of use from all significant mobile source emissions sources;

- (C) the number of mobile sources in the participating group;
- (D) the type or types of mobile sources by model year; and
- (E) the actual activity level, hours of operation, or miles traveled by type and model year.

(c) MDERC calculation. The quantity of MDERCs must be calculated from the annual difference between the mobile source baseline emissions and the strategy emissions. The MDERC must be based on actual in-use emissions of the modified or substitute mobile source.

(d) Emission offsets. Mobile source reduction strategies that reduce emissions in one criteria pollutant or precursor for which an area is designated as nonattainment or near nonattainment, yet result in an emissions increase from the same mobile source in another criteria pollutant or precursor for which that same area is nonattainment or near nonattainment, must be offset at a 1:1 ratio with DERCs or MERCs.

(e) MDERC certification.

(1) An MDEC-1 Form, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits, shall be submitted to the executive director no later than 90 days after the discrete emission reduction strategy activity has been completed, or no later than 90 days after the completion of the first 12 months of generation. Submission of the MDEC-1 Form shall continue every 12 months thereafter for each subsequent year of generation.

(2) MDERCs will be determined and certified in accordance with §101.372(d) of this title (relating to General Provisions) using:

- (A) EPA methodologies, when available;
- (B) actual monitoring results, when available;
- (C) calculations using the most current EPA mobile emissions factor model or other model as applicable; or
- (D) calculations using credible emission reduction measurement or estimation methodologies that satisfactorily address the analytical uncertainties of mobile source emissions reduction strategies. The generator shall collect relevant data sufficient to characterize the process emissions of the affected pollutant and the process activity level for all representative phases of source operation during the period under which the MDERCs are created or used.

(3) An application for MDERCs must include, but is not limited to, a completed MDEC-1 Form signed by an authorized representative of the applicant along with the following information for each pollutant reduced for each mobile source:

(A) the date of the reduction;

(B) a complete description of the generation activity;

(C) the amount of discrete mobile source emission credits generated;

(D) documentation supporting the mobile source baseline activity, mobile source baseline emission rate, mobile source baseline emissions, and the mobile source strategy emissions;

(E) a complete description of the protocol used to calculate the discrete mobile source emission reduction generated;

(F) the actual calculations performed by the generator to determine the amount of discrete mobile source emission credits generated; and

(G) a demonstration that the reductions are surplus to all local, state, and federal rules and to emissions modeled in the SIP.

Adopted November 10, 2004

Effective December 2, 2004

§101.375. Emission Reductions Achieved Outside the United States.

(a) A facility may use emission reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section.

(b) A facility may use emission reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants and substitute these reductions for reductions in other criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section; and

(1) the reduction is substituted for the reduction of another criteria pollutant and the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area; or

(2) a reduction of an air contaminant for which the area in which the facility is located has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment is substituted for any air contaminant for which the area has been designated as nonattainment or leads to the formation of any criteria pollutant for which the area has been designated as nonattainment.

(c) The use of reductions outside the United States must be approved by the executive director and the United States Environmental Protection Agency (EPA), and the user of the emission reduction must:

(1) demonstrate to the executive director and EPA that the reduction is real, permanent, enforceable, quantifiable, and surplus to any applicable Mexican, federal, state, or local law;

(2) demonstrate that the use of the reduction does not cause localized health impacts, as determined by the executive director and EPA;

(3) submit all supporting information for calculations and modeling, and any additional information requested by the executive director and EPA; and

(4) be located within 100 kilometers of the Texas - Mexico border.

(d) This section does not apply to reductions in emissions of lead.

Adopted October 4, 2006

Effective October 26, 2006

§101.376. Discrete Emission Credit Use.

(a) Requirements to use discrete emission credits. Discrete emission credits may be used if the following requirements are met.

(1) The user shall have ownership of a sufficient amount of discrete emission credits before the use period for which the specific discrete emission credits are to be used.

(2) The user shall hold sufficient discrete emission credits to cover the user's compliance obligation at all times.

(3) The user shall acquire additional discrete emission credits during the use period if it is determined the user does not possess enough discrete emission credits to cover the entire use period. The user shall acquire additional credits as allowed under this section prior to the shortfall, or be in violation of this section.

(4) The user may acquire and use only discrete emission credits listed in the registry.

(5) The user shall obtain executive director approval to use nitrogen oxides (NO_x) discrete emission reduction credits (DERCs) in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties as provided by subsection (f) of this section.

(6) A DERC may not be used unless it is available in the account for the site where it will be used.

(b) Use of discrete emission credits. With the exception of uses prohibited in subsection (c) of this section or precluded by a commission order or a condition within an authorization under the same commission account number, discrete emission credits may be used to meet or demonstrate compliance with any facility or mobile regulatory requirement including the following:

(1) to exceed any allowable emission level, if the following conditions are met:

(A) in ozone nonattainment areas, permitted facilities may use discrete emission credits to exceed permit allowables by no more than 10 tons for nitrogen oxides or 5 tons for volatile organic compounds in a 12-month period as approved by the executive director. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested; or

(B) at permitted facilities in counties or portions of counties designated as attainment or, attainment/unclassifiable, or unclassifiable, discrete emission credits may be used to exceed permit allowables by values not to exceed the prevention of significant deterioration significance levels as provided in 40 Code of Federal Regulations (CFR) §52.21(b)(23), as approved by the executive director before use. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested;

(2) as new source review (NSR) permit offsets, if the following requirements are met:

(A) the user shall obtain the executive director's approval prior to the use of specific discrete emission credits to cover, at a minimum, one year of operation of the new or modified facility in the NSR permit;

(B) the amount of discrete emission credits needed for NSR offsets equals the quantity of tons needed to achieve the maximum allowable emission level set in the user's NSR permit. The user shall also purchase and retire enough discrete emission credits to meet the offset ratio requirement in the user's ozone nonattainment area. The user shall purchase and retire either the environmental contribution of 10% or the offset ratio, whichever is higher; and

(C) for the use of mobile discrete emission reduction credits, the NSR permit must meet the following requirements:

(i) the permit must contain an enforceable requirement that the facility obtain at least one additional year of offsets before continuing operation in each subsequent year;

(ii) prior to issuance of the permit, the user shall identify the discrete emission credits; and

(iii) prior to start of operation, the user shall submit a completed application form specified by the executive director;

(D) for the use of DERCs, the user shall submit a completed application form specified by the executive director at least 90 days before the start of operation and at least 90 days before continuing operation for any period in which DERCs not included in a prior application will be used as offsets;

(3) to comply with the Mass Emissions Cap and Trade Program requirements as provided by §101.356(h) of this title (relating to Allowance Banking and Trading); or

(4) to comply with Chapter 115 or 117 of this title (relating to Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds), as allowed.

