

The Texas Natural Resource Conservation Commission (commission) adopts new §101.380, Definitions; §101.382, Applicability; §101.383, General Provisions; and §101.385, Recordkeeping and Reporting. Sections 101.383 and 101.385 are adopted *with changes* to the proposed text as published in the December 1, 2000 issue of the Texas Register (25 TexReg 11878). Sections 101.380 and 101.382 are adopted *without changes* and will not be republished. The new sections are grouped into Subchapter H, Emissions Banking and Trading; new Division 5, System Cap Trading. The new sections will also be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules will simplify emission trading for electric generating facilities (EGFs) operating under a system emission cap in the Dallas/Fort Worth (DFW) ozone nonattainment area and in the attainment counties of east and central Texas. The rules represent a continuing commitment by the commission to incorporate maximum flexibility for the electric industry in achieving the nitrogen oxides (NO<sub>x</sub>) emissions reductions necessary to achieve the goal of ozone attainment in the DFW area while maintaining reliability of service. The DFW area includes Collin, Dallas, Denton, and Tarrant counties. The adopted procedure may be applied to other facilities subject to a system cap under Chapter 117 in subsequent rulemaking.

Emission reduction credit (ERC) trading among companies is allowed under the April 19, 2000 adoption of the DFW ozone attainment demonstration rules for EGFs, which were published in the May 5, 2000 issue of the *Texas Register* (25 TexReg 4140). In order to complete a trade under these

existing rules, one source owner must bank an emission credit with the commission and another source owner must receive the executive director's approval to use the credit. This procedure works well for trades which are made relatively infrequently, such as tend to occur when emissions are limited annually. In contrast, the ozone attainment demonstration rules for EGFs in DFW establish daily NO<sub>x</sub> limits because the EGFs in DFW are more likely to emit the most NO<sub>x</sub> on days conducive to exceedences of the ozone standard. This adoption adds a trading alternative which will facilitate daily emission trading by reducing the steps necessary to trade allowable emissions among different owners. Under these rules, the source owners will be simply required to report trades and the commission will have the opportunity to review, on a quarterly basis, the daily emissions, 30-day rolling average emissions, and any emission trades which occurred during the preceding calendar quarter.

Individual sources under common ownership or control may be voluntarily grouped together in a system with a system cap on total emissions from the sources in the system. Emission allowables may be transferred from source to source within the system, provided the cap is not exceeded. This adoption allows the increase of system caps, provided that surplus emission allowables are obtained from another source owner participating in a system cap. The system cap may be increased daily using a daily surplus or on a 30-day rolling average using 30-day rolling average surpluses for the same period.

The rules adopted on April 19, 2000 also established an annual system cap for EGFs in the attainment counties of east and central Texas (25 TexReg 4101). This adoption allows the exceedence of that system cap, provided surplus emission allowables are obtained from another EGF participating in the system cap. The EGFs affected are in the following counties: Atascosa, Bastrop, Bexar, Brazos,

Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, and Wharton.

The transfer of emission allowables remains restricted to the area, nonattainment or attainment, in which it originates.

#### SECTION BY SECTION DISCUSSION

The new §101.380 contains definitions for use in this division. Surplus emission allowables are defined as an amount, greater than zero, by which a source's allowable source cap emissions exceed actual emissions for a single day or a 30-day average or tons per year for a calendar year for a source subject to Chapter 117, Subchapter B, Division 2, Utility Electric Generation in East and Central Texas.

The new §101.382 applies the trading provisions of this division to sources located within a single nonattainment area or other area with unique emission limits as defined in Chapter 117.

The new §101.383 allows the increase of system cap limits provided surplus allowances are obtained from another owner or operator participating in the system cap. Emissions caps may be increased daily or on a 30-day rolling average, provided allowances are obtained that match the period when the increase occurs. System cap limits for EGFs as regulated under Chapter 117, Subchapter B, Division 2, may be exceeded with surplus emission allowables obtained for that calendar year from another source owner or operator participating in the system cap. In response to comments, the commission has

modified §101.383(b) to use the term “units within an electric power generating system” and to more specifically reference the computation of system cap limits in §117.138. The commission has modified §101.383(c) to correctly reference subsections (a) and (b) of this section.

