

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§101.1, 101.302, 101.306, 101.350, 101.351, 101.353, 101.354, 101.360, 101.372, 101.376, 101.383, and 101.385 and the repeal of §101.22. Sections 101.1, 101.302, 101.306, 101.354, and 101.376 are adopted *with changes* to the proposed text as published in the February 23, 2007 issue of the *Texas Register*. Sections 101.22, 101.350, 101.351, 101.353, 101.360, 101.372, 101.383, and 101.385 are adopted *without changes* to the proposed text and will not be republished.

The commission does not adopt the proposed amendment to §101.23 as published in the February 23, 2007, issue of the *Texas Register*.

The amended §§101.1, 101.302, 101.306, 101.350, 101.351, 101.353, 101.354, 101.360, 101.372, 101.376, 101.383, and 101.385 and the repeal of §101.22 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas State Implementation Plan (SIP).

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

The commission has adopted revisions to 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, as part of the SIP for the Houston-Galveston-Brazoria (HGB) and Dallas-Fort Worth nonattainment areas. Under those revisions, Chapter 117 was reorganized. Chapter 101, General Air Quality Rules, contains references to sections of Chapter 117 which have changed due to the reorganization, requiring that the cited references in Chapter 101 also change. This adoption also includes revisions identified during the last quadrennial review of Chapter 101, including changes to the definitions of cold solvent cleaning, conveyORIZED degreasing, high-volume low-pressure spray guns,

open top vapor degreasing, standard conditions, and visible emissions. Other changes include the deletion of the definitions of hazardous waste management facility and hazardous waste management unit, the addition of a definition for nitrogen oxides, and the removal of an obsolete effective date section. EPA comments dealing with some references unrelated to the Chapter 117 reorganization, resulted in some changes.

#### *SECTION BY SECTION DISCUSSION*

##### *§101.1. Definitions.*

The commission adopts the modification of the opening paragraph of this section to specify that the definitions in §101.1 apply to all air quality rules. The commission adopts the changes to the definitions of cold solvent cleaning, conveyORIZED degreasing, and open-top vapor degreasing by deleting the word “metal” so that the processes also apply to cleaning non-metal parts. The adopted amendment deletes the definitions of hazardous waste management facility and hazardous waste management unit because references to these definitions are not found in any of the air rules. The adopted revision to the definition of high-volume low-pressure spray guns specifies that the operating pressure of this equipment is measured at the air cap because this provides the most accurate measurement. The commission adopts the addition of the definition of nitrogen oxides from Chapter 117 because this is a common term used throughout the commission’s air quality rules. The adopted amendment deletes the last sentence of the definition of standard conditions that reads: “Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.” The amount of air present in combustion is variable and does not qualify as a standard condition. The commission adopts the change in the second sentence of the definition of visible

emissions to read: “The radiant energy from an open flame is not considered a visible emission under this definition.” Radiant energy may manifest some visual effects but there is no air contaminant emitted.

*§101.22. Effective Date.*

The commission adopts the repeal of this section because it is no longer required.

*§101.302. General Provisions.*

The commission adopts the references to the newly renumbered Chapter 117 sections. The section has been revised since proposal due to a comment submitted by the EPA to remove the reference to §117.3310, Emission Specifications for Eight-Hour Attainment Demonstration, from §101.302(d)(1)(A) since the East Texas area is attainment for all pollutants.

*§101.306. Emission Credit Use.*

The commission adopts the references to the newly renumbered Chapter 117 sections. The section has been revised since proposal to remove the reference to §117.3123 from §101.306(b)(3) because the rule does not require it to be referenced in the equation under Figure 30 TAC §101.306(b)(3). Also, references to maximum daily cap and references to emission credits that are to be used for compliance with the requirements of 30 TAC Chapters 114, Control of Air Pollution from Motor Vehicles, Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOCs), or Chapter 117 or other programs, were added to this section since proposal due to a comment submitted by the EPA.

*§101.350. Definitions.*

The commission adopts the replacement of the definition of Houston/Galveston (HGA) ozone nonattainment area with HGB ozone nonattainment area because the name of the nonattainment area has changed.

*§101.351. Applicability.*

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

*§101.353. Allocation of Allowances.*

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections. This section has been changed since proposal to add references to sections dealing with Initial Demonstration of Compliance. These changes were unrelated to the comments submitted by EPA.

*§101.354. Allowance Deductions.*

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

*§101.360. Level of Activity Certification.*

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

*§101.372. General Provisions.*

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

*§101.376. Discrete Emission Credit Use.*

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections. This section has been changed since proposal due to a comment submitted by the EPA to correctly reference maximum daily caps instead of rolling 30-day average emission caps.