(c) Discrete emission credit use prohibitions. A discrete emission credit may not be used under this division:

(1) before it has been acquired by the user;

(2) for netting to avoid the applicability of federal and state NSR requirements;

(3) to meet (as codified in 42 United States Code (USC), Federal Clean Air Act (FCAA)) requirements for:

(A) new source performance standards under FCAA, §111 (42 USC, §7411);

(B) lowest achievable emission rate standards under FCAA, §173(a)(2) (42 USC, §7503(a)(2));

(C) best available control technology standards under FCAA, §165(a)(4) (42 USC, §7475(a)(4)) or Texas Health and Safety Code, §382.0518(b)(1);

(D) hazardous air pollutants standards under FCAA, §112 (42 USC, §7412), including the requirements for maximum achievable control technology;

(E) standards for solid waste combustion under FCAA, §129 (42 USC, §7429);

(F) requirements for a vehicle inspection and maintenance program under FCAA, §182(b)(4) or (c)(3) (42 USC, §7511a(b)(4) or (c)(3));

(G) ozone control standards set under FCAA, §183(e) and (f) (42 USC, §7511b(e) and (f));

(H) clean-fueled vehicle requirements under FCAA, §246 (42 USC, §7586);

(I) motor vehicle emissions standards under FCAA, §202 (42 USC, §7521);

(J) standards for non-road vehicles under FCAA, §213 (42 USC, §7547);

(K) requirements for reformulated gasoline under FCAA, §211(k) (42 USC, §7545); or

(L) requirements for Reid vapor pressure standards under FCAA, §211(h) and (i) (42 USC, §7545(h) and (i));

(4) to allow an emissions increase of an air contaminant above a level authorized in a permit or other authorization that exceeds the limitations of §106.261 or §106.262 of this title (relating to Facilities (Emission Limitations); and Facilities (Emission and Distance Limitations)) except as approved by the executive director and the United States Environmental Protection Agency (EPA). This paragraph does not apply to limit the use of DERC or mobile DERC in lieu of allowances under §101.356 of this title;

(5) to authorize a facility whose emissions are enforceably limited to below applicable major source threshold levels, as defined in §122.10 of this title (relating to General Definitions), to operate with actual emissions above those levels without triggering applicable requirements that would otherwise be triggered by such major source status;

(6) to exceed an allowable emission level where the exceedance would cause or contribute to a condition of air pollution as determined by the executive director; or

(7) in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, if the NO_x DERC usage requested exceeds the limit specified in subsection (f) of this section.

(d) Notice of intent to use.

(1) A completed application form specified by the executive director, signed by an authorized representative of the applicant, must be submitted to the executive director in accordance with the following requirements.

(A) Discrete emission credits may be used only after the applicant has submitted the notice and received executive director approval.

(B) The application must be submitted:

(i) except as provided in subsection (f)(4) of this section, for NO_x DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, by August 1 before the beginning of the calendar year in which the DERCs are intended for use;

(ii) for DERC use for the Mass Emissions Cap and Trade Program in accordance with §101.356 of this title, by October 1 of the control period in which the DERC are intended for use; or

(iii) for DERC use for NSR offsets, as required by subsection (b)(2)(D) of this section; or

(iv) for all other discrete emission credit use, at least 45 days before the first day of the use period if the discrete emission credits were generated from a facility, 90 days if the discrete emission credits were generated from a mobile source, and every 12 months thereafter for each subsequent year if the use period exceeds 12 months.

(C) A copy of the application must also be sent to the federal land manager 30 days prior to use if the user is located within 100 kilometers of a Class I area, as listed in 40 CFR Part 81 (2001).

(D) The application must include, but is not limited to, the following information for each use:

(i) the applicable state and federal requirements that the discrete emission credits will be used to comply with and the intended use period;

(ii) the amount of discrete emission credits needed;

(iii) the baseline emission rate, activity level, and total emissions for the applicable facility or mobile source;

(iv) the actual emission rate, activity level, and total emissions for the applicable facility or mobile source;

(v) the most stringent emission rate and the most stringent emission level for the applicable facility or mobile source, considering all applicable local, state, and federal requirements;

(vi) a complete description of the protocol, as submitted by the executive director to the United States Environmental Protection Agency for approval, used to calculate the amount of discrete emission credits needed;

(vii) the actual calculations performed by the user to determine the amount of discrete emission credits needed;

(viii) the date that the discrete emission credits were acquired or will be acquired;

(ix) the discrete emission credit generator and the original certificate number of the discrete emission credits acquired or to be acquired;

(x) the price of the discrete emission credits acquired or the expected price of the discrete emission credits to be acquired, except for transfers between sites under common ownership or control;

(xi) a statement that due diligence was taken to verify that the discrete emission credits were not previously used, the discrete emission credits were not generated as a result of actions prohibited under this regulation, and the discrete emission credits will not be used in a manner prohibited under this regulation; and

(xii) a certification of use, that must contain certification under penalty of law by a responsible official of the user of truth, accuracy, and completeness. This certification must state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(2) Discrete emission credit use calculation.

(A) To calculate the amount of discrete emission credits necessary to comply with §§117.123, 117.320, 117.323, 117.423, 117.1020, 117.1220, or 117.3020 of this title (relating to Source Cap; and System Cap), a user may use the equations listed in those sections, or the following equations.

(i) For the rolling average cap:

Figure: 30 TAC §101.376(d)(2)(A)(i)

$$DERCs = \sum_{i=1}^N [(EH_i \times ER_i) - (H_i \times R_i)] \times \frac{d}{2000}$$

Where:

N = The total number of emission units in the source or system cap.

i = Each emission unit in the source or system cap.

EH_i = The expected new daily heat input, in MMBtu per day.

ER_i = The expected new emission rate, in lb/MMBtu.

H_i = The actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.123(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable.

R_i = The actual emission rate, in pounds (lb)/MMBtu, as defined in §§117.123(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable.
 d = The number of days that emissions are expected to exceed the source or system cap.

(ii) For maximum daily cap:

Figure: 30 TAC §101.376(d)(2)(A)(ii)

$$DECs = \sum_{i=1}^N [(EH_{Mi} \times ER_i) - (H_{Mi} \times R_i)] \times \frac{d}{2000}$$

Where:

N = The total number of emission units in the source or system cap.
 i = Each emission unit in the source or system cap.
 EH_{Mi} = The expected new maximum daily heat input, in MMBtu per day.
 ER_i = The expected new emission rate, in lb/MMBtu.
 H_{Mi} = The maximum daily heat input, in MMBtu/day, as defined in §§117.123(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), or 117.1220(c)(2) of this title as applicable.
 R_i = In lb/MMBtu, is defined as in §§117.123(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), or 117.1220(c)(2) of this title as applicable.
 d = The number of days in the use period.

(B) The amount of discrete emission credits needed to demonstrate compliance or meet a regulatory requirement is calculated as follows.

Figure: 30 TAC §101.376(d)(2)(B)

$$DECs = (ELA) \times (EER - RER)$$

Where:

ELA = The expected level of activity.

EER = The expected emission rate per unit activity.

RER = The regulatory emission rate per unit activity.

(C) The amount of discrete emission credits needed to exceed an allowable emissions level is calculated as follows.

Figure: 30 TAC §101.376(d)(2)(C)

$$DECs = (ELA - PLA) \times (PER)$$

Where:

ELA = The expected level of activity.

PLA = The permitted level of activity.

PER = The permitted emission rate per unit activity.

(D) The user shall retire 10% more discrete emission credits than are needed, as calculated in this paragraph, to ensure that the facility or mobile source environmental contribution retirement obligation will be met.

(E) If the amount of discrete emission credits needed to meet a regulatory requirement or to demonstrate compliance is greater than 10 tons, an additional 5.0% of the discrete emission credits needed, as calculated in this paragraph, must be acquired to ensure that sufficient discrete emission credits are available to the user with an adequate compliance margin.

(3) A user may submit a late application in the case of an emergency, or other exigent circumstances, but the notice must be submitted before the discrete emission credits can be used. The user shall include a complete description of the situation in the notice of intent to use. All other notices submitted less than 45 days prior to use, or 90 days prior to use for a mobile source, will be considered late and in violation.