The new §101.385 requires owners or operators of sources in an ozone nonattainment area participating in this trading program to submit quarterly reports based on a calendar year within 30 days of the end of the reporting period. The reports will contain daily NO<sub>x</sub> emissions from each source and supporting calculations, rolling 30-day average for each source with supporting calculations, and all emission trades during the reporting period including trade date or period, quantity traded, and trading participants. Similarly, EGFs complying with Chapter 117, Subchapter B, Division 2, will submit reports dated on annual period beginning January 1 of each year and submitted within 30 days following the end of the annual period. The report will detail annual emissions with supporting calculations and all emission trades during the report period including trade date, quantity traded, and trade participants. This section also requires owners or operators to report to the commission, within 48 hours, any exceedences of a system cap when there were not allowances available to compensate for that exceedence. In response to comments, the commission has modified §101.385(b) to more specifically reference the computation of system cap limits in §117.138. Also in response to comments, the commission has added the clarifying phrase “conducted under this division” to §101.385(b)(3)(B) and has additionally added this clarification to §101.385(a)(3)(B). The commission has also modified §101.385(c) in response to comments. The phrase “with data to demonstrate the amount of emissions in excess of the applicable limit” has been deleted from §101.385(c)(1) and replaced with the phrase “with supporting data” and the deleted phrase has been more appropriately located in §101.385(c)(3).

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that these new sections do not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission is adopting these new sections to allow greater flexibility for sources in the affected areas to meet NO<sub>x</sub> emission limitations and for NO<sub>x</sub> emissions trading. The new sections do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state; therefore, this proposal does not constitute a major environmental rule. In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the adopted rules do not meet any of the four applicability requirements. Specifically, the emission banking and trading requirements were developed in order to meet the ozone national ambient air quality standard (NAAQS) set by the EPA under the Federal Clean

Air Act (FCAA), §109 (42 United States Code (USC), §7409), and therefore meet a federal requirement. Provisions of 42 USC, §7410, require states to adopt a SIP which provides for “implementation, maintenance, and enforcement” of the primary NAAQS in each air quality control region of the state. While §7410 does not require specific programs, methods, or reductions in order to meet the standard, state SIPs must include “enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter,” (meaning Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, like the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required; and these rules provide additional flexibility to meet emission limits. States are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session, 1999. The intent of SB 633 was

to require agencies to conduct a regulatory impact analysis (RIA) of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded “based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application.” The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The commission bases these actions on the presumption that the legislature understands this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Because it is a rule of statutory interpretation that the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the SIP rules will have a broad

impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law. The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law (unless specifically required by federal law), or exceed a requirement of a delegation agreement. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed to allow greater flexibility for EGFs in the affected areas to meet NO<sub>x</sub> emission limitations and for NO<sub>x</sub> emissions trading in order to meet the NAAQS established under federal law and authorized under Texas Clean Air Act (TCAA), §§382.011, 382.012, and 382.017 as well as under 42 USC, §7410(a)(2)(A).

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The following is a summary of that analysis. The new sections are adopted as part of a strategy to reduce and permanently cap emissions of NO<sub>x</sub> to a level which would allow the DFW nonattainment area to attain the NAAQS for ozone and to maintain air quality in the east and central Texas area. Promulgation and enforcement of the rules will not burden private real property. The new sections do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Additionally, the NO<sub>x</sub> emissions under the system cap that are the subject of these rules are not property rights. Consequently, the sections do not meet the definition of a takings under Texas Government Code, §2007.002(5). Although the new sections do not directly prevent a

nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety, and partially fulfill a federal mandate under the USC, §7410. Specifically, the emission limitations and control requirements that are the subject of this rulemaking were developed in order to meet the ozone NAAQS set by the EPA under the USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under the USC, §7410 and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rules is to implement a NO<sub>x</sub> strategy which is necessary for the DFW area to meet the air quality standards established under federal law and to maintain air quality in east and central Texas. Consequently, the exemption which applies to these rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, these revisions do not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the rulemaking relates to an action or actions subject to the Texas Coastal Management Plan (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined the

rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires the commission protect air quality in coastal areas. The new sections allow greater flexibility in meeting system cap requirements by trading NO<sub>x</sub> emissions among sources in the DFW and east and central Texas areas. These rules do not authorize any new NO<sub>x</sub> air emissions.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The new sections are part of the state's ozone attainment strategy; therefore, these revisions are to be submitted as part of the SIP. As a result, the new sections are applicable requirements under the federal operating permit program and sources are required to revise their permits if they choose to participate in the system cap.

