

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §101.302, General Provisions; §101.303, Protocols; §101.304, Program Audits; §101.372, General Provisions; §101.373, Protocols; and §101.374, Program Audits.

The commission proposes new §101.302, General Provisions; §101.303, Emission Reduction Credit Generation and Certification; §101.304, Mobile Emission Reduction Credit Generation and Certification; §101.306, Emission Credit Use; §101.309, Emission Credit Banking and Trading; §101.311, Program Audits and Reports; §101.372, General Provisions; §101.373, Discrete Emission Reduction Credit Generation and Certification; §101.374, Mobile Discrete Emission Reduction Credit Generation and Certification; §101.376, Discrete Emission Credit Use; §101.378, Discrete Emission Credit Banking and Trading; and §101.379, Program Audits and Reports.

The commission proposes amendments to §101.300, Definitions; §101.301, Purpose; §101.350, Definitions; §101.351, Applicability; §101.352, General Provisions; §101.353, Allocation of Allowances; §101.354, Allowance Deductions; §101.356, Allowance Banking and Trading; §101.360, Level of Activity Certification; §101.370, Definitions; and §101.371, Purpose. The repealed, new, and amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas state implementation plan (SIP).

The proposed new and amended §§101.300 - 101.304, 101.306, 101.309, and 101.311 are grouped into Subchapter H, Emissions Banking and Trading; Division 1, Emission Credit Banking and Trading. The

proposed new and amended §§101.370 - 101.374, 101.376, 101.378, and 101.379 are grouped into Subchapter H, Division 4, Discrete Emission Credit Banking and Trading.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The emissions banking and trading program has been designed to offer flexibility in generating and using emission reduction credits (ERC), mobile emission reduction credits (MERC), discrete emission reduction credits (DERC), and mobile discrete emission reduction credits (MDERC). Flexibility has been built into the rules to create incentives for the early or permanent control of volatile organic compound (VOC) and oxides of nitrogen (NO_x) emissions.

These revisions are necessary to reorganize Chapter 101, Subchapter H, Divisions 1 and 4 in a manner parallel to each other, with rule structure which follows a logical process of recognizing, quantifying, and certifying reductions as credits while clearly explaining the guidelines for trading and using creditable reductions. Rule language outlining mobile and stationary source credit use, banking, and trading would be consolidated to eliminate redundant language for these generator categories. Rule language outlining mobile and stationary source credit generation and certification would be divided into individual sections due to differences in methods of generation, quantification, and information needed for certification between the two generator categories. For clarity, these revisions would replace all references to the term “source” with the terms “facility,” as defined in 30 TAC §116.10, Definitions; or “mobile source,” as defined in §101.300 and §101.370. Also, because a facility is defined as a stationary source, all references to “stationary” are proposed to be deleted as duplicative. In the past, confusion among the regulated community has originated from inconsistencies between

federal and state definitions of the term “source.” Emission credits and discrete emission credits are generated and used by the actual emissions-producing equipment (i.e., boiler, flare, automobile, marine vessel) and not by the exhaust point at which emissions enter the atmosphere (i.e., an exhaust stack). A new definition of the term “facility” would apply to all stationary generator categories, while mobile source would refer to all mobile generator categories.

These revisions would also address concerns raised by the EPA regarding the quantification protocols used when measuring baseline emissions for the generation and use of credits. For reductions to be certified as emission credits or discrete emission credits, the reduction must meet the criteria of being quantified with confidence using replicable methodologies. EPA outlines elements necessary for approval of trading programs which will be used within a SIP in guidance titled, *Improving Air Quality with Economic Incentive Plans* (EPA 452/R-01-001, dated January 2001). This guidance contains information listing recommended elements of quantification protocols used to calculate baseline emissions and emission reductions within trading programs submitted as part of a SIP. EPA guidance also suggests that an approved trading program would contain provisions for EPA approval of quantification protocols submitted after a trading program has been approved as part of the SIP. These provisions would include a 30-day public comment period for each new protocol along with a requirement that the protocol, along with any comments received by the commission, be submitted to EPA. After a 45-day adequacy review, EPA may approve, disapprove, or take no action on the proposed protocol. Some of the requirements for an EPA approved quantification protocol would include: collection of data characterizing the process of all phases of facility operation during credit generation or use; instrumentation possessing the ability to measure the applicable parameters

characteristic of facility operation; submittal and adherence to a quality assurance/quality control plan; discussion of testing conditions affecting results; use of applicable EPA test methods; and the use of continuous emissions monitors (CEMS) or predictive emissions monitors (PEMS), if in place.

Rule language outlining emission credit and discrete emission credit protocols would be added to require the use of quantification protocols submitted by the executive director to the EPA for approval. Proposed language would identify the testing and monitoring methodologies used to show compliance with the emission specifications and control requirements of 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, as quantification protocols which have been submitted by the executive director to the EPA for approval. In addition, rule language would be added to address missing data events.

Language covering facilities generating or using emission credits or discrete emission credits for which no protocol has been submitted by the executive director to the EPA for approval would be revised to require: 1) quantification methods at least as rigorous as the methods required for demonstrating compliance with an applicable requirement; 2) the collection of data which sufficiently characterizes the facility's emissions during all phases of operation; and 3) the use of CEMS or PEMS, if in place.

Protocols not previously submitted by the executive director to the EPA for approval would be made available for public comment for 30 days prior to submittal.

Proposed revisions to Chapter 101, Subchapter H, Division 3, Mass Emissions Cap and Trade Program, are necessary to clarify and amend the applicability of the division and general provisions of the mass emissions cap and trade (MECT) program. In addition, the commission would propose adding

language stating that the quantity and sales price information on all allowance transactions shall be made immediately available to the public. Proposed revisions to Figure: 30 TAC §101.353(a) in §101.353(a) would amend the existing reduction factors to reflect a total NO_x emission reduction of 80% for utility and non-utility point sources from the 1997 emissions inventory baseline. This proposed revision would simultaneously eliminate the reduction factors associated with the referenced emission specifications in §117.106(c)(5), Emission Specifications for Attainment Demonstration, and §117.206(c)(18), Emission Specifications for Attainment Demonstration. The proposed revisions would also add language to offer facilities subject to §117.206 or §117.475, Emission Specifications, an alternative to the existing reduction factors of §101.353(a).

Proposed amendments would add the term “uncontrolled” to clarify that the design capacity used in determining applicability to the cap and trade program shall be without regard to any enforceable or physical limitations, including pollution control equipment, whether installed from the manufacturer or after start-up. Upon adoption on December 6, 2000, Division 3 became the sole compliance mechanism cited in Chapter 117, Subchapter E, Administrative Provisions, for facilities subject to §117.106 or §117.206 at a site in the Houston/Galveston (HGA) ozone nonattainment area with a collective uncontrolled design capacity greater than or equal to ten tons per year (tpy) of NO_x. Existing language in §101.351 exempts sites, including those classified as major for NO_x, from the cap and trade program if the facilities subject to the sections previously referenced have a collective uncontrolled design capacity of less than ten tpy of NO_x. As written, a site classified as major for NO_x would have no compliance mechanism if the bulk of emissions contributing to this classification were from emission specification for attainment demonstration (ESAD) exempt facilities. With no present compliance

mechanism for facilities subject to §117.106(c) or §117.206(c) at a site classified as major with a collective uncontrolled design capacity to emit less than ten tpy of NO_x, the commission proposes amendments which would include these facilities within the cap and trade program. For purposes of this chapter, sources will be considered to be major sources if they were classified as major on or after December 31, 2000, which was the effective date of the MECT program.

Beginning April 1, 2004, allowances allocated to a facility subject to §117.206 or §117.475 are reduced over time by a factor called "X." The commission would propose new language which would allow a facility to delay the reduction in its calendar year 2004 allocation if the facility committed to controlling emissions to the levels required in §117.206 or §117.475 by April 1, 2005. This proposed language would allow facilities, which may cease to operate, the flexibility of avoiding the economic expenditure of additional pollution controls while preserving the emission reductions targeted within a SIP.

Proposed new language would require that allowances be deducted from a site's compliance account when changes made after December 31, 2000 to an ESAD covered facility result in NO_x emissions increase at a non-ESAD covered facility at that site. Facilities subject to the MECT program which combust fuel or waste streams may potentially reduce NO_x emissions by redirecting these streams to facilities that are exempted from the ESAD requirements, thus shifting the associated emissions to facilities outside of the MECT program. For example, a waste gas stream containing fuel-bound nitrogen historically fired through a boiler is redirected to a flare, increasing the NO_x emissions from the flare and reducing emissions at the boiler. A reduction in emissions at the MECT facility could result in excess allowances while the overall benefit to the airshed could be zero due to the increase in

NO_x emissions from the ESAD-exempt facility. In fact, if the stream is directed to a facility with lesser controls, the airshed could see an overall increase. The proposed new language would ensure that changes made to MECT facilities after December 31, 2000 which shift NO_x emissions to ESAD-exempt facilities, be offset by deducting an amount of allowances from the MECT facility equal to that increase.

SECTION BY SECTION DISCUSSION

Division 1

The commission proposes to amend the following definitions in §101.300. The definition of activity would be amended to omit the example of mass emitted per unit of activity, as this does not describe an activity, and the acronym VMT would be deleted because it is not used again in the definition. In the definitions of the terms “activity,” “actual emissions,” “emission reduction strategy,” “generator,” “most stringent allowable emissions rate,” “permanent,” “surplus,” and “user,” the words “facility or mobile” would be added before the word “source” to clarify that the definition applies to stationary and mobile sources. The definition of applicable emission point would be deleted from the rule because the term is obsolete. In the definitions of area source, baseline activity, baseline emission rate, baseline emissions, and mobile source baseline emission, the term “source” would be replaced with either the term “facility” or the term “mobile source” to eliminate the inconsistency between the existing federal and state definitions of source. The definitions of baseline, mobile emissions baseline, mobile emission reduction credit, and most stringent allowable emissions rate would be amended to include limitations from local regulatory entities and the term “rules” as part of those limitations. The definitions of baseline and baseline activity would be amended to clarify that emissions inventories are “used in a

SIP” instead of “for SIP determinations.” The definition of baseline activity would also be amended to describe a facility’s actual level of activity based on actual data averaged over any two consecutive calendar year period, including or following the most recent year of emissions inventory used in the SIP for the nonattainment area in which the facility is located or year(s) subsequent to the SIP year. For facilities in existence less than 24 months or not having two complete calendar years of data, a shorter time period of not less than 12 months may be considered by the executive director. The definitions of baseline emission rate and baseline emissions would be amended to spell out the acronyms for terms that are only used once. The definition of baseline emissions would be further amended to clarify that the emissions are measured in tons per year, and the product of baseline activity and baseline emission rate shall be averaged over any two consecutive calendar year period, including or following the most recent year of emissions inventory used in the SIP for the nonattainment area in which the facility is located or year(s) subsequent to the SIP year. In the definitions of curtailment, emission reduction, and protocol, the term “stationary” would be changed to the term “facility” to be consistent. In the definition of emission reduction, the word “of” would be changed to the word “in” to be grammatically correct. The definition of emission reduction credit would be amended to specify that ERCs are made from a stationary facility, and to move the phrase “expressed in tons per year” adjacent to the term it modifies. The definition of facility would be amended to refer only to §116.10 instead of §116.10(4) to avoid having to change this reference if the definition numbering in §116.10 changes. The definition of mobile source baseline activity would be amended to refer to a level of activity at a mobile source, and the definition of mobile source baseline emissions would be revised to clarify that these emissions shall be expressed in tpy. The definition of ozone season would be deleted, because the term does not apply to this division. The definition of shutdown would be revised to include mobile sources. The definition

of source would be amended to refer only to §101.1 instead of §101.1(90) to avoid having to change this reference if the definition numbering in §101.1 changes. The definition of surplus would be amended to clarify that reductions from facilities and mobile sources must be beyond any reductions relied upon for the SIP.