*§101.383. General Provisions.*

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

*§101.385. Recordkeeping and Reporting.*

The commission adopts the replacement of references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

The commission also adopts minor administrative changes to address conformity to *Texas Register* requirements and other agency rules and guidelines.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this adoption 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although the ultimate intent is to protect the environment, these adopted amendments are mainly the result of an administrative action only, to correct and update cross-references to Chapter 117, which has been reorganized, modify certain definitions, and make other procedural changes to Chapter 101.

Chapter 117, Control of Air Pollution from Nitrogen Compounds, has been reorganized. Chapter 101, General Air Quality Rules, contains extensive references to sections of Chapter 117 that were renumbered because of the reorganization. The references contained in Chapter 101 must change accordingly. This adoption also includes revisions identified during the last quadrennial review of Chapter 101 by the executive director and includes changes to the definitions of visible emissions, cold solvent cleaning, conveyORIZED degreasing, open- top vapor degreasing, high-volume low-pressure spray guns, and standard conditions. Other adopted changes include deleting the definitions of hazardous waste management facility and hazardous waste management unit, adding a definition for nitrogen oxides, and removing an obsolete effective date section. The adopted rules will not adversely

affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory impact analysis of a major environmental rule as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted requirements are consistent with applicable federal standards. In addition, this adoption does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission solicited comments on the draft regulatory impact analysis determination and no comments were received.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to update references to sections of Chapter 117, which has been reorganized, to modify certain definitions, and to make other procedural changes to Chapter 101. These amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Promulgation and enforcement of these adopted rules is neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The adopted rules update references and definitions. No new sources of air contaminants will be authorized and the revisions will maintain the same level of emissions control as

previous rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicited comments on the consistency of this rulemaking, but no comments on the CMP were received.

#### PUBLIC COMMENT

A public hearing on the proposal was held in Austin on March 20, 2007 at the TCEQ. No comments were received at the public hearing. The commission received written comments from the EPA and Eternal Springs Wellness during the public comment period, which closed on March 26, 2007.

EPA suggested modifications to the adopted rules as stated in the RESPONSE TO COMMENTS section of this preamble, and commented that they appreciate efforts made to update definitions and references in Chapter 101 that are changing due to the reorganization of Chapter 117.

#### RESPONSE TO COMMENTS

Eternal Springs Wellness commented that they oppose delaying the plan until 2018 and would like to see cleaner air now. Eternal Springs Wellness commented that they would like to see the implementation of

California standards and VOC storage tank/degassing regulations strengthened and implemented by January 1, 2009.

**The commission appreciates the commenters' interest in air quality. The comments do not relate to the proposed Chapter 101 revisions, and no changes to the rule have been made in response to them.**

EPA noted that since §101.23 is no longer part of the federally approved regulations in the Texas SIP, they would be unable to approve the proposed administrative changes to this section.

**The commission agrees that §101.23 is not part of the federally approved regulations in the Texas SIP. The commission applies the conditions of this section either through other rules of the commission or through individual permits, and the proposed amendments to §101.23 have not been adopted.**

EPA noted that, to be included in the Texas SIP, the Alternate Emission Reduction Policy would need to be developed in accordance with EPA's guidance on economic incentive programs, as well as meet applicable Clean Air Act requirements.

**The commission is not currently considering whether to adopt any rules regarding an alternate emission reduction policy.**

EPA commented that §101.302(d)(1)(A) incorrectly references §117.3310, since emission reduction credits (ERCs) only apply to nonattainment areas.

**The rule has been revised to remove the reference to §117.3310.**

EPA commented that there is an inconsistency in §101.306(b)(3) with Figure 30 TAC §101.306(b)(3) and §101.376(d)(2) with Figure 30 TAC §101.376(d)(2)(A). Sections 101.306(b)(3) and 101.376(d)(2) allow the use of credits for compliance with §117.3123 but the section is not included in the figures Figure: 30 TAC §101.306(b)(3) and Figure: 30 TAC §101.376(d)(2)(A).

**The rule has been revised to remove the reference to §117.3123 from §101.306(b)(3). Section 117.9800 allows ERCs and discrete emission reduction credits (DERCs) to be used for alternative compliance with §117.3123. However, the equation to determine compliance to the source cap in §117.3123 is different from the equations in Figure 30 TAC §101.306(b)(3) and Figure 30 TAC §101.376(d)(2)(A)(i). For compliance with §117.3123, the equations in §117.3123 are required to be used in place of Figure 30 TAC §101.306(b)(3) or Figure 30 TAC §101.376(d)(2)(A)(i).**

EPA commented that Figure 30 TAC §101.306(b)(3) does not reference the maximum daily cap requirements found in §101.306(b)(2).