#### HEARINGS AND COMMENTERS

The commission held public hearings on the proposal in Irving on January 3, 2001 and in Austin on January 4, 2001. Eight commenters submitted comments during the public comment period which closed on January 5, 2001.

American Electric Power (AEP), the Association of Electric Companies of Texas, Inc. as submitted by Jenkins and Gilchrist (AECT), and TXU Business Services (TXU), generally supported the proposal but suggested changes for clarity. Entergy Services, Inc. (Entergy) and Reliant Energy, Inc. (Reliant) supported the concept of the proposal but advocated its expansion to other regions of the state. The City of Garland and the City of Denton as submitted by the Law Office of Erich Birch, P.C. (the

Cities) supported the concept of the proposal but suggested specific changes. The North Central Texas Council of Governments supported the proposal. Environmental Defense opposed specific parts of the proposal.

#### ANALYSIS OF TESTIMONY

AECT, AEP, and TXU supported the proposal but commented on an apparent omission from §101.383(c) where subsection (b) was not cited as an exception to Chapter 117 cap requirements. Subsection (b) contains the new requirement for trading in east and central Texas.

**The commission has revised the rule in response to this comment. The citation in §101.383(c) has been corrected.**

AECT and AEP commented that §101.382 should be modified to clarify the term “within another single area with unique emission limits....” They suggested stating specifically that trading of surplus emission allowables would be limited to sources located within a single nonattainment area or within another single area with unique emission limits “such as the east and central Texas area comprising those counties listed in §117.131(4).”

**The commission has not changed the rule based on this comment. Chapter 117 contains specific emission limits for NO<sub>x</sub> based on attainment status of a defined geographic area and other factors. Because emission credits or allowances are based on meeting the standards in Chapter 117, the**

**commission believes it is appropriate to retain the language that restricts trading based on the Chapter 117 language that specifies to what geographic area those standards apply.**

AECT and AEP commented that §101.383(b) be modified to remove the term “utility electric generating units” which is not defined in Chapter 101. They also commented that the proposed subsection refers to “Chapter 117, Subchapter B, Division 2” which is a broader reference than is necessary and suggested narrowing the reference to §117.138, System Cap. They repeated this comment concerning a similar reference to Chapter 117, Subchapter B, Division 2 in §101.385(b).

AECT also commented that the annual reporting requirement that is the subject of §101.385(b) should also be referenced in §117.149.

**The commission has modified §101.383(b) to use the term “units within an electric power generating system.” This term is consistent with that used in §117.138. The commission has also modified §101.383(b) and §101.385(b) to more specifically reference the computation of system cap limits in §117.138. The commission did not propose amendments to §117.149 in this rulemaking and therefore cannot amend the section at this adoption. The commission may examine the need to include the reporting requirement of §101.385(b) in §117.149 for future rulemaking.**

AECT and AEP commented that the 30-day schedule for submission of an annual activity report as required by §101.385(b)(2) is too short and should be expanded to 60 days. They stated that the 60-day

schedule would be consistent with the schedule required for grandfathered electric generating facilities under §101.336(b).

**The commission has not changed the rule based on this comment. The annual activity report will be a compilation of existing records on trades that have occurred during a calendar year, and the commission believes 30 days is adequate time to accomplish this.**

AECT and AEP commented that §101.385(b)(3)(B) be modified to state that the applicability to emission trades referenced in the subparagraph is limited to the trades conducted under Chapter 101, Subchapter H, Division 5.

**The commission agrees with the commenter that the suggested change clarifies intent and has made the appropriate change to §101.385(b)(3)(B) and additionally to §101.385(a)(3)(B).**

AECT and AEP commented that the phrase “with data to demonstrate the amount of emissions in excess of the applicable limit” be deleted from §101.385(c)(1) and be replaced with the phrase “with supporting data.” The deleted phrase should be relocated to §101.385(c)(3) since the subject of that paragraph is exceedences of limits.