The following new definitions would be added to §101.300. The definition of facility would be referenced to §116.10, Definitions, where it is defined as a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source. The definition of site would be referenced from §122.10, Definitions, where it is defined as the total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). A new definition of state implementation plan would be added as a plan providing control strategies for attaining and maintaining a primary or secondary national ambient air quality standard (NAAQS). Strategic emissions would be defined as a facility's or mobile source's new allowable emission limit following the implementation of an emission reduction strategy. The new allowable emission limit must be enforceable through permit amendment, permit alteration, permit voidance, submittal of a PI-8 Form, submittal of an OP-CRE1 Form, or agreed order from the commission for the reduction to be certified as an emission credit.

The commission proposes amendments to existing language in §101.301 which would replace the term "source" with the terms "facility" and "mobile source," and would remove references to the term "stationary" in conjunction with the term "facility."

The proposed new §101.302 would restructure the existing language found in §101.302 describing the general provisions for the Emission Credit Banking and Trading Program, and improve readability by organizing the rule language to follow a process of identifying applicable pollutant types, eligible generator categories, general emission credit requirements, protocols for quantifying identified reductions, and the geographic limitations for generating and using emission credits. The new subsection (b) would clarify that it is applicable to eligible generator categories. This subsection would allow facilities (including area sources), mobile sources, and facilities (including area sources) or mobile sources associated with agencies under §101.30, Conformity of General Federal Actions to State Implementation Plans, to be eligible to generate emission credits. The new subsection (c) would clarify criteria that must be met to qualify a reduction as an ERC or MERC. These criteria have also been listed as subparagraphs to improve clarity and readability of the rule. Rule language governing protocols for quantifying reductions to be certified as emission credits has been relocated from the existing §101.303 to the new §101.302 and amended to address EPA concerns. In a new subsection (e), the commission is proposing to relocate existing language that requires the generator and user of emission credit to receive a unique certificate and certificate number verifying the amount of credit to the nearest tenth of a tpy. Language which allows the executive director, with commission approval, to discontinue emission credit trading would be relocated to the new §101.309. The existing language in subsection (f) would be amended to require executive director and EPA approval prior to the use of emission credit outside the nonattainment area in which it was generated. The existing subsection (g) would be amended to require credit users to retain records from the beginning of the use period and for five years after. The existing language in subsection (h) would be amended to include the sales price of emission credits as information which would be made immediately available to the public. A new

subsection (k) is proposed that states that the owner of an emission credit shall be the owner or operator of the facility where the credit is generated unless certain conditions exist. Those conditions would include cases where the cost of generating the credit is incurred by someone other than the owner or operator, or the owner or operator does not have the potential to generate the minimum credit needed for transactions (one-tenth of a ton). For example, if an entity implements a mobile source strategy that would reduce emissions from cars in the public fleet, the executive director may assign the reduction credits to that entity instead of the individual car owner or operator, if the entity bears the cost of the strategy and the strategy will not achieve one tenth of a ton reduction on an individual vehicle. The commission proposes this amendment to provide an incentive for strategies which must be implemented on a large scale in order to achieve measurable reductions.

The proposed new §101.303 would contain requirements for ERC generation and certification. A proposed new subsection (a) would identify the methods by which ERCs may or may not be generated. New language to this subsection would prohibit the generation of ERCs from reduction funded through state or federal programs unless specifically allowed by that program or from a shutdown of a facility which did not have emissions reported or represented in the most recent emission inventory used in the SIP. The commission proposes to relocate and amend language prohibiting generation of ERCs from the shifting of activity from one facility to another facility located at the same site. The commission proposes a new subsection (b), outlining the equation used to calculate the amount of ERCs generated, with a clarification that the baseline activity and the baseline emission rate must be from the same year. The new proposed subsection (c) would identify the requirements for certifying reductions as ERCs. The proposed language will eliminate the opportunity for facilities which implemented a reduction

strategy prior to December 6, 2000 to submit an application by June 1, 2001 since that date has passed. Proposed new language would be added to this subsection to require ERCs to be quantified in accordance with the protocols in §101.302(d). Existing language identifying an application for ERC certification would be relocated to this subsection and amended to require the application to include a signed EC-1 Form, Application for Certification of Emission Credits, along with supporting documentation in order to be deemed complete. Existing language identifying the enforceable mechanisms for ERCs would be relocated to this subsection and amending the language to address standard permits. Language has been included to require denial of an application to be in writing and to allow for resubmittal if all requirements are met, including those regarding the timing of a submission.

The proposed new §101.304 would contain requirements for MERC generation and certification. The commission proposes the relocation of existing language in §101.303(c) to new subsection (a) and amends the language to prohibit the generation of MERCs from reductions funded from a local, state, or federal program unless specifically allowed by that program and reductions from the transfer of emissions from one mobile source to another mobile source in the same nonattainment area. The proposed new subsection (b) relocates existing language describing MERC generation calculations. The new proposed subsection (c) would identify the requirements for certifying reductions as MERCs. The proposed language will eliminate the opportunity for mobile sources which implemented a reduction strategy prior to December 6, 2000 to submit an application by June 1, 2001 since that date has passed. Proposed new language would be added to this subsection to require MERCs to be quantified in accordance with the protocols in §101.302(d). Existing language identifying an application for MERC certification would be relocated to this subsection and amended to require that the application to include

a signed MEC-1 Form, Application for Certification of Mobile Emission Credits, along with supporting documentation in order to be deemed complete. Existing language identifying the enforceable mechanism for MERCs would be relocated to this subsection and amended to eliminate the use of the MERC-1 Form.

The proposed new §101.306 would contain existing language found in §101.303 outlining the requirements, calculations, and schedule for emission credit use. The proposed section would contain new language to include the use of emission credits as an annual allocation of allowances under Division 3. The proposed new equation in subsection (b)(2) would be used to calculate the amount of emission credits needed for compliance with 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Chapter 115, and Chapter 117. The new equation would be the product of the maximum annual activity level during the use period and the difference between the projected emission rate during the use period and the emission rate required for compliance with the emission specification. The proposed new equation in subsection (b)(3) would be used to calculate the amount of credits needed to exceed the maximum 30-day rolling average emission cap or maximum daily cap for facilities operating under a system or source cap.

The proposed new §101.309 would relocate language from §101.302 and §101.303 which describes the credit registry, the life of credits, and trading requirements. Existing language would be revised to state that emission credits may be voided instead of withdrawn from the registry at any time prior to expiration by the owner. Proposed new language describes the process for obtaining a creditability review of emission credits.

The proposed new §101.311 would relocate existing language in §101.304 requiring the executive director to review the emission credit program every three years. New proposed language would require the executive director to make available to EPA and the general public reports on the amount of emission credits generated, used, and traded under this division.

Division 3

The commission proposes to amend §101.350 to add the definition of uncontrolled design capacity clarifying that applicability to this division shall be based on the maximum capacity of a facility to emit NO_x without regard to pollution control equipment or any other physical or enforceable limitation.

The commission proposes amendments to §101.351 which would clarify and revise the applicability of the MECT program under Division 3. A new subsection (b) is proposed to be added to the section requiring the existing language to be identified as subsection (a). A new proposed subsection (a)(1) would state that Division 3 is applicable to all facilities located at a site which met the definition of major source as defined in §117.10, Definitions. Subsection (a)(2) would be modified to clarify that the design capacity to emit ten tons or more per year of NO_x means “uncontrolled” design capacity. The proposed new subsection (b) which would require any site meeting the definition of major source as of December 31, 2000 to continue to be classified as a major source for the purposes of Chapter 101. The proposed new language would also require a site which does not meet the definition of major source on December 31, 2000, but becomes a major source at any time thereafter to be classified as a major source for the purposes of Chapter 101 from that time forward. These changes might expand the MECT program to include those sites which emit less than ten tons from their units subject to ESADs,

but which are, nevertheless, major sources. Facilities at these sites, if any, will be allocated allowances upon submittal of an ETC-3 Form, Level of Activity Certification, to the executive director. They will not be treated as new facilities which have to purchase allowances to begin operation.

The commission proposes revisions to §101.352(b) which would amend the February 1 deadline requiring sites to hold a quantity of allowances in their compliance account equal to or greater than the previous compliance period's NO_x emissions. The proposed revision would amend this deadline to March 1, paralleling existing language in §101.354, Allowance Deductions. Proposed revisions to subsection (e) would clarify that only new or modified facilities subject to federal nonattainment new source review requirements, which are not considered existing as defined in §101.350, may simultaneously use allowances to satisfy the correlating one to one portion of offset requirements as provided in Chapter 116, Subchapter B, Division 7, Emission Reductions: Offsets.

The commission proposes amendments to Figure: 30 TAC §101.353(a) in §101.353(a) which would define the "X" reduction factor for facilities within an electric generating system as 0.00 for January 1, 2002 through March 31, 2003; 0.50 for April 1, 2003 through March 31, 2004; and 1.00 on and after April 1, 2004. The proposed revision would define "X" for all other facilities as 0.00 for January 1, 2002 through March 31, 2004; 0.47 for April 1, 2004 through March 31, 2005; 0.80 for April 1, 2005 through March 31, 2006; 0.93 for April 1, 2006 through March 31, 2007; and 1.00 on and after April 1, 2007. The commission proposes new language in §101.353(a) which would allow facilities subject to the reduction factor outlined under paragraph (3)(B) an alternative reduction factor schedule. The proposed new language would state that facilities subject to the reductions factors under subparagraph

(B) may elect to receive no reduction in allowances through March 31, 2004 in exchange for reducing emissions to ESAD levels by April 1, 2005. Proposed new language would require sites electing to comply with the alternative reduction schedule to notify the executive director by letter no later than April 1, 2003. In addition, proposed revisions to this section would clarify the definition of variable LA_{HA} , historical average activity level, as it pertains to facilities which began operation after January 1, 1997. Proposed revisions to §101.353(g) would clarify the number of calendar years available as an alternative baseline period due to extenuating circumstances and the deadline for submittal of an application for extenuating circumstances.