**The rule has been revised to include references to both the 30-day rolling average and the maximum daily cap average requirements for system caps and source caps.**

EPA commented that Figure 30 TAC §101.376(d)(2)(A)(ii) incorrectly references §§117.123(b)(1), 117.223(b)(1), 117.323(b)(1), and 117.423(b)(1), which refer to rolling 30-day average emission caps instead of maximum daily caps.

**The rule has been revised to change the citations to §§117.123(b)(2), 117.223(b)(2), 117.323(b)(2) and 117.423(b)(2).**

## **SUBCHAPTER A: GENERAL RULES**

### **§101.1**

#### **STATUTORY AUTHORITY**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also adopted under §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC,

Chapter 382. The amended section is also adopted under the Federal Clean Air Act, 42 United States Code, §§7401 - 7671q.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 380.051.

**§101.1. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in the air quality rules in this title, have the following meanings, unless the context clearly indicates otherwise.

(1) **Account**--For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits Program), all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

(2) **Acid gas flare**--A flare used exclusively for the incineration of hydrogen sulfide and other acidic gases derived from natural gas sweetening processes.

(3) **Agency established facility identification number**--For the purposes of Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities), a unique alphanumeric code required to be assigned by the owner or operator of a regulated entity that the emission inventory reporting requirements of §101.10 of this title (relating to Emissions Inventory Requirements) are applicable to each facility at that regulated entity.

(4) **Ambient air**--That portion of the atmosphere, external to buildings, to which the general public has access.

(5) **Background**--Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

(6) **Boiler**--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) **Capture system**--All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(8) **Captured facility**--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared

basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(9) **Carbon adsorber**--An add-on control device that uses activated carbon to adsorb volatile organic compounds from a gas stream.

(10) **Carbon adsorption system**--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(11) **Coating**--A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(12) **Cold solvent cleaning**--A batch process that uses liquid solvent to remove soils from the surfaces of parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(13) **Combustion unit**--Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(14) **Combustion turbine**--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft will be treated as one unit.

(15) **Commercial hazardous waste management facility**--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility that disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(16) **Commercial incinerator**--An incinerator used to dispose of waste material from retail and wholesale trade establishments.

(17) **Commercial medical waste incinerator**--A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(18) **Component**--A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves that has the potential to leak volatile organic compounds.

(19) **Condensate**--Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(20) **Construction-demolition waste**--Waste resulting from construction or demolition projects.

(21) **Control system or control device**--Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(22) **Conveyorized degreasing**--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(23) **Criteria pollutant or standard**--Any pollutant for which there is a national ambient air quality standard established under 40 Code of Federal Regulations Part 50.

(24) **Custody transfer**--The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(25) **De minimis impact**--A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source that has undergone a major modification that does not exceed the following specified amounts.

Figure: 30 TAC §101.1(25) (No change.)

AIR CONTAMINANT	ANNUAL	24-HOUR	8-HOUR	3-HOUR	1-HOUR
Inhalable Particulate Matter (PM <sub>10</sub> )	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>			
Sulfur Dioxide	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>		25 µg/m <sup>3</sup>	
Nitrogen Dioxide	1.0 µg/m <sup>3</sup>				
Carbon Monoxide			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>

(26) **Domestic wastes**--The garbage and rubbish normally resulting from the functions of life within a residence.

(27) **Emissions banking**--A system for recording emissions reduction credits so they may be used or transferred for future use.

(28) **Emissions event**--Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(29) **Emissions reduction credit**--Any stationary source emissions reduction that has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(30) **Emissions reduction credit certificate**--The certificate issued by the executive director that indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(31) **Emissions unit**--Any part of a stationary source that emits, or would have the potential to emit, any pollutant subject to regulation under the Federal Clean Air Act.

(32) **Excess opacity event**--When an opacity reading is equal to or exceeds 15 additional percentage points above an applicable opacity limit, averaged over a six-minute period.

(33) **Exempt solvent**--Those carbon compounds or mixtures of carbon compounds used as solvents that have been excluded from the definition of volatile organic compound.

(34) **External floating roof**--A cover or roof in an open top tank that rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

(35) **Federal motor vehicle regulation**--Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations Part 85.