**The commission agrees that the suggested reorganization clarifies the rule and has had made the recommended deletion and relocation.**

Entergy and Reliant commented that in the May 2000 rulemaking which established daily NO<sub>x</sub> emission limits for utility boilers in the DFW area, similar limits were established for utility boilers in the Beaumont/Port Arthur (BPA) nonattainment area. They stated that the requirement for flexibility in meeting NO<sub>x</sub> limits is as great in BPA as it is in DFW and that the flexibility that is proposed for DFW be extended to BPA as well. They stated that in the preamble for the System Cap Trading rules (25 TexReg 11878) the commission stated that the proposed procedure may be applied to other facilities subject to a system cap under Chapter 117 in subsequent rulemaking. Reliant also commented that the trading flexibility should apply in the Houston/Galveston (HGA) nonattainment area.

**The commission has not changed the rule in response to this comment. The commission desires to extend maximum flexibility to any group of electric generating facilities subject to emission limits or system caps. However, these amendments were proposed for the DFW area and certain other counties of east and central Texas, and there was no opportunity for full public comment from the BPA or HGA areas. Trading flexibility is an issue closely related to the SIPs for the BPA and HGA areas, and the commission believes there should be an opportunity for comment in a separate rulemaking before this flexibility is further extended. The commission may consider extending this flexibility in future rulemaking.**

Environmental Defense supported trading between owners or operators of two system caps and stated that this would not jeopardize the overall regional cap. They expressed concern over the proposed §117.109 and §117.139 which allow the use of ERCs and discrete emission reduction credits (DERCs). Environmental Defense stated that the use of these credits creates the possibility that reduction credits

generated from a control strategy no longer in place can be used to meet system cap requirements (in the case of DERCs) and would lead to exceedences of the cap. They urged the commission to limit the trading flexibility in §117.109 and §117.139 to compliance with the requirements of Chapter 101, Subchapter H, Division 5.

**The commission has not changed the rule in response to this comment. The commission has previously examined the use of ERCs and DERCs and their effect on system caps and adopted §117.570 to extend the flexibility of using these credits within a system cap. The commission has analyzed the use of DERCs within the DFW system caps. A DERC represents one ton of emission credit and may only be used once. Because of the limited amount of DERCs available for use in the DFW area, the commission believes their use under the system caps will not significantly affect the SIP. Sections 117.109 and 117.139 clarify an existing flexibility that was created with the adoption of §117.570 in December 2000.**

The Cities commented that they and TXU are the only operators of electric generating facilities in the DFW area with the Cities supplying about 10% of the power and TXU supplying the other 90%. The trading program would therefore be limited to these three participants. The Cities do not anticipate having any surplus allowables that would be of significance to TXU and the only source of allowables to the Cities would be TXU. The Cities do not imply any bad motive to TXU, but stated that they are concerned that TXU's near monopoly will allow them to control the price of allowables. The Cities suggested that, until such time as other electric generating operators move into the DFW area, the commission tie the price of allowables to some independent standard such as the average cost of

installation of electric generator emission controls in DFW. Another option would be to establish a ceiling on prices based on the price of credits in markets similar to DFW.

**The commission has not changed the rules in response to this comment. The trading of allowables is an alternative to meeting emission limitations, and the commission would expect that, under the flexibility of trading programs, an owner of an electric generating unit would choose the least expensive option of either obtaining additional allowables or lowering emissions. The commission acknowledges the relative size of the generating capacity of the eligible participants in the DFW program but disagrees that the Cities would not have excess allowables that would be of significance to TXU. The price of allowables will be determined by several factors including the need of a supplier to increase generation and the amount of allowables available. Even a small amount of excess allowables available from a relatively small generator could be important when maximum generation is required from a larger generator. The commission will continually monitor the operation of the program and will address problems if and when they emerge.**

The Cities commented that the estimated price of reduction credits of \$3,600 per ton, as based on prices in HGA, is significantly underestimated. The market will tighten as SIP deadlines approach resulting in a price for credits that can be from ten to 100 times as much. They stated that the program as proposed allows the option of control installation or participating in the trading program. As the market tightens those operators that chose to forego the installation of controls could find the cost of credits prohibitively expensive.