The commission proposes new language in §101.354 requiring that allowances be deducted for changes made after December 31, 2000 to a facility subject to an emission specification under §117.206 or §117.475 which directly result in a NO_x emissions increase at a facility exempted from an emission specification under §117.206 or §117.475. The deduction in allowances shall be equivalent to the increase in NO_x emissions. The proposed new language would also require that supporting documentation verifying the NO_x increase, such as form of fuel usage and emission factor data, be included with the submittal of the ECT-1 Form on March 31 following each control period.

The commission proposes amendments to §101.356 which would revise the information required for allowance transfer and the restrictions on banking and trading of unused allowances. Proposed language to this section would require that the price paid per allowance be included on the ECT-4 Form, Application for Permanent Transfer of Allowance Ownership. Proposed revisions to this section would also add language stating that all information regarding the quantity and sales price of allowance

transactions shall be made immediately available to the public. The proposed amendments also add language which would prohibit the banking or trading of allowances issued prior to January 1, 2005 which are not used for compliance during a control period if allocated in accordance with the alternative reduction factor schedule of §101.353(a)(3)(C).

The commission proposes revisions to §101.360 which would clarify that an owner or operator of a facility receiving allowances based on an allowable level of activity shall submit an ECT-3 Form, Level of Activity Certification, no later than 90 days from the end of the fifth year of operation, certifying its level of activity for the chosen two consecutive calendar year period. This revision would further clarify that the owner or operator would receive no benefit of allowances allocated based on the two consecutive years of actual operation until January 1 of the following control period.

Division 4

Section §101.370 contains the definitions to be used within Subchapter H, Division 4. The commission proposed to amend the definition of activity to add language that specifies that activity is measured in units that have a direct correlation with the economic output and emission rate of the source. The definitions of actual emissions, area source, baseline activity, baseline emission rate, and baseline emissions would be amended to replace the terms “unit” or “source” with the term “facility” to be consistent. The definition of applicable emission point would be deleted from the rule because the term is obsolete. The definitions of baseline and baseline activity would be amended to clarify that emissions inventories are “used in a SIP” instead of “for SIP determinations,” and would also be amended to describe a facility’s actual level of activity based on actual data averaged over any two consecutive

calendar year period, including or following the most recent year of emissions inventory used in the SIP for the nonattainment area in which the facility is located or year(s) subsequent to the SIP year. For facilities in existence less than 24 months or not having two complete calendar years of data, a shorter time period of not less than 12 months, may be considered by the executive director. The definitions of discrete emission credit and discrete emission reduction credit would be amended to clarify that the credits are measured in tenths of a ton. The definitions of emission reduction strategy, generator, most stringent allowable emissions rate, permanent, strategy activity, strategy emission rate, surplus, and user, would be amended to add the words “facility or mobile” before the word “source” because the definitions apply to both facilities and mobile sources. The term “DERCs” would be replaced with the term “discrete emission reduction credit.” The definition of mobile source baseline emission rate has been added for clarification. The commission proposes to amend the definition of ozone season to add the citation in 40 Code of Federal Regulations 58, Appendix D which specifies the ozone seasons by geographic area. The definition of surplus would be amended to clarify that reductions from facilities and mobile sources must be beyond any reductions relied upon for the SIP.

The following new definitions would be added to §101.370. The definition of facility is referenced to §116.10 where it is defined as a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source. The definition of site is referenced from §122.10 where it is defined as the total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). A new definition for state implementation plan would be added as a plan providing control strategies for attaining and maintaining a primary or secondary NAAQS.

The commission proposes amendments to existing language in §101.371 which would replace the term “source” with the terms “facility” and “mobile source,” and would remove references to “stationary” in conjunction with the term “facility.”

The proposed new §101.372 contains the general provisions for the Discrete Emission Credit and Trading Program. This section would be restructured to improve readability by organizing the rule language to follow a process of identifying applicable pollutant types, eligible generator categories, general discrete emission credit requirements, protocols for quantifying identified reductions, and the geographic limitations for generating and using discrete emission credits. The new subsection (b) would clarify that it is applicable to eligible generator categories which would continue to allow facilities (including area sources), mobile sources, and facilities (including area sources) or mobile sources associated with agencies under §101.30, to be eligible to generate discrete emission credits. Rule language governing protocols for quantifying reductions to be certified as discrete emission credits would be relocated from §101.373 to §101.372 and amended to address EPA concerns. Subsection (e) would clarify the requirements for certifying discrete emission credits. The commission proposes new language that would require the generator and user of discrete emission credits to receive a unique certificate and certificate number verifying the amount of discrete credit. Proposed new language in subsection (f) would prohibit the use of NO_x discrete emission credits within the covered attainment counties, as defined in §115.10, Definitions, if the discrete emission credits were generated outside of the covered attainment counties. In addition, proposed new language under subsection (f) would prohibit the use of VOC and NO_x discrete emission credits within any of the covered attainment counties, as defined in §115.10, if the discrete emission credits were generated outside of these covered

attainment counties or certain nonattainment areas. For simplification, subsection (l) would consolidate existing requirements defining the generator's and user's compliance burden. A new subsection (m) is proposed that states that the owner or operator of a discrete emission credit shall be the owner or operator of the facility or mobile source where the credit is generated unless certain conditions exist. Examples of those conditions would include cases where the cost of generating the credit is incurred by someone other than the owner or operator, or the owner or operator does not have the potential to generate the minimum credit needed for transactions (one-tenth of a ton). For example, if an entity implements a mobile source strategy that would reduce emissions from cars in the public fleet, the executive director may assign the reduction credits to that entity instead of the individual car owner or operator, if the entity bears the cost of the strategy and the strategy will not achieve one tenth of a ton reduction on an individual vehicle. The commission proposes this amendment to provide an incentive for strategies which must be implemented on a large scale in order to achieve measurable reductions.

The commission proposes a new §101.373 which would contain requirements for DERC generation and certification. A new proposed subsection (a) would contain new language outlining the methods to generate DERCs and would relocate existing language describing the methods that are not acceptable for DERC generation. Proposed new language would prohibit generation of DERCs from the shifting of emissions from one facility to another facility at the same site. The proposed new language would also prohibit the generation of DERCs from reductions funded through local, state, or federal programs unless specifically allowed under that program. Also prohibited would be reductions from a facility subject to Division 3 or reductions from shutdown of a facility which did not have emissions reported or represented in the most recent emission inventory used in the SIP. Proposed new subsection (b) would

relocate and amend existing language describing DERC calculation. The proposed language would clarify the variables used to calculate DERC generation. The new proposed subsection (c) would identify the requirements for certifying reductions as DERCs. Existing language identifying an application for DERC certification would be relocated to this subsection and amended to require the application to include a signed DEC-1 Form, Notice of Generation and Generator Certification of Discrete Emission Credits, along with supporting documentation in order to be deemed complete.

The commission proposes a new §101.374 which would relocate the existing language from §101.373 identifying the requirements for MDERC generation and certification. New language under the proposed subsection (a) would prohibit generation of MDERCs from reductions funded through local, state, and federal programs unless specifically allowed by that program. The proposed new subsection (c) would identify the requirements for certifying reductions as MDERCs. Existing language identifying an application for MDERC certification would be relocated to this subsection and amended to require that the application to include a signed MDEC-1 Form along with supporting documentation in order to be deemed complete.

The proposed new §101.376 contains existing requirements found in §101.373 for discrete emission credit use. The proposed new equations in subsection (d)(2)(A) would be used to calculate the amount of discrete emission credits needed to exceed the maximum 30-day rolling average emission cap or maximum daily cap for facilities operating under a system or source cap. A proposed new equation in subsection (d)(2)(B) would be used to calculate the amount of discrete emission credits needed to comply with the requirements found in Chapters 114, 115, and 117. A proposed new equation in

subsection (d)(2)(C) would be used to calculate the amount of discrete emission credits needed to exceed a permit allowable for up to 12 months within any consecutive 24-month period.

The commission proposes new §101.378 which would relocate existing language from §101.372 and §101.373 which describes the credit registry, the life of credits, and trading requirements.

The proposed new §101.379 would relocate existing language in §101.374 requiring the executive director to review the discrete emission credit program every three years. New language would be proposed that requires the executive director to make available to EPA and the general public, reports on the amount of discrete emission credits generated, used, and traded under this division.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, no fiscal implications are expected for the agency or other units of state or local government resulting from the implementation or enforcement of the proposed amendments.

The proposed amendments reorganize current provisions related to emission credit banking and trading and discrete emission credit banking and trading. The Emission Credit Banking and Trading Program is a market-based framework for trading emission reductions of VOC, NO_x, and certain other criteria pollutants from stationary, area, and mobile sources. The program was designed to provide additional flexibility for complying with the Texas Clean Air Act (TCAA) while creating a net reduction in total

air emissions with each transaction. The proposed amendments will apply to all stationary, mobile, and area generators and users of emission credits.

As the proposed amendments are procedural in nature and reorganize and clarify current rule language; and because significant changes are not anticipated in current practices, no fiscal implications are expected for units of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Horvath has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed amendments would be simplified and easier to understand rule language for the regulated community, the general public, and federal, state, and local agencies. In addition, the proposed amendments are anticipated to allow for more expedient EPA review of the emission credit program as a SIP revision because the proposed revisions are expected to address EPA concerns regarding the quantification protocols used when measuring baseline emissions for the generation and use of credits.

The proposed amendments reorganize current provisions related to emission credit banking and trading and discrete emission credit banking and trading. The Emission Credit Banking and Trading Program is a market-based framework for trading emission reductions of VOC, NO_x, and certain other criteria pollutants from stationary, area, and mobile sources. The program was designed to provide additional flexibility for complying with the TCAA while creating a net reduction in total air emissions with each

transaction. The proposed amendments will apply to all stationary, mobile, and area generators and users of emission credits.

As the proposed amendments are procedural in nature and reorganize and clarify current rule language; and because significant changes are not anticipated in current practices, no fiscal implications are expected for businesses or individuals.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of the implementation and enforcement of the proposed amendments for small and micro-businesses that generate, bank, or trade emission credits.