(4) The user is responsible for determining the credits it will purchase and notifying the executive director of the selected generating facility or mobile source in the application. If the generator's credits are rejected or the application is incomplete, the use of discrete emission credits by the user may be delayed by the executive director. The user cannot use any discrete emission credits that have not been certified by the executive director. The executive director may reject the use of discrete emission credits by a facility or mobile source if the credit and use cannot be demonstrated to meet the requirements of this section.

(5) If the facility is in an area with an ozone season less than 12 months, the user shall calculate the amount of discrete emission credits needed for the ozone season separately from the non-ozone season.

(e) Notice of use.

(1) The user shall calculate:

(A) the amount of discrete emission credits used, including the amount of discrete emission credits retired to cover the environmental contribution, as described in subsection (d)(2)(D) of this section, associated with actual use; and

(B) the amount of discrete emission credits not used, including the amount of excess discrete emission credits that were purchased to cover the environmental contribution, as described in subsection (d)(2)(D) of this section, but not associated with the actual use, and available for future use.

(2) Discrete emission credit use is calculated by the following equations.

(A) The amount of discrete emission credits used to demonstrate compliance or meet a regulatory requirement is calculated as follows.

Figure: 30 TAC §101.376(e)(2)(A)

$$DECs = (ALA) \times (AER - RER)$$

Where:

ALA = actual level of activity

AER = actual emission rate per unit activity

RER = regulatory emission rate per unit activity

(B) The amount of discrete emission credits used to comply with permit allowables is calculated as follows.

Figure: 30 TAC §101.376(e)(2)(B)

$$DECs = (ALA - PLA) \times (AER)$$

Where:

ALA = actual level of activity

PLA = permitted level of activity

AER = permitted emission rate per unit activity

(3) A form specified by the executive director for using credits must be submitted to the commission in accordance with the following requirements.

(A) The notice must be submitted within 90 days after the end of the use period. Each use period must not exceed 12 months.

(B) The notice is to be used as the mechanism to update or amend the notice of intent to use and must include any information different from that reported in the notice of intent to use, including, but not limited to, the following items:

(i) purchase price of the discrete emission credits obtained prior to the current use period, except for transfers between sites under common ownership or control;

(ii) the actual amount of discrete emission credits possessed during the use period;

(iii) the actual emissions during the use period for volatile organic compounds and nitrogen oxides;

(iv) the actual amount of discrete emission credits used;

(v) the actual environmental contribution; and

(vi) the amount of discrete emission credits available for future use.

(4) Discrete emission credits that are not used during the use period are surplus and remain available for transfer or use by the holder. In addition, any portion of the calculated environmental contribution not attributed to actual use is also available.

(5) The user is in violation of this section if the user submits the report of use later than the allowed 90 days following the conclusion of the use period.

(f) DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(1) For the 2015 calendar year, the use of NO_x DERCs in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties may not exceed 42.8 tons per day.

(2) Beginning in the 2016 calendar year, the use of NO_x DERCs in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties may not exceed 17.0 tons per day.

(3) If the total number of DERCs submitted for the upcoming calendar year in all applications received by the August 1 deadline in subsection (d)(1)(B)(i) of this section is greater than the applicable limit in paragraph (1) or (2) of this subsection, the executive director shall apportion the number of DERCs for use.

(A) In determining the amount of DERC use to approve for each application, the executive director may take into consideration:

(i) the total number of DERCs existing in the nonattainment area bank;

(ii) the total number of DERCs submitted for use in the upcoming control period;

(iii) the proportion of DERCs requested for use to the total amount requested;

(iv) the amount of DERCs required by the applicant for compliance;

(v) the technological and economic aspects of other compliance options available to the applicant; and

(vi) the location of the facilities for which owners or operators are requesting use of DERCs.

(B) The executive director shall consider the appropriate amount of DERCs allocated for each application submitted on a case-by-case basis.

(4) If the total number of DERCs submitted for use during the upcoming calendar year in all applications received by the August 1 deadline in subsection (d)(1)(B)(i) of this section is less than the limit, the executive director may:

(A) approve all requests for DERC usage provided that all other requirements of this section are met; and

(B) consider any late application submitted as provided under subsection (d)(3) of this section that is not an Electric Reliability Council of Texas, Inc. (ERCOT)-declared emergency situation as defined in paragraph (5) of this subsection, but will not otherwise approve a late submittal that would exceed the limit established in this subsection.

(5) If the applications are submitted in response to an ERCOT-declared emergency situation, the request will not be subject to the limit established in this subsection and may be approved provided all other requirements are met. For the purposes of this paragraph, an ERCOT-declared emergency situation is defined as the period of time that an ERCOT-issued emergency notice or energy emergency alert (EEA) (as defined in ERCOT Nodal Protocols, Section 2: Definitions and Acronyms (June 1, 2012) and issued as specified in ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations (June 1, 2012)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT.

(g) Inter-pollutant use of DERCs. With prior approval from the executive director and the EPA, a NO_x or VOC DERC may be used to meet the NNSR offset requirements for the other ozone precursor if photochemical modeling demonstrates that overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

Adopted June 3, 2015

Effective June 25, 2015

§101.378. Discrete Emission Credit Banking and Trading.

(a) The credit registry. All discrete emission credit generators, users, and holders will be included in the commission's credit registry.

(1) All notices submitted by a generator, holder, or user will be reviewed for credibility; and when deemed certified, posted to the credit registry.

(2) The credit registry will assign a unique number to each certificate which will include the amount of emission reductions generated to the tenth of a ton.

(3) The credit registry will maintain a listing of all credits available or used for each ozone nonattainment area. One combined listing for all the counties or portions of counties designated as attainment or unclassifiable will be provided by the credit registry.

(4) The registry shall not contain proprietary information.

(b) Life of a discrete emission credit. A discrete emission credit is available for use after the application form specified by the executive director has been received, deemed creditable by the executive director, and deposited in the commission credit registry in accordance with subsection (a) of this section, and may be used anytime thereafter except as stated in this subsection. All credits are deposited in the credit registry and reported as available credits until they are used or withdrawn. A DERC generated from a shutdown may not be used.

(c) Trading. Discrete emission credits are freely transferable in whole or in part, and may be traded or sold to a new owner at any time after certification.

(1) Before the transfer, the seller shall submit to the executive director a completed application form specified by the executive director.

(2) The executive director will issue a new certificate number to the purchaser reflecting the discrete emission credits purchased, and a new certificate number to the seller reflecting any remaining discrete emission credits available. A trade is considered final only after the executive director grants approval of the transaction.

(3) The trading of discrete emission credits may be discontinued by the executive director in whole or in part and in any manner, with commission approval, as a remedy for problems resulting from trading in a localized area of concern.

Adopted June 3, 2015

Effective June 25, 2015

§101.379. Program Audits and Reports.

(a) The executive director will audit this program every three years.

(1) The audit will evaluate the timing of credit generation and use, the impact of the program on the state's attainment demonstration and the emissions of hazardous air pollutants, the availability and cost of credits, compliance by the participants, and any other elements the executive director may choose to include.

(2) The executive director will recommend measures to remedy any problems identified in the audit. The trading of discrete emission credits may be discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the United States Environmental Protection Agency (EPA) and made available for public inspection within six months after the audit begins.