**The commission has not changed the rules in response to this comment. The estimate of the price of reduction credits was based on the best data available to the commission. The commission understands that the conditions affecting the cost of credits will change and has purposely established this program to allow individual operators to analyze their operation and its relation to other operations and make their best business judgement. The commission expects that the market for credits will tighten based on the relative stringency of the DFW emission standards. Owners of electric generating facilities should consider this possibility when making the decision whether to install additional emission controls or to purchase credits for compliance.**

The Cities commented that the trading option should be extended to other NO<sub>x</sub> sources, stationary and mobile, as an incentive to reductions and as a method of reducing the potential of a monopolistic market.

**The commission has not changed the rules in response to this comment. This rule was proposed as applicable to electric generating facilities in the DFW area and certain counties in east and central Texas. Trading flexibility is an issue closely related to the SIP, and the commission believes there should be an opportunity for public comment before this flexibility is further extended. The commission may examine extending this flexibility for future rulemaking.**

#### STATUTORY AUTHORITY

The new sections are adopted under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the

commission to develop a plan for control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; and 42 USC, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

**SUBCHAPTER H: EMISSIONS BANKING AND TRADING**

**DIVISION 5: SYSTEM CAP TRADING**

**§§101.380, 101.382, 101.383, 101.385**

**§101.380. Definitions.**

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise: **Surplus emission allowables** - The amount, greater than zero, that a source owner or operator's allowable emissions in a system cap emission limit specified in Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) is greater than the actual emissions in that system, in:

(1) pounds per day for a:

(A) single day; or

(B) rolling 30-day average period; or

(2) tons per year for a calendar year period for a source subject to Chapter 117, Subchapter B, Division 2 of this title (relating to Utility Electric Generation in East and Central Texas).

**§101.382. Applicability.**

Trades of emission allowables are limited to sources located within a single nonattainment area or within another single area with unique emission limits identified in Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds).

**§101.383. General Provisions.**

(a) System cap limits may be exceeded with surplus emission allowables obtained for that day from another source owner or operator participating in a system cap. The owner or operator may exceed the:

(1) maximum daily cap with a one-day surplus emission allowables generated on the same day; and

(2) rolling 30-day average daily system cap emission limitation with a surplus emission allowables generated over the same period.

(b) System cap limits for units within an electric power generating system as regulated under §117.138 of this title (relating to System Cap) may be exceeded with surplus emission allowables obtained for that calendar year from another source owner or operator participating in a system cap.

(c) The cap requirements of Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) continue to apply, except as modified in subsections (a) and (b) of this section.

**§101.385. Recordkeeping and Reporting.**

(a) The owner or operator of a source in an ozone nonattainment area participating with this division shall submit to the executive director a quarterly report.

(1) Each quarterly report will be based on a three-calendar month period beginning on January 1 of each year.

(2) The report shall be submitted within 30 days following the end of the quarterly period.

(3) The report shall detail the following:

(A) the daily nitrogen oxides (NO<sub>x</sub>) emissions from each source along with supporting calculations for the maximum daily cap and the rolling 30-day average system cap emission limitation;

(B) all emission trades conducted under this division during the reported time period including the trade date or period, quantity traded, and trading participants.

(b) The owner or operator of a source participating in a system cap limit for sources subject to §117.138 of this title (relating to System Cap) shall submit to the executive director an annual report.

(1) Each annual report will be based on a 12-month calendar period beginning on January 1 of each year.

(2) The report shall be submitted within 30 days following the end of the annual period.

(3) The report shall detail the following:

(A) the annual NO<sub>x</sub> emissions from each source along with supporting calculations; and

(B) all emissions trades conducted under this division during the reported time period including trade date, quantity traded, and trade participants.

(c) The owner or operator of any system participating in this division shall report within 48 hours to the executive director any time that the system exceeded its daily or rolling 30-day average system cap emission limitation, or within 30 days any time that the system exceeded its annual system cap, and did not obtain surplus emission allowables for that time period. This report shall include:

- (1) cause of the exceedence with supporting data;
- (2) date or period of exceedence;
- (3) amount of exceedence with data to demonstrate the amount of emissions in excess of the applicable limit; and
- (4) number of surplus emission allowables traded on the date of or during the period of the exceedence.