The proposed amendments are procedural in nature and reorganize and clarify current rule language; and because significant changes are not anticipated in current practices, no fiscal implications are expected for small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. A “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 proposed amendments to Chapter 101 are not intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants; although, the underlying banking program is intended to achieve these goals. The proposed amendments themselves are generally procedural and programmatic changes to the banking rules to improve readability and to clarify the existing program. The substantive changes which are proposed are meant to provide flexibility and to provide a mechanism for EPA approval of certain protocols. There is the potential for a small number of sources to become subject to the MECT program as a result of changes to the applicability language. Incorporation into this program should provide flexibility for these sources in meeting Chapter 117 requirements. None of these revisions place additional financial burdens on the regulated community. Therefore, the proposed

rules do not 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.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.”

Specifically, the banking and cap and trade systems were revised by this proposal developed in order to provide flexibility in meeting the ozone NAAQS set by the EPA under 42 United States Code (USC), §7409, and therefore meets a federal requirement. This rulemaking does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the NAAQS established under federal law and authorized under Texas Health and Safety Code (THSC), §§382.011, 382.012, and 382.017, as well as under 42 United States Code (USC), §7410(a)(2)(A).

The commission invites public comment on the draft regulatory impact assessment.

TAKINGS IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the proposed rules. The revisions are proposed to programs which would provide flexibility in meeting the ozone NAAQS set by the EPA under 42 USC, §7409. Promulgation and enforcement of the rules will not burden private real property. The proposed 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 credits and allowances created under these rules are not property rights. Consequently, these proposed sections do not meet the definition of a takings under Texas Government Code, §2007.002(5). Although the proposed rule revisions 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 42 USC, §7410. Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA under the 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under 42 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 rule proposal is to revise programs which provide flexibility in meeting the ozone NAAQS set by the EPA under 42 USC, §7409. Consequently, the exemption which applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, these proposed revisions will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission's preliminary consistency determination for the proposed rules in accordance with 31 TAC §505.22 found that the proposed rulemaking is consistent with the applicable CMP goal to protect and preserve the quality and values of coastal natural resource areas (31 TAC §501.12(1)) and the policy which requires that the commission protect air quality in coastal areas (31 TAC §501.14(q)).

The rule proposal reorganizes those sections of Chapter 101 concerning emission credits and ensures that emission credit generation and use is consistent with EPA protocols. No new emissions are authorized by this proposal; therefore, the rulemaking is consistent with the applicable CMP goal and policy.

The commission invites public comment regarding the consistency of the proposed rules with the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because Chapter 101 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits, owners or operators subject to the Federal Operating Permit Program must, consistent with the

revision process in Chapter 122, revise their operating permits to include the revised Chapter 101 requirements for each emission unit at their site affected by the revisions to Chapter 101.

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled for the following times and locations:

July 18, 2002, 2:00 p.m., Texas Natural Resource Conservation Commission, 12100 North I-35,

Building E, Room 201S, Austin; July 22, 2002, 10:00 a.m., City of Houston, City Council Chambers,

2nd Floor, 901 Bagby, Houston; as well as July 22, 2002, 7:00 p.m., Flukinger Community Center,

16003 Lorenzo, Channelview. The hearings will be structured for the receipt of oral or written

comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals

may present oral statements when called upon in order of registration. A four-minute time limit may be

established at the hearings to assure that enough time is allowed for every interested person to speak.

There will be no open discussion during the hearings; however, commission staff members will be

available to discuss the proposal 30 minutes before the hearings and will answer questions before and

after the hearings.

Persons planning to attend the hearings who have special communication or other accommodation

needs, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900.

Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments should reference Rule Log Number 2002-044-101-AI. Comments must be received by 5:00 p.m. on July 22, 2002, although oral and written comments submitted at the 7:00 p.m. July 22, 2002 hearing will be accepted. For further information, please contact Cory Chism, Air Permits Division, at (512) 239-0539 or Alan Henderson, Policy and Regulations Division, at (512) 239-1510.

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 1: EMISSION CREDIT BANKING AND TRADING

§§101.300 - 101.304, 101.306, 101.309, 101.311

STATUTORY AUTHORITY

The new and amended sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new and amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants. The new and amended sections are also proposed under 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.

The new and amended sections implement THSC, §§382.002, 382.011, 382.012, 382.017; and 42 USC, §7410(a)(2)(A).

§101.300. Definitions.

The following words and terms, when used in this division, shall 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 [(VMT)], or other similar units that have a direct correlation with the economic output and emission rate of the facility or mobile source [i.e., mass emitted per unit of activity].

(2) **Actual emissions** - Actual emissions as of a particular date shall equal the total emissions during the selected time period, using the facility or mobile source's [unit's] actual daily operating hours, production rates, or types of materials processed, stored, or combusted during the selected time period.

[(3) **Applicable emission point** - The source which is either generating an emission reduction or using an emission credit.]

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

(4) [(5)] **Baseline** - Emissions that occur prior to an emission reduction strategy, considering all limitations required by applicable local, state, and federal rules and regulations. The baseline may not exceed the quantity of emissions reported in the most recent year of emissions inventory used in the [for] state implementation plan [(SIP) determinations].

(5) [(6)] **Baseline activity** - The facility's [source's] level of activity based on the facility's [unit's] actual daily operating hours, production rates, or types of materials processed, stored, or combusted averaged over any two consecutive [two] calendar years [year period] including and following [or including] the most recent year of emissions inventory used in the state implementation plan [for SIP determinations] or subsequent year(s) which precede the emission reduction strategy or credit use period. For facilities [sources] in existence less than 24 months or not having two complete calendar years of activity data, a shorter time period of not less than 12 months may be considered by the executive director.

(6) [(7)] **Baseline emission rate [(BER)]** - The facility's [source's] rate of emissions per unit of activity during the baseline activity period.

(7) [(8)] **Baseline emissions** - The facility's [source's] total actual emissions, in tons per year, based on the product of baseline activity and baseline emission rate averaged over any two

consecutive calendar years including and following the most recent year of emissions inventory used in the state implementation plan or subsequent year(s) which precede the emission reduction strategy or credit use period [(BER)].

(8) [(9)] **Certified** - Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(9) [(10)] **Curtailement** - A reduction in activity level at any facility [stationary] or mobile source.

(10) [(11)] **Emission Credit** - An emission reduction credit [(ERC)] or mobile emission reduction credit [(MERC)].

(11) [(12)] **Emission Reduction** - An actual reduction in [of] emissions from a facility [stationary] or mobile source.

(12) [(13)] **Emission reduction credit [(ERC)]** - A certified emission reduction, expressed in tons 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 [, and expressed in tons per year].

(13) [(14)] **Emission reduction strategy** - The method implemented to reduce the facility's or mobile source's emissions [which are surplus].

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

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

(16) **Mobile emissions baseline** - Mobile emissions that occur prior to a mobile emission reduction strategy, considering all limitations required by applicable local, state, and federal rules and regulations. A valid mobile emission baseline can be calculated by either using measured emissions of an appropriately sized sample of the participating mobile sources using an approved EPA [United States Environmental Protection Agency (EPA)] test procedure or by using estimated emissions of the participating mobile sources using the most recent edition of EPA's on-road or non-road mobile emissions factor models, or other model as applicable. To ensure that mobile emission reduction credits are surplus, mobile source baseline emissions estimates for each year of the proposed mobile source control program must be the same as, or lower than, those used, or proposed to be used, in the state implementation plan [SIP] in which the control program is proposed.

(17) **Mobile emission reduction credit (MERC [or mobile credit])** - A credit representing the amount of emission reductions from a mobile source strategy. These emission reductions are voluntary and must be in addition to compliance with [requirements of] local, state, and

federal rules and regulations. MERCs are any enforceable, permanent, and quantifiable emission reduction (exhaust and/or evaporative) generated by a mobile source, which has been banked in accordance with the rules of the commission. MERCs can be banked, purchased, traded, and sold to meet clean air mandates for specified air programs, and MERCs may be applied to the emission reduction obligations of another air quality source or to air quality attainment goals. MERCs are expressed in tons per year.

(18) (No change.)

(19) **Mobile source baseline activity** - The level of activity of a mobile source [Will be] 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) - (B) (No change.)

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

(D) (No change.)

(20) **Mobile source baseline emission** - The mobile source's total actual [mobile source] emissions, in tons per year, based on the product of mobile source activity [action] and the mobile source emissions rate.

(21) **Most stringent allowable emissions rate** - The emission rate of a facility or mobile source, considering all limitations required by applicable local, state, and federal rules, or regulations.

[(22) **Ozone season** - The portion of the year when ozone monitoring is federally required to occur in a specific geographic area.]

(22) [(23)] **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.

(23) [(24)] **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 [stationary] or mobile sources.

(24) [(25)] **Quantifiable** - An emission reduction that can be measured or estimated with confidence using replicable methodology.

(25) [(26)] **Real reduction** - A reduction in which actual emissions are reduced as opposed to a reduction in allowable emissions.

(26) [(27)] **Shutdown** - The permanent cessation of an activity producing emissions at a facility or mobile source.

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

(28) **Source** - As defined in §101.1 [§101.1(90)] of this title (relating to Definitions).

(29) **State implementation plan** - a plan which 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.

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

(31) [(29)] **Surplus** - An emission reduction that is not otherwise required of a facility or mobile source by any local, state or federal law, regulation, or agreed order and has not been otherwise relied upon in the state implementation plan.

(32) [(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.

§101.301. Purpose.

The purpose of this division is to allow the operator of a facility, as defined in §116.10 of this title (relating to Definitions), or mobile source to generate emission credits by reducing emissions beyond the level required by any local, state, and federal regulation and to allow the operator of another facility or mobile source to use these credits. Participation under this division is strictly voluntary.

§101.302. General Provisions.

(a) Applicable pollutants. Reductions of volatile organic compounds (VOC) and nitrogen oxides (NO_x) may qualify as emission credits. Reductions of other pollutants do not qualify as emission credits under this division, except as provided in paragraph (2) of this subsection. Reductions of one pollutant may not be used to meet the requirements for another pollutant, unless:

(1) urban airshed modeling demonstrates that one ozone precursor may be substituted for another, subject to executive director and EPA approval; or

(2) the facility generating the emission reductions is located outside the United States;

and

(A) the substitution:

(i) results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area, as determined by the executive director;

(ii) is from the reduction of an air contaminant for which the area has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment; and

(iii) is for any air contaminant for which the area has been designated as nonattainment or leads to the formation of a criteria pollutant for which the area has been designated as nonattainment; and

(B) the user:

(i) demonstrates that the use of the reduction does not cause localized health impacts, as determined by the executive director;

(ii) submits all supporting information for calculations and modeling, and any additional information requested by the executive director; and

(iii) is located within 100 kilometers of the Texas - Mexico border.