(b) No later than February 1 of each calendar year, the executive director shall develop and make available to the general public and the EPA a report that includes the following information for the previous calendar year:

(1) the amount of each pollutant emission credits generated under this division;

(2) the amount of each pollutant emission credits used under this division;

(3) a summary of all trades completed under this division; and

(4) the amount of discrete emission reduction credits approved for use under §101.376(f) of this title (relating to Discrete Emission Credit Use).

Adopted June 3, 2015

Effective June 25, 2015

SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 6: HIGHLY REACTIVE VOLATILE ORGANIC COMPOUND
EMISSIONS CAP AND TRADE PROGRAM
§§101.390 - 101.394, 101.396, 101.399 - 101.401, 101.403
Effective June 25, 2015

§101.390. Definitions.

Unless specifically defined in the Texas Clean Air Act or in §3.2 or §101.1 of this title (relating to Definitions), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition, the following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise.

(1) **Affected facility**--A facility subject to §115.720 or §115.760 of this title (relating to Applicability and Definitions; and Applicability and Cooling Tower Heat Exchange System Definitions) that is located at a site that is subject to this division.

(2) **Allowance**--The authorization to emit one ton of highly reactive volatile organic compounds, expressed in tenths of a ton, during a control period.

(3) **Authorized account representative**--The responsible person who is authorized in writing to transfer and otherwise manage allowances for the site.

(4) **Baseline emissions period**--The two consecutive control periods from 2006 - 2009 with the highest monitored average actual highly reactive volatile organic compound emissions for the purpose of establishing baseline emissions used for the allocation of allowances, except as allowed under §101.394(a)(2) and (3) of this title (relating to Allocation of Allowances).

(5) **Broker**--A person not required to participate in the requirements of this division who opens an account under this division only for the purpose of banking and trading allowances.

(6) **Broker account**--The account where allowances held by a broker are recorded. Allowances may not be used to satisfy compliance requirements for this division while held in a broker account.

(7) **Compliance account**--The account in which allowances held by the owner or operator of a site are recorded for the purposes of meeting the requirements of this division for each affected facility at that site.

(8) Control period--The 12-month period beginning January 1 and ending December 31 of each year. The initial control period began January 1, 2007.

(9) Highly reactive volatile organic compounds--As defined in §115.10 of this title (relating to Definitions).

(10) Houston-Galveston-Brazoria (HGB) ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(11) Industry sector--One of the following sectors of industry in which participants of the Highly Reactive Volatile Organic Compounds (HRVOC) Emissions Cap and Trade program are assigned, according to the process type and products from which the largest share of HRVOC emissions is associated, for the purpose of assigning an industry sector share under the allocation equation located in §101.394(a)(1) of this title (relating to Allocation of Allowances): petroleum refining, non-polymer chemical producers, polymer producers, and storage/loading/other.

(12) Level of activity--The amount of highly reactive volatile organic compounds (HRVOCs) in pounds produced as an intermediate, by-product, or final product or used by a process unit during a given period of time, but excluding any recycled HRVOCs internal to the process unit.

(13) Site--As defined in §122.10 of this title (relating to General Definitions).

(14) Uncontrolled emissions--The total emissions during routine normal operations from each affected facility calculated as pre-control using the applicable control efficiency for the purpose of determining site allocations under §101.394(a)(1) of this title (relating to Allocation of Allowances).

(15) Vintage allowance--An allowance that is not used for compliance during the control period in which it is allocated and remains available for use only in the following control period.

Adopted June 3, 2015

Effective June 25, 2015

§101.391. Applicability.

(a) This division applies to each site in the Houston-Galveston-Brazoria ozone nonattainment area with one or more affected facilities. Affected facilities include vent

gas streams, flares, and cooling tower heat exchange systems that emit or have the potential to emit highly reactive volatile organic compounds.

(b) For the purpose of compliance with Chapter 115, Subchapter H, Division 1 or 2 of this title (relating to Vent Gas Control; and Cooling Tower Heat Exchange Systems), each site that meets the applicability requirements of this section will always be subject to this division unless exempted under §101.392 of this title (relating to Exemptions).

(c) The banking and trading requirements of this division apply to a broker and a broker account.

Adopted June 3, 2015

Effective June 25, 2015

§101.392. Exemptions.

(a) A site in the Houston-Galveston-Brazoria ozone nonattainment area that has the potential to emit, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions), 10 tons per year or less of highly reactive volatile organic compounds from all affected facilities at the site is exempt from the requirements of this division.

(b) A site in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller County is exempt from the requirements of this division except for §101.401(a) - (e) of this title (relating to Level of Activity Certification). The commission may revoke this exemption upon public notice of this revocation. If the exemption is revoked, the owner or operator of a site subject to this division located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller County shall comply within 180 days of public notice.

Adopted June 3, 2015

Effective June 25, 2015

§101.393. General Provisions.

(a) An allowance may be used only for the purposes described in this division and only for an affected facility. An allowance may not be used for any purpose that is not described in this division or to meet or exceed the limitations authorized under Chapter 116, Subchapter B of this title (relating to New Source Review Permits), or any other applicable local, state, or federal requirement.

(b) No later than March 1 after each control period, the quantity of allowances in a site's compliance account must be equal to or greater than the total highly reactive volatile organic compound (HRVOC) emissions from each affected facility at the site during the control period.

(c) An allowance may not be used to satisfy netting requirements under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review).

(d) An allowance may be used to offset volatile organic compound (VOC) emissions from an affected facility if such use is authorized in a nonattainment new source review (NNSR) permit issued under Chapter 116, Subchapter B of this title with the following conditions.

(1) The owner or operator shall use a permanent allowance allocation stream equal to the amount specified in the NNSR permit to offset VOC emissions from an affected facility. A vintage allowance cannot be used as an offset. An allowance used for offsets may not be banked, traded, or used for any other purpose except as allowed in §101.396(e) of this title (relating to Allowance Deductions).

(2) At least 30 days before the start of operation of an affected facility using allowances as offsets, the owner or operator shall submit an application form specified by the executive director.

(A) Except as provided in paragraph (3) of this subsection, the executive director shall permanently set aside in the site's compliance account an allowance used for the one-to-one portion of the offset ratio. If an allowance set aside for offsets devalues in accordance with §101.394(a)(1) or (f) of this title (relating to Allocation of Allowances), the owner or operator shall submit the application at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. At the end of each control period, the executive director shall deduct from the site's compliance account all allowances set aside as offsets.

(B) The executive director shall permanently retain an allowance used for the environmental contribution portion of the offset ratio. An allowance used for this purpose cannot be used for compliance with this division or devalued due to future regulatory changes except as required in §101.394(a)(1) of this title.

(3) The owner or operator may submit a request to the executive director to release an allowance used for offsets. If approved, the executive director will release the allowances for use in the control period following the date that the request is submitted. Allowances will not be released retroactively for any previous control periods. A request may be submitted if the owner or operator:

(A) receives authorization in the NNSR permit for the affected facility to use an alternative means of compliance for any portion of the VOC offset

requirement equivalent to the amount of allowances the owner or operator requests to have released for the affected facility; or

(B) permanently shuts down the affected facility, except that an allowance used for the environmental contribution portion of the offset ratio does not qualify for release under this paragraph.

(e) An allowance does not constitute a security or a property right.

(f) An allowance will be allocated, traded, and used in tenths of tons. The number of allowances will be rounded up to the nearest tenth of a ton when determining allowances used.

(g) The owner or operator shall use one compliance account for all affected facilities located at the same site and are under common ownership or control.