(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 §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).

(c) Emission credit requirements.

(1) Emission reduction credits (ERCs) are certified reductions which 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 state implementation plan (SIP) for VOC and NO_x;
and

(D) the facility's annual emissions prior to the emission credit application must have been reported or represented in the emissions inventory used in the SIP.

(2) Mobile emission reduction credits (MERCs) are certified reductions which 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 for VOC and NO_x;

(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 which 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 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) Facilities subject to the emission specifications under §§117.106, 117.206, or 117.475 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) shall quantify reductions in NO_x using the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) Facilities subject to the requirements under §§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542 of this title (relating to Control Requirements; and Emission Specifications) shall quantify VOC reductions using the testing and monitoring methodologies identified to show compliance with the emission specifications or requirements.

(C) 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 must 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) facilities with continuous emissions monitoring systems or predictive emissions monitoring systems in place shall use this data in quantifying actual emissions; and

(iv) the chosen quantification protocol shall be made available for approval by the EPA.

(2) In the event that the monitoring and testing data required under paragraph (1) of this subsection is missing or unavailable, the facility may report actual emissions for that period of time using these listed methods in the following order of preference to determine actual emissions:

(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)*, 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator shall use the most conservative method for replacing the missing data, 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 credit registry will assign a unique number to each certificate which will include the amount of emission reductions generated.

(f) Geographic scope. Except as provided in paragraph (3) of this subsection, only emission reductions generated in ozone 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, state, or nation provide an improvement to the air quality in the county of use; or

(2) the emission credit was generated in an ozone nonattainment area which has an equal or higher nonattainment classification than the ozone 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 ozone nonattainment area where the emission credit is generated contribute to a violation of the national ambient air quality standard in the ozone nonattainment area of use; or

(3) a facility is using emission reductions generated outside the United States which have been determined by the executive director to be real, permanent, enforceable, quantifiable, and surplus to any applicable international, federal, state, or local law and the result would provide a greater health benefit to the area as determined by the executive director.

(g) Recordkeeping. The user must maintain a copy of all notices and backup information submitted to the credit registry from the beginning of the use period and for at least five years after. The user must also make such records available upon request to representatives of the executive director, EPA, and any local enforcement agency. The records shall 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 specific number, name, or other identification 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 notices and information regarding the generation, availability, use, and transfer of emission credits shall be immediately made available to the public.

(i) Authorization to emit. An emission credit created under this division is a limited authorization to emit VOC and/or NO_x, unless otherwise defined, in accordance with the provisions of this section, the FCAA, and the TCAA, 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 an organization from participating in emission credit trading either as a generator or user, if the executive director determines that the organization has violated the requirements of the program, or abused the privileges provided by the program.

(k) Credit Ownership. The owner of the initial emission credit certificate 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 one-tenth of a ton of credit.

§101.303. Emission Reduction Credit Generation and Certification.

(a) Methods of generation.

(1) Emission reduction credits (ERCs) may be generated using one of the following methods or any other method that is approved by the executive director:

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

(B) the installation and operation of pollution control equipment which reduces emissions below the level required of the facility;

(C) a change in a manufacturing process which reduces emissions below the level required of the facility;

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

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

(2) ERCs 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, as defined in §122.10 of this title (relating to General Definitions);

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

(C) reductions in emissions from the shutdown of a facility which was not reported or represented in the most recent emissions inventory used in the state implementation plan (SIP).

(b) 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. The facility's strategic emissions equal the enforceable emission limit for the applicable facilities after the emission reduction strategy has been implemented.

Figure: 30 TAC §101.303(b)

ERC Calculation

$$ERC = \left\{ \left[(BA_1 \times BER_1) + (BA_2 \times BER_2) \right] \div 2 \right\} - SE$$

Where:

BA_1 = the facility's level of activity during the first of any two consecutive years following or including the most recent year of emissions inventory used in the state implementation plan (SIP).

BER_1 = the facility's actual emission rate measured during the year used for determining BA_1 .

BA_2 = the facility's level of activity during the second of any two consecutive years following or including the most recent year of emissions inventory used in the SIP.

BER_2 = the facility's actual emission rate measured during the year used for determining BA_2 .

SE = strategic emissions

(c) ERC certification.

(1) Facilities with potential ERCs must submit an EC-1 Form, Application for Certification of Emission Credits, within 180 days of the implementation of the emission reduction strategy to the executive director. 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 certificate will be issued to the owner.

(2) ERCs shall 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 emission reduction credits must include, but is not limited to, a completed EC-1 Form 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 emission credits generated;

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

(D) documentation supporting the baseline emission activity, baseline emission rate, baseline total emissions, and strategic emissions;

(E) emissions inventory data from the most recent year of emissions inventory used in the state implementation plan and emissions inventory data for the two consecutive years used to determine baseline activity for each applicable pollutant and facility;

(F) the most stringent emission rate and the most stringent emission level for the applicable facility, considering all the local, state, and federal applicable regulatory and statutory 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 emission credits generated.

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

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

(B) voiding an NSR permit when a facility has been shut down;

(C) for any facility which is authorized by standard permit, standard exemption, or permit by rule, certifying emissions on a PI-8 Form, Special Certification Form for Exemptions and Standard Permits, or other form deemed equivalent by the executive director, the emission reduction and the new maximum allowable emission limit;

(D) for any facility which is not required to have authorization by permit, standard permit, standard exemption, or permit by rule, certifying emissions on an OPC-RE1 Form, Certified Registration of Emissions Form for Potential to Emit, or other form deemed equivalent by the executive director, the emission reduction and the new maximum allowable emission limit; or

(E) for any facility which is not required to have authorization by permit, standard permit, standard exemption, or permit by rule, obtaining an agreed order which sets a new maximum allowable emission limit.

(5) 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.

§101.304. Mobile Emission Reduction Credit Generation and Certification.

(a) Methods of generation.

(1) Mobile emission reduction credits (MERCs) 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 cannot be generated from reductions funded through state or federal programs, unless specifically allowed under that program.

(3) MERCs cannot be generated from a mobile source if the emissions have been transferred from that mobile source to another mobile source.

(b) MERC calculation. The quantity of MERCs must be calculated from the annual difference between the mobile source emissions baseline 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. Emission baselines for quantifying MERCs should include the following information and data as appropriate, but not be limited to:

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

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

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

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

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

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

(c) MERC certification.

(1) Mobile sources with potential MERCs must 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) otherwise calculated using the most current EPA mobile emissions factor model or other model as applicable; or

(D) otherwise calculated using creditable emission reduction measurement or estimation methodologies which 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 at each applicable mobile source:

(A) a complete description of the generation strategy;

(B) the amount of emission credits generated;

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

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

(E) the actual calculations performed by the generator to determine the amount of emission credits generated; and

(F) 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 which sets a new maximum allowable mobile source emission limits.

(5) 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.

§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 (related to Definitions), or major modification to an existing source;
- (2) mitigation offsets for action by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans);
- (3) an alternative means of compliance with volatile organic compound and nitrogen oxides reduction requirements to the extent allowed in Chapters 114, 115, and 117 of this title (relating to Control of Air Pollution from Motor Vehicles; 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 in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas);
- (5) an annual allocation of allowances as provided in §101.356 of this title (relating to Allowance Banking and Trading);
- (6) compliance with motor vehicle fleet requirements to the extent allowed by §114.201 of this title (relating to Mobile Emission Reduction Credit Program); or

(7) compliance with other requirements as allowable within the guidelines of local, state, and federal laws.

(b) Credit use calculation.

(1) The number of emission credits needed by the user for offsets shall be determined as provided in §116.150 of this title.

(2) For emission credits used in compliance with Chapters 114, 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)

Calculation of Emission Credits Needed

$$ECs = A \times (EF_p - EF_r)$$

Where:

- | | | |
|--------|---|---|
| A | = | maximum projected annual activity level during use period |
| EF_p | = | projected emission rate per unit of activity during use period |
| EF_r | = | emission rate per unit of activity required by Chapter 114, 115, or 117 |

(3) For emission credits used to comply with §§117.108, 117.210, or 117.223 of this title (relating to System Cap; and Source 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)

Calculation of Emission Reductions Needed for System Cap or Source Cap

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

Where:

- N = the total number of emission units in the source cap
- i = each emission unit in the source cap
- H_i = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §117.108(c)(1), §117.210 (c)(1), or §117.223(b)(1) of this title
- R_i = the facility's emission factor, in pounds (lb)/MMBtu, is defined as in §117.108(c)(1), §117.210 (c)(1), or §117.223(b)(1) of this title
- H_n = the maximum daily heat input, in MMBtu per day, expected for an emission unit during the use period
- R_n = the maximum emission factor, in lb/MMBtu, expected for an emission unit during the use period

(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) For emission credits which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), the emission credits must be identified prior to permit issuance. Prior to construction, the offsets must be provided through submittal of a completed EC-3 Form, Notice of Intent to Use Emission Credits, along with the original emission credit certificate.

(2) For emission credits that are to be used for compliance with the requirements of Chapters 114, 115, or 117 of this title or other programs, the user must submit a completed EC-3 Form along with the original emission credit certificate, at least 90 days prior to the planned use of the emission credit. Emission credits 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 emission credit certificate, 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 by the executive director's decision 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.

§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 prior to 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 prior to January 2, 2001 shall be available for use for 120 months from the date of the emission reduction.

(3) Emission credits certified as part of an administratively complete EC-1 Form, Application for Certification of Emission Credits, received after January 2, 2001 shall be available for use for 60 months from the date of the emission reduction.

(4) Notwithstanding paragraphs (2) and (3) 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 insure the reductions generating the emission credit are surplus to all current state and/or federal rules, regulations, or requirements which would have been applicable to 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 EC-2 Form, Re-review of Emission Credits.

(2) In the event 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) Prior to the transfer, the executive director must be notified by means of a completed EC-4 Form, Application for Transfer of Emission Credits, accompanied by the original certificate to be transferred.

(2) The executive director will issue a new certificate with a unique certificate number to the emission credit purchaser reflecting the emission credits purchased by the new owner, and a revised certificate to the emission credit seller showing any remaining emission credits available to the original owner. Emission credits will be considered transferred only after the executive director grants final 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 in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas).

§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 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 volatile organic compound (VOC) and nitrogen oxides (NO_x) emission credits generated under this division within each ozone nonattainment area;

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

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

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 1: EMISSION CREDIT BANKING AND TRADING

§§101.302 - 101.304

STATUTORY AUTHORITY

These repealed sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. These repealed sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants. These repealed sections are also proposed under 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.

The proposed repeals implement THSC, §§382.002, 382.011, 382.012, 382.017; and 42 USC, §7410(a)(2)(A).

§101.302. General Provisions.

§101.303. Protocols.

§101.304. Program Audits.

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 3: MASS EMISSIONS CAP AND TRADE PROGRAM

§§101.350 - 101.354, 101.356, 101.360

STATUTORY AUTHORITY

The amended sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants. The amended sections are also proposed under 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.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.017; and 42 USC, §7410(a)(2)(A).

§101.350. Definitions.

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

(1) - (13) (No change.)

(14) **Uncontrolled design capacity** - The maximum capacity of a facility to emit a pollutant without regard to any enforceable or physical operational limitations including air pollution control equipment.

§101.351. Applicability.

(a) This division applies to all [stationary] facilities which emit nitrogen oxides (NO_x) in the Houston/Galveston ozone nonattainment area, as defined in §101.1 of this title (relating to Definitions) which are subject to the emission specifications under §§117.106, 117.206, or [and] 117.475 of this title (relating to Emission Specifications for Attainment Demonstration; [Emission Specifications for Attainment Demonstration;] and Emission Specifications) and which are:

(1) located at a site which meets the definition of major source, as defined in §117.10 of this title (relating to Definitions), or

(2) located at a site where they collectively have an uncontrolled [a] design capacity to emit ten tons or more per year of NO_x.

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

§101.352. General Provisions.

(a) (No change.)

(b) Beginning March [February] 1, 2003, and no later than March [February] 1 following the end of every control period, each site[,] shall hold a quantity of allowances in its compliance account that is equal to or greater than the total emissions of nitrogen oxides emitted during the control period just ending. Compliance with this division will begin with the initial control period beginning January 1, 2002.

(c) An owner or operator of a facility subject to this division may certify reductions from the facility as emission reduction credits [(ERCs)], provided that:

(1) - (2) (No change.)

(d) (No change.)

(e) Allowances may be used simultaneously to satisfy the correlating one to one portion of offset requirements for new or modified facilities which do not meet the definition of an existing facility, as defined in §101.350 of this title (relating to Definitions), subject to federal nonattainment new source review [NSR] requirements as provided in Chapter 116, Subchapter B, Division 7 of this title (relating to Emission Reductions: Offsets).

(f) - (i) (No change.)

§101.353. Allocation of Allowances.

(a) Allowances will be deposited into compliance accounts according to the following equation except as provided in subsection (b) or (h) of this section.

Figure: 30 TAC §101.353(a)

$$A = \left[B \right] - X \left[B - \left(\frac{LA_{HA} * EF_{final}}{2000} \right) \right]$$

- Where:
- (1) A = number of allowances rounded to tenths of tons;
 - (2) B = the facility's baseline emission rate and is calculated as follows:
 - (A) For facilities in operation prior to January 1, 1997:

$$B = \frac{(LA_{97} * EF_{97}) + (LA_{98} * EF_{98}) + (LA_{99} * EF_{99})}{3(2000)}$$

- Where:
- LA₉₇ = the facility's level of activity, as certified by the executive director for 1997;
 - LA₉₈ = the facility's level of activity, as certified by the executive director for 1998;
 - LA₉₉ = the facility's level of activity, as certified by the executive director for 1999;
 - EF₉₇ = the facility's emission factor for 1997 or the emission specifications under §§117.106, 117.206, and 117.475 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) (ESAD) whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director;
 - EF₉₈ = the facility's emission factor for 1998 or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director;
 - EF₉₉ = the facility's emission factor for 1999 or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director.
- (B) For existing facilities not in operation prior to January 1, 1997 and that have been in operation less than five complete consecutive calendar years beginning after the end of the adjustment period and have not established two years of baseline data:

$$B = \frac{LA_{Allowable} * EF_{Allowable}}{2000}$$

Where: $LA_{\text{Allowable}}$ = The level of activity authorized by the executive director until such time two consecutive calendar years of actual level of activity data is available;
 $EF_{\text{Allowable}}$ = The emission factor or the emission specifications under ESAD, whichever is higher, authorized by the executive director until such time two consecutive calendar years of actual emission data is available.

(C) For existing facilities not in operation prior to January 1, 1997 and that have established two consecutive calendar years of baseline data out of the first five years of operation following the end of the adjustment period:

$$B = \frac{(LA_{\text{Year} - 1} * EF_{\text{Year} - 1}) + (LA_{\text{Year} - 2} * EF_{\text{Year} - 2})}{2(2000)}$$

Where: $LA_{\text{Year}-1}$ = the facility's level of activity, as certified by the executive director, for the first of any two consecutive years within the first five years of operation;
 $LA_{\text{Year}-2}$ = the facility's level of activity, as certified by the executive director, for the second of any two consecutive years within the first five years of operation;

$EF_{\text{Year}-1}$ = the facility's emission factor or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director, for the first of any two consecutive years within the first five years of operation;

$EF_{\text{Year}-2}$ = the facility's emission factor or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director, for the second of any two consecutive years within the first five years of operation.

(3) X = reduction factor, where:

(A) For all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), located in the Houston/Galveston nonattainment area:

(i) for January 1, 2002 through March 31, 2003, X = 0.00;

- (ii) for April 1, 2003 through March 31, 2004, $X = 0.50$;
 - (iii) on or after April 1, 2004, $X = 1.00$;
 - (B) For all other facilities:
 - (i) for January 1, 2002 through March 31, 2004, $X = 0.00$;
 - (ii) for April 1, 2004 through March 31, 2005, $X = 0.47$;
 - (iii) for April 1, 2005 through March 31, 2006, $X = 0.80$;
 - (iv) for April 1, 2006 through March 31, 2007, $X = 0.93$;
 - (v) on and after April 1, 2007, $X = 1.00$;
 - (C) Alternatively, facilities subject to the reduction factors under subparagraph B of this paragraph may elect to comply with the following:
 - (i) for January 1, 2002 through March 31, 2004, $X=0.00$;
 - (ii) on and after April 1, 2005, $X=1.00$.
 - (D) Election to comply with the alternative reduction schedule under subparagraph (C) of this paragraph shall be made by letter to the executive director no later than April 1, 2003.
 - (E) For calendar years which include two different reduction factors, the reduction factor shall be adjusted using the appropriate ratio to reflect the number of months covered by each reduction factor.
- (4) LA_{HA} = historical average level of activity, where:
 - (A) For existing facilities in operation on or before January 1, 1997, the average level of activity, as certified by the executive director, for 1997, 1998, and 1999; or
 - (B) For existing facilities which began operation after January 1, 1997, LA_{HA} is:
 - (i) the level of activity authorized by the executive director until such time 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.
- (5) EF_{final} = emission factor, as listed in §§117.106, 117.206, or 117.475 of this title.
- (6) For facilities using alternative emission specifications as allowed in §117.206(c)(17) or §117.475(c)(6) of this title, the level of activity for any formula will be the lowest of the level of activity as calculated in variables

(2)(A), (2)(B), or the level of activity limited by an enforceable limit or commitment necessary to qualify for an alternative emission specification in §117.206(c)(17) or §117.475(c)(6) of this title.

(b) - (f) (No change.)

(g) The owner or operator of a facility may, due to extenuating circumstances, request [up to two additional calendar years to establish] 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 June 30, 2001 to request an alternative three consecutive calendar year period for facilities in operation prior to January 1, 1997;

(2) 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 facilities whose baseline as described by variable (2)(C) listed in the figure contained in subsection (a) of this section is not complete by June 30, 2001[, no later than 90 days after completion of the baseline period]; or

(3) (No change.)

(h) (No change.)

§101.354. Allowance Deductions.

(a) (No change.)

(b) In the event that the monitoring and testing data required under subsection (a) of this section is missing or unavailable, the facility may report actual emissions for that period of time using the following equation or other listed methods in the following order to determine actual emissions: continuous monitoring data; periodic monitoring data; testing data; manufacturer's data, and *EPA Compilation of Air Pollution Emission Factors (AP-42), 2000*. When reporting actual emissions as required under this subsection, the facility must also submit the justification for not using the methods in subsection (a) of this section and the justification for the method used.

Figure: 30 TAC §101.354(b) (No change.)

(c) - (d) (No change.)

(e) Nitrogen Oxides (NO_x) emissions increases from facilities not subject to an emission specification under §117.206 or §117.475 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) which result from changes made after December 31, 2000 to facilities subject to this division and §117.206(h)(3) or §117.475(f) of this title. The allowances shall be deducted from a site's compliance account in an amount equal to the NO_x emissions increases. Documentation detailing these increases in NO_x emissions shall be included with the submittal of the ECT-1 Form, Annual Compliance Report.

(f) [(e)] Allowances allocated in accordance with the variables in (a)(2)(B) listed in Figure 30 TAC §101.353(a) may only be used by the facility for which they were allocated and may not be used by other facilities at the same site during the same control period.

(g) [(f)] On March 1 after every control period, a site shall hold a quantity of allowances in its compliance account that is equal to or greater than the total NO_x [nitrogen oxides] emissions emitted during the prior control period.

§101.356. Allowance Banking and Trading.

(a) - (b) (No change.)

(c) The owner or operator of a site receiving allowances on an annual basis may permanently sell those rights to any person in accordance with the following requirements: [.]

(1) a [This] request for transfer of ownership shall be reviewed for approval
[completed] by the executive director following the submission of a completed ECT-4 Form,
Application for Permanent Transfer of Allowance Ownership; [.]

(2) the ECT-4 Form shall include the price paid per allowance and shall be submitted
to executive director at least 30 days prior to the allowances being deposited into the transferee's broker
or compliance account;

(3) all information regarding the quantity and sales price of allowances shall be immediately made available to the public; and

(4) the [The] executive director will issue a letter to the purchaser and seller reflecting this transaction. The transaction will be considered finalized upon issuance of this letter.

(d) The banking for future use or trading of allowances [Allowances] not used for compliance during a control period shall be restricted in accordance with the following:

(1) allowances which were allocated in accordance with the variable [variables] in (2)(B) [and (3)(B)] listed in the figure contained in §101.353(a) of this title (relating to Allocation of Allowances) may not be banked for future use or traded; and [.]

(2) allowances which were allocated prior to January 1, 2005 in accordance with the with the variables in (3)(C) listed in the figure contained in §101.353(a) of this title may not be banked for future use or traded.

(e) (No change.)

(f) Trades will be reviewed for approval by the executive director in accordance with the following:

(1) [the] submittal of a completed ECT-2 Form, Application for Transfer of Allowances; [.]

(2) the [The] completed ECT-2 Form shall include the price paid per allowance and shall be submitted to executive director at least 30 days prior to the allowances being deposited into the transferee's broker or compliance account; [.]

(3) all information regarding the quantity and sales price of allowances shall be immediately made available to the public; and

(4) the [The] executive director will issue a letter to the purchaser and seller reflecting this trade. The trade will be considered finalized upon issuance of this letter.