(h) The executive director shall maintain a registry of the allowances in each compliance account and broker account. The registry will not contain proprietary information.

(i) The owner or operator of an affected facility may certify reductions from an affected facility as VOC emission reduction credits (ERCs), provided that:

(1) an enforceable and permanent reduction of annual allowances is approved by the executive director at a ratio of 1.0 ton of allowances per year for each 1.0 ton per year of ERCs generated from HRVOC reductions; and

(2) all applicable requirements of Division 1 of this subchapter (relating to Emission Credit Program) are met.

(j) If there is a change in ownership of a site subject to this division, the new owner of the site is responsible for complying with the requirements of this division beginning with the control period during which the site was purchased. The new owner shall contact the executive director to request a compliance account for the site. The new owner must acquire allowances in accordance with §101.399 of this title (relating to Allowance Banking and Trading).

Adopted June 3, 2015

Effective June 25, 2015

§101.394. Allocation of Allowances.

(a) The executive director shall deposit allowances into a compliance account as follows.

(1) For a site located in Harris County, allowances will be determined using the following equation:

Figure: 30 TAC §101.394(a)(1)

$$S = AC^1 \times ISS \times SS$$

Where:

S = the allocation for the site.

*AC*¹ = the amount of highly reactive volatile organic compound (HRVOC) tons defined in (1) - (4) of this figure less the total amount allocated to those sites receiving a minimum allocation under subsection (c) of this section.

(1) For 2014, *AC*¹ = 3,105.9 tons;

(2) For 2015, *AC*¹ = 2,932.9 tons;

(3) For 2016, *AC*¹ = 2,761.2 tons; and

(4) For 2017 and all subsequent control periods, *AC*¹ = 2,588.6 tons.

ISS = Industry Sector Share: Total actual average emissions for the industry sector during the baseline emissions period divided by the total actual average emissions for all participating sites during the baseline emissions period.

SS = Site share: The sum of the total average actual emissions for vents, cooling towers, and other facilities and uncontrolled emissions for flares, heaters, boilers, furnaces, thermal and catalytic oxidizers, and other combustion control devices combusting HRVOC streams, during the baseline emissions period divided by the total uncontrolled actual average emissions for the industry sector during the baseline emission period.

(2) For a site in Harris County not in operation or with HRVOC emissions that are not representative of permitted normal routine operation due to an authorized modification that resulted in an HRVOC emission reduction during the baseline emissions period, the owner or operator may request from the executive director the use of any allowance stream acquired from facilities previously participating in the HRVOC Emissions Cap and Trade program in lieu of reallocation until the alternate baseline emissions are established for the site, according to the following:

(A) this allowance stream is less than the HRVOC permit allowable limit in effect at the time the facility commences operation;

(B) the baseline emissions period for any site under this paragraph will be any consecutive 24 months from 2010 - 2012; and

(C) beginning with the 2014 control period, all sites will receive an allocation in accordance with the methodology under paragraph (1) of this subsection.

(3) A site meeting the following conditions may request to use an alternative baseline emissions period consisting of the two consecutive calendar-year control periods immediately preceding the baseline emissions period defined under §101.390 of this title (relating to Definitions):

(A) the site used continuous flow rate monitoring and speciation of HRVOC to determine HRVOC emissions during the alternative baseline period;

(B) the site had permanent, voluntary, and quantifiable HRVOC emission reductions in an amount equal to or greater than 25 tons resulting in a site-wide reduction in HRVOC emissions of at least 25% as calculated by comparing the average HRVOC emissions from the alternate baseline period to the baseline emissions period defined under §101.390 of this title;

(C) qualifying HRVOC emission reductions must have been made enforceable by a permit application submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or other submittal to the executive director no later than April 1, 2010; and

(D) a request for an alternative baseline period must be received by the executive director no later than July 1, 2010.

(4) For a site located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, allowances will be determined using the following equation.

Figure: 30 TAC §101.394(a)(4)

$$S = \frac{LA}{\sum_{i=1}^n LA_i} \times AC$$

Where:

S = the greater of 5.0 tons or the allocation for the site.
i = each site located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties and subject to this division.
n = the total number of sites subject to this division.
LA = the level of activity baseline for a site, calculated as the annual level of activity for any 12 consecutive months during the period of 2000-2004 for the site, as certified by the executive director.
AC = 4,390.8 tons per year of highly reactive volatile organic compounds less the total amount allocated to those sites receiving a minimum of 5.0 tons.

(5) Uncontrolled emissions for affected facility types for use in determining site allocations under paragraph (1) of this subsection must be calculated as follows.

(A) For flares, the uncontrolled emissions are equal to actual average HRVOC emissions from routine normal operation during the baseline emissions period for that facility divided by one minus the average percent control efficiency specifications for flares in §115.725(d) of this title (relating to Monitoring and Testing Requirements).

(B) For heaters, boilers, furnaces, thermal and catalytic oxidizers, and other combustion control devices combusting HRVOC streams, the uncontrolled emissions must be calculated by dividing actual average emissions from routine normal operation during the baseline emissions period for each facility by one minus 99%, or by one minus the actual monitored HRVOC control efficiency for the facility, not to exceed 99.9%, if that facility has demonstrated the actual monitored HRVOC control efficiency through stack performance testing.

(C) For any other facility without a demonstrated combustion control efficiency, the control efficiency is equal to zero; therefore, the uncontrolled emissions will be equal to the actual HRVOC emissions from routine normal operation.

(D) For a site that employs a flare or vent gas recovery or flare minimization control strategy that is not requesting the use of an alternative baseline emissions period under paragraph (3) of this subsection, the owner or operator may request to include the amount of any quantifiable reduction in actual HRVOC emissions attributable to the use of flare or vent gas recovery as uncontrolled emissions, subject to approval by the executive director. The amount of quantified reductions is equal to the difference of the average actual HRVOC emissions from routine normal operation during a consecutive 12-month period before the 2006 - 2009 baseline emissions period

and the implementation of the HRVOC gas recovery or flare minimization control strategy and the enforceable allowable HRVOC permit limit for the affected facility after the recovery-based emissions reduction strategy implementation. The average actual HRVOC emissions used for quantifying the reductions under this subparagraph must be determined through continuous flow rate monitoring and HRVOC speciation testing. This allowable emissions limit must be made enforceable through a permit application submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) to the executive director no later than April 1, 2010. Credit allocated for reductions due to flare or vent gas recovery cannot also be creditable if the HRVOC stream is sent to another control device. The creditable emissions from flare gas recovery calculated in this subparagraph are then converted to uncontrolled emissions through the use of the average control efficiency specifications under §115.725(d) of this title.

(E) For a site that has purchased HRVOC allowance streams, uncontrolled emissions must be the greater of the uncontrolled emissions calculated under subparagraphs (A) - (C) of this paragraph, or the sum of the original existing HRVOC allowance allocated according to the previous allocation methodology and the amount of the allowance stream in tons. If a site's actual two-high year emissions is less than the sum of its original existing HRVOC allowance and the amount of the allowance stream in tons, the owner or operator shall add the difference to the uncontrolled emissions as actual emissions.

(b) The level of activity of a site will be determined by summing the levels of activity from the chosen 12 consecutive month period for each process unit, as defined in §115.10 of this title (relating to Definitions), located at the site that produce one or more HRVOCs as an intermediate, by-product, or final product or that use one or more HRVOCs as a raw material or intermediate to produce a product.