(g) Sites may use nitrogen oxides (NO_x) discrete emission reduction credits (DERCS) or mobile discrete emission reduction credits (MDERCS) which have been generated and acquired in accordance with Division 4 of this subchapter (relating to Discrete Emission Credit Banding and Trading) in place of allowances for compliance with this division in accordance with paragraphs (1) - (9) of this subsection. Sites may use volatile organic compound (VOC) DERCS or MDERCS which have been generated and acquired in accordance with Division 4 of this subchapter, in place of allowances for compliance with this division in accordance with paragraphs (1) - (9) of this subsection provided that demonstration has been made and approved by the executive director and the EPA to

show that the use of VOC DERCs or MDERCs is equivalent, on a one to one basis or other ratio, to the use of NO_x allowances in reducing ozone.

(1) - (8) (No change.)

(9) DERCs or MDERCs submitted with a [notice of intent to use,] DEC-2 Form, Notice of Intent to Use Discrete Emission Credits, for the purpose of compliance with this section, must be submitted to the executive director at least 30 days prior to intended use.

(h) (No change.)

§101.360. Level of Activity Certification.

(a) (No change.)

(b) The owner or operator of any facility subject to this division who has certified a facility's allowable level of activity under subsection (a)(2) of this section shall:

(1) certify[,] no later than 90 days from the end of the fifth year of operation [its second complete calendar year used to determine its baseline activity,] the actual level of activity and actual emission factors for the [those] two complete consecutive calendar years chosen as a baseline by submitting to the executive director a completed ECT-3 Form, Level of Activity Certification, 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) (No change.)

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 4: DISCRETE EMISSION CREDIT BANKING AND TRADING

§§101.370 - 101.374, 101.376, 101.378, 101.379

STATUTORY AUTHORITY

The new and amended sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new and amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants. The new and amended sections are also proposed under 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.

The new and amended sections implement THSC, §§382.002, 382.011, 382.012, 382.017; and 42 USC, §7410(a)(2)(A).

§101.370. Definitions.

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

(1) **Activity** - The amount of operation at a facility 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** - Shall equal the total emissions during the selected time period, using the facility's or mobile source's [unit's] actual daily operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

[3) **Applicable emission point** - The emission point that is either generating an emission reduction or using a discrete emission credit.]

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

(4) [(5)] **Baseline** - Emissions that occur prior to an emission reduction strategy, considering all limitations required by applicable state and federal regulations. The baseline may not exceed the most recent level of emissions reported in the emissions inventory used in a [for] state implementation plan (SIP) [determinations]. For facilities in an area in which a SIP demonstration is not required for a criteria pollutant, the two consecutive calendar years shall include or follow the 1990 emission inventory. For reduction strategies that exceed 12 months, the baseline is established after the first year of generation and is fixed for the life of the strategy. A new baseline is established for each unique emission reduction strategy.

(5) [(6)] **Baseline activity** - The facility's [source's] actual level of activity based on the facility's [unit's] actual daily operating hours, production rates, or types of materials processed, stored, or combusted averaged over any two consecutive [two] calendar years [year period] including and following the most recent year of emissions inventory used in the [for] SIP [determinations] or subsequent year(s) which precede the emission reduction strategy or credit use period. For facilities in an area in which a SIP demonstration is not required for a criteria pollutant, the two consecutive calendar years shall include or follow the 1990 emission inventory. For facilities [sources] in existence less than two years or not having two complete calendar years of activity data, a shorter time period of not less than 12 months may be considered by the executive director.

(6) [(7)] **Baseline emission rate** - The facility's [source's] rate of emissions per unit of activity during the baseline activity period.

(7) [(8)] **Baseline emissions** - The facility's [source's] total actual emissions based on the baseline activity and baseline emission rate.

(8) [(9)] **Certified** - Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(9) [(10)] **Curtailement** - A temporary or partial reduction in activity level at any facility or mobile source.

(10) [(11)] **Discrete emission credit** - An emission reduction generated over a discrete period of time, and measured in tenths of a ton [tons]. A creditable emission credit such as a discrete emission reduction credit [(DERC)] or mobile discrete emission reduction credit [(MDERC)].

(11) [(12)] **Discrete emission reduction credit [(DERC)]** - A creditable emission reduction which is created during a generation period, quantified after the period in which emissions reductions are made, and expressed in tenths of a ton [tons].

(12) [(13)] **Emission reduction** - An actual reduction in [of] emissions from a facility [stationary] or mobile source.

~~(13)~~ [(14)] **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.

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

(15) **Generation period** - The discrete period of time, not exceeding 12 months, over which a discrete emission reduction credit [DERC] is created.

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

(17) - (18) (No change.)

(19) **Mobile emissions baseline** - Mobile emissions that occur prior to a mobile emission reduction strategy, considering all limitations required by applicable state and federal regulations. A valid mobile emission baseline can be calculated by either using measured emissions of an appropriately sized sample of the participating mobile sources using an approved EPA [United States Environmental Protection Agency (EPA)] test procedure or by using estimated emissions of the participating mobile sources using the most recent edition of EPA's on-road or non-road mobile emissions factor models, or other model as applicable. To ensure that mobile credits are surplus, mobile source baseline emissions estimates for each year of the proposed mobile source control

program must be the same as, or lower than, those used, or proposed to be used, in the state implementation plan [SIP] in which the control program is proposed.

(20) - (22) (No change.)

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

(24) [(23)] Most stringent allowable emissions rate - The emissions rate of a facility or mobile source, considering all limitations required by applicable local, state, and federal regulations.

(25) [(24)] 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.

(26) [(25)] Permanent - An emission reduction that is long-lasting and unchanging for the remaining life of the facility or mobile source.

(27) [(26)] 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 [stationary] or mobile sources.

(28) [(27)] **Quantifiable** - An emission reduction that can be measured or estimated with confidence using replicable techniques.

(29) [(28)] **Real reduction** - A reduction in which actual emissions are reduced.

(30) **Shutdown** - The permanent cessation of an activity producing emissions at a facility.

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

(32) [(29)] **Source** - As defined in §101.1 of this title (relating to Definitions).

(33) **State implementation plan** - A plan which provides for attainment and maintenance of a primary or secondary national ambient air quality standard.

(34) [(31)] **Strategy activity** - The facility's or mobile source's level of activity during the discrete emission reduction credit [DERC] generation period.

(35) [(32)] **Strategy emission rate** - The facility's or mobile source's emission rate during the discrete emission reduction credit [DERC] generation period.

(36) [(33)] **Surplus** - An emission reduction that is not otherwise required of a facility or mobile source by a state or federal law, regulation, or agreed order.

(37) [(34)] **Use period** - The period of time over which the user [source] applies discrete emission credits to an applicable emission reduction requirement.

(38) [(35)] **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.

(39) [(36)] **Use strategy** - The compliance requirement for which discrete emission credits are being used.

§101.371. Purpose.

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

§101.372. General Provisions.

(a) Applicable pollutants. 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 discrete emission credits 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:

(1) urban airshed modeling demonstrates that one may be substituted for another or as approved by the executive director and the EPA;

(2) the facility generating the emission reductions is located outside the United States and:

(A) the substitution:

(i) results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area, as determined by the executive director;

(ii) is from the reduction of a criteria pollutant for which the area has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment; and

(iii) is for any criteria pollutant for which the area has been designated as nonattainment; and

(B) the user:

(i) demonstrates that the use of the reduction does not cause localized health impacts, as determined by the executive director;

(ii) submits all supporting information for calculations and modeling, and any additional information requested by the executive director; and

(iii) is located within 100 kilometers of the Texas - Mexico border.

(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 §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).

(c) Discrete emission credit requirements.

(1) To be creditable as a discrete emission reduction credit (DERC), an emission reduction must meet the following:

(A) the reduction be real, quantifiable, and surplus at the time the discrete emission credit is generated;

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

(C) the facility's annual emissions prior to the discrete emission credit application must have been reported or represented in the emissions inventory used for the SIP.

(2) To be creditable as a mobile discrete emission reduction credit (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) Facilities subject to the emission specifications under §§117.106, 117.206, or 117.475 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission

Specifications) shall quantify reductions in NO_x using the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) Facilities subject to the requirements under §§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542 (relating to Emission Specifications; and Control Requirements) shall quantify VOC reductions using the testing and monitoring methodologies identified to show compliance with the emission specifications or the requirements.

(C) 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 must 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) facilities with continuous emissions monitoring systems or predictive emissions monitoring systems in place shall use this data in quantifying actual emissions; and

(iv) the chosen quantification protocol shall be made available for approval by the EPA.

(2) In the event that the monitoring and testing data required under paragraph (1) of this subsection is missing or unavailable, the facility may report actual emissions for that period of time using these listed methods in the following order of preference to determine actual emissions:

(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), 2000; or*

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator shall use the most conservative method for replacing the missing data, 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 shall be rounded down to the nearest tenth of a ton when generated and shall be rounded up to the nearest tenth of a ton when used.

(2) Applications for certification will be reviewed in order to determine the credibility of the reductions. 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 notification. The applicant may submit a revised notification at any time.

(4) If a facility's or mobile source's emissions exceed its allowable emission limit, the amount of emissions exceeding the limit may not be certified as discrete emission credits.

(5) Certified discrete emission credits will receive a unique certificate number which will include the amount of discrete emission credits generated to the tenth of a ton.

(f) Geographic scope. Except as provided in paragraphs (7) and (8) of this subsection, 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 paragraph (5) of 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 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.

(8) A facility may use discrete emission reductions generated outside the United States provided that the emission reductions are quantifiable, real, and surplus to any applicable international, federal, state, or local law and the result would provide a greater health benefit to the area as determined by the executive director. The applicant must:

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

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

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

(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 notices and backup information submitted to the registry for a minimum of five years, following the completion of the generation period. The user must maintain a copy of all notices and backup information submitted to the registry 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 shall 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 specific number, name, or other identification of discrete emission credits used for 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 FCAA, and the TCAA, 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 company from participating in discrete emission credit trading either as a generator or user, if the executive director determines that the company has violated the requirements of the program or abused the privileges provided by the program.

(1) Compliance burden and enforcement.

(1) The generator is responsible for assuring that the discrete emission credits generated are certified.

(2) The user is responsible for ensuring that discrete emission credits which currently reside in the registry are certified prior to use.

(3) 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. The user should ensure that the credits to be purchased are real, surplus, and properly quantified discrete emission credits.

(4) 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.

(5) Users may not transfer their compliance burden and legal responsibilities to a third party participant. Third party participants 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 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 one tenth of a ton of credit.

§101.373. Discrete Emission Reduction Credit Generation and Certification.