(c) A site in Harris County subject to the requirements of this division that receives an HRVOC allocation of less than 5.0 tons will be eligible to receive a minimum allocation of 5.0 tons of HRVOC allowances per year. A site subject to the requirements of this division that receives an HRVOC allocation of greater than or equal to 5.0 tons but less than 10.0 tons will be eligible to receive a minimum allocation of 10.0 tons of HRVOC allowances per year. This provision does not apply if the site's allocation falls below a minimum allocation only because of a transfer of part or all of the site's allocation.

(d) The executive director will deposit allowances into each compliance account by January 1 of each year.

(e) The executive director may adjust the deposits for any control period to reflect new or existing state implementation plan requirements.

(f) The executive director may add or deduct allowances from compliance accounts based on the review of reports required under §101.400 of this title (relating to Reporting).

Adopted June 3, 2015

Effective June 25, 2015

§101.396. Allowance Deductions.

(a) The executive director shall deduct from a site's compliance account an amount of allowances equal to the total highly reactive volatile organic compounds (HRVOC) emissions from each affected facility at the site during the previous control period. The amount of HRVOC emissions must be quantified using the monitoring and testing protocols established in §115.725 and §115.764 of this title (relating to Monitoring and Testing Requirements), as appropriate.

(b) The amount of HRVOC emissions from an affected facility must be calculated for each hour of the year and summed to determine the annual emissions for compliance. For emissions from emissions events subject to the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) or emissions from scheduled maintenance, startup, or shutdown activities subject to the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), the hourly emissions to be included in the summation may not exceed the short-term limit of §115.722(c) or §115.761(c) of this title (relating to Site-wide Cap and Control Requirements; and Site-wide Cap).

(c) If the monitoring and testing data required under subsection (a) of this section does not exist or is unavailable, the owner or operator of the site shall determine the HRVOC emissions for that period of time using the following methods in the following order: continuous monitoring data; periodic monitoring data; testing data; manufacturer's data; and engineering calculations.

(1) When reporting the amount of HRVOC emissions under this subsection, the owner or operator of the site shall also submit the justification for not using the methods in subsection (a) of this section and the justification for the method used.

(2) If emissions are quantified under this subsection due to non-compliance with the monitoring and testing required under subsection (a) of this section, the executive director shall deduct allowances from a site's compliance account in an amount equivalent to the HRVOC emissions quantified under this subsection plus an additional 10%.

(d) When deducting allowances from the compliance account of a site for a control period, the executive director will deduct the allowances beginning with the most recently allocated allowances before deducting vintage allowances.

(e) The amount of allowances deducted from a site's compliance account under subsection (a) of this section will be reduced by the amount of allowances deducted in accordance with §101.393(d)(2)(A) of this title (relating to General Provisions).

(f) If the total actual HRVOC emissions from the affected facilities during a control period exceed the amount of allowances in the site's compliance account on March 1 following that control period, the executive director will reduce allowances for the next control period by an amount equal to the emissions exceeding the allowances in the site's compliance account plus an additional 10%.

(1) If the site's compliance account does not hold sufficient allowances to accommodate this reduction, the executive director shall issue a Notice of Deficiency requiring the owner or operator to obtain sufficient allowances within 30 days of the notice.

(2) These actions do not preclude additional enforcement action by the executive director.

Adopted June 3, 2015

Effective June 25, 2015

§101.399. Allowance Banking and Trading.

(a) An allowance allocated for a control period that is not used for compliance for that control period may be banked as a vintage allowance for use in demonstrating compliance for the next control period under §101.396 of this title (relating to Allowance Deductions) or traded.

(b) An allowance that has not expired or been used may be traded at any time during a control period except as provided by this section.

(c) At least 30 days before the allowances are deposited into the buyer's account, the seller shall submit the appropriate trade application to the executive director. The completed application must include the amount of allowances to be traded and, except for transactions between sites under common ownership or control, the purchase price per ton of allowances traded.

(1) To trade a current allowance or vintage allowance for a single year, the seller shall submit an application form specified by the executive director. Trades

involving allowances needed for compliance with a control period must be submitted on or before January 30 of the following control period.

(2) To permanently trade ownership of any portion of the allowances allocated annually to an individual facility, the seller shall submit an application form specified by the executive director.

(3) To trade any portion of the allowances that are scheduled to be allocated to an individual facility in a future control period, the seller shall submit an application form specified by the executive director.

(d) All information regarding the quantity and sales price of allowances will be made available to the public as soon as practicable.

(e) The executive director will send letters to the seller and buyer if the trade is approved or denied. If approved, the trade is final upon the date of the letter from the executive director.

(f) Allowances that were provided under §101.394(a)(2) of this title (relating to Allocation of Allowances) are not eligible for trade.

(g) Allowances generated from a site located in counties other than Harris County may not be used at a site located in Harris County. Allowances generated from a site located in Harris County may not be used at a site located in counties other than Harris County.

(h) Only an authorized account representative may trade allowances.

(i) Allowances subject to an approved transaction will be deposited into the buyer's account within 30 days of receipt of a completed trade application.

Adopted June 3, 2015

Effective June 25, 2015

§101.400. Reporting.

(a) No later than March 31 after each control period, the owner or operator of each site shall submit a completed annual compliance report specified by the executive director to the executive director, which must include the following:

(1) the total amount of actual HRVOC emissions from each affected facility at the site during the preceding control period;

(2) the method or methods used to determine the actual HRVOC emissions for each affected facility, including, but not limited to, monitoring protocol and results, calculation methodologies, and emission factors; and

(3) a summary of all final transactions for the preceding control period.

(b) For the owner or operator of a site failing to submit an annual compliance report by the required deadline in subsection (a) of this section, the executive director may withhold approval of any proposed trades from that site involving allowances allocated for the control period for which the report is due or to be allocated in subsequent control periods.

(c) The owner or operator of a site subject to this division that no longer has authorization to operate any affected facilities may request a waiver from the reporting requirements in this section. If approved, the annual compliance report will not be required until a new affected facility is authorized at the site.

Adopted June 3, 2015

Effective June 25, 2015

§101.401. Level of Activity Certification.

(a) No later than April 30, 2005, the owner or operator of each site subject to this division will submit to the executive director a completed Form ECT-3H, Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Level of Activity Certification Form.

(b) For each process unit subject to this division, the owner or operator will certify in the ECT-3H form the level of activity for the selected 12 consecutive months during the period of 2000 through 2004.

(c) The owner or operator will attach to the ECT-3H form information and documentation necessary to support the proposed level of activity baseline.

(d) The owner or operator of the site may mark any portion of the ECT-3H form, or supporting information and documentation, as confidential under Texas Health and Safety Code, §382.041.

(e) In conjunction with submission of the ECT-3H form, the owner or operator of the site subject to this division will provide enforceable documentation of the maximum allowable emission rate of highly-reactive volatile organic compounds from facilities located at that site.

(f) No later than July 1, 2010, the owner or operator of each site subject to this division will submit to the executive director a completed Form ECT-6H, Highly Reactive Volatile Organic Compound Emissions Cap and Trade Baseline Emissions Certification Form.

(g) For each site subject to this division, the owner or operator will certify in the ECT-6H form the two highest consecutive calendar-year control periods selected from the period of 2006 - 2009 to establish the baseline emissions period.

Adopted March 10, 2010

Effective April 1, 2010

§101.403. Program Audits and Reports.

(a) No later than three years after the effective date of this division, and every three years thereafter, the executive director will audit this program.

(1) The audit will evaluate the impact of the program on the state's ozone attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the executive director may choose to include.

(2) The executive director will recommend measures to remedy any problems identified in the audit. The trading of allowances may be limited or discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the United States Environmental Protection Agency and made available for public inspection within six months after the audit begins.

(b) No later than June 30, following the end of each control period, the executive director shall develop and make available to the general public and the United States Environmental Protection Agency, a report that includes:

(1) number of allowances allocated to each compliance account;

(2) total number of allowances allocated under this division;

(3) number of actual highly-reactive volatile organic compound allowances subtracted from each compliance account based on the actual highly-reactive volatile organic compound emissions from the site; and

(4) a summary of all trades completed under this division.

Adopted December 1, 2004

Effective December 23, 2004

SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 7: CLEAN AIR INTERSTATE RULE
§§101.501 - 101.504, 101.506, 101.508
Effective March 4, 2010

§101.501. Applicability.

This division applies to any stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine meeting the applicability requirements under 40 Code of Federal Regulations Part 96, Subpart AA or Subpart AAA.

Adopted July 12, 2006

Effective August 3, 2006

§101.502. Clean Air Interstate Rule Trading Program.

(a) The commission incorporates by reference, except as specified in this division, the provisions of 40 Code of Federal Regulations (CFR) Part 96, Subpart AA - Subpart II and Subpart AAA - Subpart III (as amended through October 19, 2007 (72 FR 59190)) for purposes of implementing the Clean Air Interstate Rule (CAIR) trading programs for annual emissions of oxides of nitrogen (NO_x) and sulfur dioxide to meet the requirements of Federal Clean Air Act, §110(a)(2)(D).

(b) Owners and operators of sources subject to 40 CFR Part 96, Subpart AA - Subpart II or Subpart AAA - Subpart III shall comply with those requirements.

(c) The methodologies and procedures for determining and recording each subject source's CAIR NO_x allowance allocation in 40 CFR Part 96, Subpart EE are replaced by the requirements of this division.

Adopted February 10, 2010

Effective March 4, 2010

§101.503. Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget.

(a) The oxides of nitrogen (NO_x) trading budget for annual allocations of Clean Air Interstate Rule NO_x allowances for the control periods in 2009 - 2014 and in 2015, and thereafter, shall be equivalent to the tons of NO_x emissions listed for Texas in the state trading budget under 40 Code of Federal Regulations §96.140.

(b) A total amount of Clean Air Interstate Rule NO_x allowances equal to 9.5% of the NO_x trading budget identified under subsection (a) of this section must be set-aside for allocation to new units.

Adopted July 12, 2006

Effective August 3, 2006

§101.504. Timing Requirements for Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations.

(a) The executive director shall submit to the United States Environmental Protection Agency (EPA) the Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowance allocations determined in accordance with §101.506(c) of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations) by the following dates:

- (1) October 31, 2006, for the 2009 - 2014 control periods;
- (2) October 31, 2011, for the 2015 control period;
- (3) October 31, 2012, for the 2016 control period; and

(4) 38 months prior to the beginning of each applicable control period for the control period beginning in 2017 and for each control period thereafter.

(b) For the control period beginning in 2009, and for each control period thereafter, the executive director shall submit to EPA the CAIR NO_x allowance allocations determined in accordance with §101.506(d) and (e) of this title by October 31 of the applicable control period.

(c) If the executive director fails to submit to EPA the CAIR NO_x allowance allocations in accordance with subsection (b) of this section, EPA will assume that no CAIR NO_x allowances are to be allocated, for the applicable control period, to any CAIR NO_x unit that would otherwise be allocated CAIR NO_x allowances under §101.506(d) and (e) of this title.

Adopted February 10, 2010

Effective March 4, 2010

§101.506. Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations.

(a) For units commencing operation before January 1, 2001:

(1) for each control period in 2009 - 2017, the baseline heat input, in million British thermal units (MMBtu), is the average of the three highest amounts of the unit's adjusted control period heat input for 2000 - 2004 with the adjusted control period heat input for each year calculated as follows:

(A) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90%;

(B) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50%; and

(C) if the unit is not subject to subparagraph (A) or (B) of this paragraph, the unit's control period heat input for such year is multiplied by 30%.

(2) for the 2018 control period and for the control period beginning every five years thereafter, the baseline heat input must be adjusted to reflect the average of the three highest amounts of the unit's adjusted control period heat input from control periods one through five of the preceding nine control periods with the adjusted control period heat input for each year calculated as follows:

(A) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90%;

(B) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50%; and

(C) if the unit is not subject to subparagraph (A) or (B) of this paragraph, the unit's control period heat input for such year is multiplied by 30%.

(b) For units commencing operation on or after January 1, 2001:

(1) for each control period in 2009 - 2014, Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowances must be allocated from the new unit set-aside identified under §101.503(b) of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget) and determined in accordance with subsection (d) of this section;

(2) for the 2015, 2016, and 2017 control periods, for units operating each calendar year during a period of five or more consecutive years, the baseline heat input is the average of the three highest amounts of the unit's total converted control period heat input over the first such five years. The converted control period heat input for each year is calculated as follows:

(A) except as provided in subparagraph (B) or (C) of this paragraph, the converted control period heat input equals the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 British thermal units per kilowatt-hour (Btu/kWh), if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000

Btu/MMBtu. If a generator is served by two or more units, then the gross electrical output of the generator must be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) for a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the converted heat input is the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and converted to MMBtu by dividing by 1,000,000 Btu/MMBtu; or

(C) for a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the converted heat input is determined using the equation in the following figure.

Figure: 30 TAC §101.506(b)(2)(C)

$$HI = \frac{(O \times 3,414 \text{ Btu/kWh}) + \frac{HE}{0.8}}{1,000,000 \text{ Btu/MMBtu}}$$

Where:

Btu = British thermal units.

HE = the total heat energy, in Btu, of the steam produced by any associated heat recovery steam generator during the control period.

HI = the converted heat input, in MMBtu, of the combustion turbine cogeneration unit.

kWh = kilowatt-hour.

MMBtu = million British thermal units

O = the gross electrical output during the control period of the enclosed device comprising the compressor, combustor, and turbine.

(3) for the 2018 control period and for the control period beginning every five years thereafter, for units operating each calendar year during a period of five or more consecutive years, the baseline heat input must be adjusted to reflect the average of the three highest amounts of the unit's converted control period heat input from control periods one through five of the preceding nine control periods. The converted control period heat input for each year is calculated as follows:

(A) except as provided in subparagraph (B) or (C) of this paragraph, the converted control period heat input equals the control period gross electrical output

of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by two or more units, then the gross electrical output of the generator must be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) for a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the converted control period heat input equals the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and converted to MMBtu by dividing by 1,000,000 Btu/MMBtu; or

(C) for a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the converted control period heat input is determined using the equation in the following figure.

Figure: 30 TAC §101.506(b)(3)(C)

$$HI = \frac{(O \times 3,414 \text{ Btu/kWh}) + \frac{HE}{0.8}}{1,000,000 \text{ Btu/MMBtu}}$$

Where:

Btu = British thermal units

HE = the total heat energy, in Btu, of the steam produced by any associated heat recovery steam generator during the control period.

HI = the converted heat input, in MMBtu, of the combustion turbine cogeneration unit.

kWh = kilowatt-hour

MMBtu = million British thermal units

O = the gross electrical output during the control period of the enclosed device comprising the compressor, combustor, and turbine.