(a) Methods of generation.

(1) Discrete emission reduction credits (DERC) may be generated using one of the following methods or any other method that is approved by the executive director:

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

(B) the installation and operation of pollution control equipment which reduces emissions below the level required of the facility; or

(C) a change in the manufacturing process which reduces emission below the level required of the facility;

(2) DERCs may not be generated by the following strategies:

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

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

(C) emission reductions required to comply with any provision under Title I of the FCAA regarding tropospheric ozone, or Title IV of the FCAA regarding acid deposition control;

(D) emission reductions of hazardous air pollutants, as defined in the FCAA, §112, from application of a standard promulgated under FCAA, §112;

(E) emission reductions which have occurred as a result of transferring the emissions to another facility at the same site;

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

(G) emission reductions occurring at a facility which 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) emission reductions at a site facility with a flexible permit, unless the reductions are made permanent and enforceable or the generator can demonstrate that the emission reductions were not used to satisfy the conditions for the facilities under the flexible permit.

(I) emission reductions funded through state or federal programs, unless specifically allowed under that program;

(J) emission reductions from a facility subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program); or

(K) emission reductions from the shutdown of a facility that was not included in the state implementation plan (SIP).

(b) DERC calculation.

(1) DERCs, except for shutdowns, are calculated according to the following equations.

Figure: 30 TAC §101.373(b)(1)

DERC Calculation

(A) If $SA \geq BA$, then:

$$(BE) - (SER * SA) = \text{reduction generated}$$

(B) If $SA < BA$, then:

$$(BE) - (SER * BA) = \text{reduction generated}$$

Where:

BA = average activity level for the two consecutive year baseline

SA = emission reduction strategy activity

SER = emission reduction strategy emission rate

BE = baseline emission, the lower of the emissions for each pollutant reported or represented in the emissions inventory used for the state implementation plan or the two-year baseline emissions average (BE_A)

$$BE_A = (BE_1 + BE_2)/2$$

Where:

BE_1 = The lowest of the facility's actual emissions, emissions reported to emission inventory, or allowable emissions for the first year used to determine the two-year baseline average.

BE_2 = The lowest of the facility's actual emissions, emissions reported to emission inventory, or allowable emissions for the second year used to determine the two-year baseline average.

(2) For shutdown emission reduction strategies, the quantity of emission reduction generated is equivalent to the baseline emissions.

(3) The generation period for a shutdown is five years. Shutdown DERCs must be generated and noticed to the registry on an annual basis.

(c) DERC certification.

(1) A DEC-1 Form, Notice of Generation and Generator Certification of Discrete Emission Credits, must be submitted to the executive director no later than 90 days after the end of the generation period, or no later than 90 days after the completion of the first 12 months of generation. Submission of the DEC-1 Form should continue every 12 months thereafter for each subsequent year of generation.

(2) DERCs shall 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 DEC-1 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) for shutdown emission reduction strategies, an explanation as to whether production shifted from the shutdown facility to another facility at the same site;

(D) the amount of discrete emission credits generated;

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

(F) documentation supporting the baseline emission activity, baseline emission rate, emission reduction strategy emission rate, and emission reduction strategy activity;

(G) emissions inventory data from the most recent year of emissions inventory used in the SIP and emissions inventory data for the two consecutive years used to determine the baseline activity for each applicable pollutant and emission point;

(H) the most stringent emission rate for the applicable facility, considering all the local, state, and federal applicable regulatory and statutory requirements;

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

(J) the actual calculations performed by the generator to determine the amount of discrete emission credits generated.

§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 rule, and is subject to the approval of the commission.

(2) MDERCs cannot be generated from reductions funded through state or federal programs, unless specifically allowed under that program.

(3) MDERCs cannot be generated from a mobile source if the emissions have been transferred from that mobile source to another mobile source.

(b) MDERC calculation. An MDERC may be calculated from the annual difference between the mobile source emissions baseline and the actual emissions level after the MDERC strategy has been

put in place. The MDERC must be based on actual in-use emissions of the modified or substitute mobile source. Emission baselines for quantifying MDERCs should include the following information and data as appropriate, but not be limited to:

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

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

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

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

(5) the actual activity level, hours of operation or miles traveled by type, and model year.

(c) MDERC certification.

(1) An MDEC-1 Form, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits, must 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 should 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 creditable emission reduction measurement or estimation methodologies which satisfactorily address the analytical uncertainties of mobile source emissions reduction strategies. The generator must 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 emission activity, mobile source baseline emission rate, mobile source baseline total emissions, and the mobile source strategy;

(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;

(G) the calculation protocol as approved by the executive director and submitted to EPA; and

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

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

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

(B) the owner of the facility or mobile source lacked the potential to generate one tenth of a ton of credit.

§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 must 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 must 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 must acquire additional credits as allowed under this section prior to the shortfall, or be in violation of this section.

(4) Facility or mobile source operators may acquire and use only discrete emission credits listed on the registry.

(b) Use of discrete emission credits. With the exception of uses prohibited in subsection (c) of this section or precluded by commission order or 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 25 tons for nitrogen oxides (NO_x) or five tons for volatile organic compounds (VOC) 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 must 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 unclassified, 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, §52.21(b)(23), as approved by the executive director prior to use. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user must 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 must 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 must also purchase and retire enough discrete emission credits to meet the offset ratio requirement in the user's ozone nonattainment area. The user must purchase and retire either the environmental contribution of 10% or the offset ratio, whichever is higher; and

(C) 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 must identify the discrete emission credits; and

(iii) prior to start of operation the user must submit a completed DEC-2 Form, Notice of Intent to Use Discrete Emission Credits, along with the original certificate;

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

(4) to comply with Chapters 114, 115, and 117 of this title (relating to Control of Air Pollution from Motor Vehicles; 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 FCAA requirements for:

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

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

(C) best available control technology standards under FCAA, §165(a)(4);

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

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

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

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

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

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

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

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

(L) requirements for Reid vapor pressure standards under FCAA, §211(h) and

(i);

(4) to allow an emissions increase of an air contaminant that exceeds the limitations of §106.261(3) or (4) or §106.262(3) of this title (relating to Facilities (Emission Limitations); and Facilities (Emission and Distance Limitations)) except as approved by the executive director;

(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; or

(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.

(d) Notice of intent to use.

(1) A completed DEC-2 Form, 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 at least 45 days prior to 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 Code of Federal Regulations 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 regulatory requirements;

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

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

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

(ix) the discrete emission credit generator and the original certificate 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;

(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, which 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) DERC use calculation.

(A) To calculate the amount of discrete emission credits necessary to comply with §§117.108, 117.138, 117.210, or 117.223 of this title (relating to System Cap; and Source 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)

Amount of DERCS

$$\text{Required (tons)} = \sum_{i=1}^N \left[(EH_i \times ER_i) - (H_i \times R_i) \right] \times \left(\frac{d}{2000} \right)$$

Where:

- d = the number of days in the use period
- i = each emission unit in the source cap
- N = the total number of emission units in the source cap
- H_i = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.108(c)(1), 117.138(c), 117.210(c)(1) or (c)(2), or 117.223(b)(1) of this title (relating to System Cap; and Source Cap)
- R_i = actual emission rate, in pounds (lb)/MMBtu, as defined in §§117.108(c)(1), 117.138(c), 117.210(c)(1) or (c)(2), or 117.223(b)(1) of this title
- EH_i = expected new daily heat input, in MMBtu per day
- ER_i = expected new emission rate, in lb/MMBtu.

(ii) For maximum daily cap:

Figure: 30 TAC §101.376(d)(2)(A)(ii)

Amount of DERCS

$$\text{Required (tons)} = \left[(EH_{Mi} \times ER_i) - (H_{Mi} \times R_i) \right] \frac{1}{2000}$$

Where:

i and *N* are defined as in the first equation in this paragraph

R_i = in lb/MMBtu, is defined as in §§117.108(c)(2), 117.210(c)(3), or 117.223(b)(1) of this title (relating to System Cap; and Source Cap)

H_{Mi} = the maximum daily heat input, in MMBtu/day, as defined in §§117.108(c)(2), 117.210(c)(3), or 117.223(b)(1) of this title.

EH_{Mi} = expected new maximum daily heat input, in MMBtu per day

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

(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)

$$(ELA) \times (EER - RER) = \text{discrete emission credits needed}$$

Where:

ELA = expected level of activity

EER = expected emission rate per unit activity

RER = regulatory emission rate per unit activity.

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

Figure: 30 TAC 101.376(d)(2)(C)

$$(ELA - PLA) \times (PER) = \text{discrete emission credits needed}$$

Where:

ELA = expected level of activity

PLA = permitted level of activity

PER = permitted emission rate per unit activity

(D) The user must 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 ten 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 notice late in the case of an emergency, but the notice must be submitted before the discrete emission credits can be used. The user must include a complete

description of the emergency situation in the notice of intent to use. All other notices submitted less than 45 days prior, or 90 days prior for a mobile source, to use 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 notice of intent to use. If the generator's credits are rejected or the notice of generation 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)(C) 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)(C) of this section, but not associated with the actual use, and available for future use.

(2) DERC 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)

$(ALA) \times (AER - RER) = \text{discrete emission credits used}$
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)

$$(ALA - PLA) \times (AER) = \text{discrete emission credits used}$$

Where:

ALA = expected level of activity

PLA = permitted level of activity

AER = permitted emission rate per unit activity

(3) A DEC-3 Form, Notice of Use of Discrete Emission 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;

(B) The notice must be submitted within 90 days of the conclusion of each 12-month use period, if applicable.

(C) 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;

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

(iii) the actual emissions during the use period for VOC and NO_x;

(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.

§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.

(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 unclassified 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 DEC-1 Form, Notice of Generation and Generator Certification of Discrete Emission Credits, 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. All credits are deposited in the credit registry and reported as available credits until they are used or withdrawn.

(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) Prior to the transfer, the executive director must be notified by means of a completed DEC-4 Form, Application for Transfer of Discrete Emission Credits.

(2) The executive director will issue a letter to the discrete emission credit purchaser reflecting the discrete emission credits purchased by the new owner, and a letter to the discrete emission credit seller showing any remaining discrete emission credits available to the original owner. Discrete emission credits are considered transferred 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.

§101.379. Program Audits and Reports.

(a) No later than three years after the effective date of this division section, 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 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 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:

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

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

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

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 4: DISCRETE EMISSION CREDIT BANKING AND TRADING

§§101.372 - 101.374

STATUTORY AUTHORITY

These repealed sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new and amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants. These repealed sections are also proposed under 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.

These proposed repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.017; and 42 USC, §7410(a)(2)(A).

§101.372. General Provisions.

§101.373. Protocols.

§101.374. Program Audits.