(c) For units with a baseline heat input calculated under subsection (a) or (b)(2) or (3) of this section, CAIR NO_x allowances must be allocated according to the equation in the following figure.

Figure: 30 TAC §101.506(c)

$$A = \frac{HI}{\sum_{i=1}^n HI_i} \times B$$

Where:

A = the amount of Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowances allocated to a CAIR NO_x unit rounded to the nearest whole allowance.

i = each CAIR NO_x unit qualifying for an allocation under this subsection.

n = the total number of CAIR NO_x units qualifying for an allocation under this subsection.

HI = the baseline heat input for a CAIR NO_x unit qualifying for an allocation under this section as calculated under subsection (a) or (b)(2) or (3) of this section.

B = a total amount of CAIR NO_x allowances equal to 90.5% of the NO_x trading budget identified in §101.503(a) of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget), except as provided in subsection (e) of this section.

(d) For units commencing operation on or after January 1, 2001, and that have not established a baseline heat input in accordance with subsection (b)(2) or (3) of this section, CAIR NO_x allowances must be allocated according to the following.

(1) Beginning with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under subsection (c) of this section, CAIR NO_x allowances must be allocated from the new unit set-aside identified under §101.503(b) of this title. For the first control period in which a CAIR NO_x unit commences commercial operation, such CAIR NO_x unit will not receive a CAIR NO_x allocation from the new unit set-aside.

(2) To receive a CAIR NO_x allowance allocation from the new unit set-aside, the CAIR designated representative shall submit to the executive director a written request on or before May 1 of the first control period for which the CAIR NO_x allowance allocation is requested and after the date that the CAIR NO_x unit commences commercial operation.

(3) In a CAIR NO_x allowance allocation request under paragraph (2) of this subsection, the amount of CAIR NO_x allowances requested for a control period must not exceed the CAIR NO_x unit's total tons of NO_x emissions reported to EPA for the calendar year immediately preceding such control period.

(4) The executive director shall review each CAIR NO_x allowance allocation request submitted in accordance with this subsection and shall allocate CAIR NO_x allowances for each control period as follows.

(A) The executive director shall accept a CAIR NO_x allowance allocation request only if the request meets, or is adjusted as necessary to meet, the requirements of this subsection.

(B) On or after May 1 of the control period, the executive director shall determine the sum of all accepted CAIR NO_x allowance allocation requests for the control period.

(C) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under subparagraph (B) of this paragraph, then the executive director shall allocate the full amount of CAIR NO_x allowances requested to each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request that was accepted by the executive director.

(D) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under subparagraph (B) of this paragraph, then the executive director shall allocate CAIR NO_x allowances to each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request accepted by the executive director according to the equation in the following figure.

Figure: 30 TAC §101.506(d)(4)(D)

$$A = \frac{RQ}{\sum_{i=1}^n RQ_i} \times SA$$

Where:

A = the amount of Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowances, rounded to the nearest whole allowance, allocated to each CAIR NO_x unit under a CAIR NO_x unit allocation request accepted by the executive director.

i = each CAIR NO_x allowance allocation request accepted by the executive director.

n = the total number of CAIR NO_x allowance allocation requests accepted by the executive director.

RQ = the amount of the CAIR NO_x allowances requested, as adjusted under subparagraph (A) of this paragraph, for each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request accepted by the executive director.

SA = the total amount of CAIR NO_x allowances in the new unit set-aside identified under §101.503(b) of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget).

(E) The executive director shall notify each CAIR designated representative who submitted a CAIR NO_x allowance allocation request of the amount of CAIR NO_x allowances, if any, allocated for the control period to the CAIR NO_x unit covered under the request.

(e) If, after completion of the procedures under subsection (d) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the executive director shall allocate to each CAIR NO_x unit receiving an allocation under subsection (c) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under subsection (c) of this section, divided by 90.5% of the NO_x trading budget identified in §101.503(a) of this title, and rounded to the nearest whole allowance as appropriate.

(f) A unit's control period heat input, and a unit's status as coal-fired or natural gas-fired, for a calendar year under subsection (a) of this section, and a unit's total tons of NO_x emissions during a calendar year under subsection (d) of this section, must be determined in accordance with 40 Code of Federal Regulations (CFR) Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or must be based on the best available data reported to the executive director for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(g) On or before the latter of May 1, 2011, or May 1 of the control period immediately following a unit's fifth consecutive year of commercial operation, the CAIR designated representative of a unit establishing a baseline heat input in accordance with subsection (b)(2) or (3) of this section shall submit, on a form specified by the executive director, written certification of the gross electrical output of the generator or generators served by the unit and the total heat energy of any steam produced by the unit during the first five years of commercial operation.

Adopted February 10, 2010

Effective March 4, 2010

§101.508. Compliance Supplement Pool.

(a) In addition to the Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowances allocated under §101.506 of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations), the executive director may allocate for the control period in 2009 up to the amount of CAIR NO_x allowances listed as the compliance supplement pool for Texas under 40 Code of Federal Regulations (CFR) §96.143.

(b) For any CAIR NO_x unit that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits and allocation of CAIR NO_x allowances from the compliance supplement pool under subsection (a) of this section for such early reduction credits, in accordance with the following.

(1) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with 40 CFR Part 96, Subpart HH for the entire control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_x unit shall submit to the executive director by July 1, 2009, a written request for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts, in tons, of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, determined in accordance with 40 CFR Part 96, Subpart HH.

(c) For any CAIR NO_x unit whose compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under subsection (a) of this section, in accordance with the following.

(1) The CAIR designated representative of such CAIR NO_x unit shall submit to the executive director by July 1, 2009, a written request for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under subsection (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(A) obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(B) obtain under subsections (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

(d) The executive director shall review each request under subsections (b) or (c) of this section submitted by July 1, 2009, and shall allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units covered by such request as follows.

(1) The executive director shall make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of subsections (b) or (c) of this section.

(2) If the total amount of CAIR NO_x allowances in all requests, as adjusted under paragraph (1) of this subsection, is less than the amount of allowances in the compliance supplement pool under subsection (a) of this section, the executive director shall allocate to each CAIR NO_x unit covered by a request the amount of CAIR NO_x allowances requested, as adjusted under paragraph (1) of this subsection.

(3) If the total amount of CAIR NO_x allowances in all requests, as adjusted under paragraph (1) of this subsection, is more than the amount of allowances in the compliance supplement pool under subsection (a) of this section, the executive director shall allocate CAIR NO_x allowances to each CAIR NO_x unit covered by a request according to the equation in the following figure.

Figure: 30 TAC §101.508(d)(3)

$$A = \frac{RQ}{\sum_{i=1}^n RQi} \times SP$$

Where:

A = the number of Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowances, rounded to the nearest whole allowance, allocated from the compliance supplement pool to a unit covered under a compliance supplement pool allocation request accepted by the executive director.

i = each compliance supplement pool allocation request accepted by the executive director.

n = the total number of compliance supplement pool allocation requests accepted by the executive director.

RQ = the amount of CAIR NO_x allowances requested for the unit under subsection (b) or (c) of this section, as adjusted under paragraph (1) of this subsection.

SP = the amount of CAIR NO_x allowances in the compliance supplement pool.

(4) By November 30, 2009, the executive director shall determine, and submit to EPA, the allocations under paragraph (2) or (3) of this subsection.

Adopted July 12, 2006

Effective August 3, 2006