(36) **Federally enforceable**--All limitations and conditions that are enforceable by the United States Environmental Protection Agency administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61; requirements within any applicable state implementation plan (SIP); and any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart 1, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(37) **Flare**--An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and that is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(38) **Fuel oil**--Any oil meeting the American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01, Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(39) **Fugitive emission**--Any gaseous or particulate contaminant entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(40) **Garbage**--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(41) **Gasoline**--Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater that is produced for use as a motor fuel, and is commonly called gasoline.

(42) **Hazardous wastes**--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(43) **Heatset (used in offset lithographic printing)**--Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(44) **High-bake coatings**--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(45) **High-volume low-pressure spray guns**--Equipment used to apply coatings by means of a spray gun that operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the air cap.

(46) **Incinerator**--An enclosed combustion apparatus and attachments that is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is considered to be an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually is also considered to be an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of

any rule within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(47) **Industrial boiler**--A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(48) **Industrial furnace**--Cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and other devices the commission may list.

(49) **Industrial solid waste**--Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment

when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(50) **Internal floating cover**--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(51) **Leak**--A volatile organic compound concentration greater than 10,000 parts per million by volume or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(52) **Liquid fuel**--A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units per pound.

(53) **Liquid-mounted seal**--A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(54) **Maintenance area**--A geographic region of the state previously designated nonattainment under the Federal Clean Air Act Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a. The following are the maintenance areas within the state:

(A) Victoria Ozone Maintenance Area 60 (*Federal Register* (FR) 12453) - Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421) - Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(55) **Maintenance plan**--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(56) **Marine vessel**--Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(57) **Mechanical shoe seal**--A metal sheet that is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(58) **Medical waste**--Waste materials identified by the Department of State Health Services as “special waste from health care-related facilities” and those waste materials commingled and discarded with special waste from health care-related facilities.

(59) **Metropolitan Planning Organization**--That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC), §134 and 49 USC, §1607.

(60) **Mobile emissions reduction credit**--The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state rules) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter F of this title (relating to Vehicle Retirement

and Mobile Emission Reduction Credits), and that has been banked in accordance with Subchapter H, Division 1 of this chapter.

(61) **Motor vehicle**--A self-propelled vehicle designed for transporting persons or property on a street or highway.

(62) **Motor vehicle fuel dispensing facility**--Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(63) **Municipal solid waste**--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(64) **Municipal solid waste facility**--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(65) **Municipal solid waste landfill**--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal

solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(66) **National ambient air quality standard**--Those standards established under 42 United States Code, §7409, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(67) **Net ground-level concentration**--The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(68) **New source**--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(69) **Nitrogen oxides (NO<sub>x</sub>)**--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(70) **Nonattainment area**--A defined region within the state that is designated by the United States Environmental Protection Agency (EPA) as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of 42 United States Code, §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state for all national ambient air quality standards (NAAQS). EPA has indicated that it will revoke the one-hour ozone standard in full, including the associated designations and classifications, on June 15, 2005, which is one year following the effective date of the designations for the eight-hour NAAQS of June 15, 2004.

(A) Carbon monoxide (CO). El Paso CO nonattainment area (56 FR 56694)--Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the City of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Reynolds Street, Reynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Reynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM<sub>10</sub>). El Paso PM<sub>10</sub> nonattainment area (56 FR 56694)--Classified as a Moderate PM<sub>10</sub> nonattainment area. Portion of El Paso County that comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. No designated nonattainment areas.

(D) Nitrogen dioxide. No designated nonattainment areas.

(E) Ozone (one-hour).

(i) Houston-Galveston-Brazoria (HGB) one-hour ozone nonattainment area (56 FR 56694) - Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso one-hour ozone nonattainment area (56 FR 56694) - Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont-Port Arthur (BPA) one-hour ozone nonattainment area (69 FR 16483) - Classified as a Serious ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas-Fort Worth one-hour ozone nonattainment area (63 FR 8128) - Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Ozone (eight-hour).

(i) HGB eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) BPA eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Marginal ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iii) Dallas-Fort Worth eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(iv) San Antonio eight-hour ozone nonattainment area (69 FR 23936) - Classified under the Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), nonattainment deferred to September 30, 2005, or as extended by EPA.

(G) Sulfur dioxide. No designated nonattainment areas.

(71) **Non-reportable emissions event**--Any emissions event that in any 24-hour period does not result in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(72) **Opacity**--The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(73) **Open-top vapor degreasing**--A batch solvent cleaning process that is open to the air and that uses boiling solvent to create solvent vapor used to clean or dry parts through condensation of the hot solvent vapors on the parts.

(74) **Outdoor burning**--Any fire or smoke-producing process that is not conducted in a combustion unit.

(75) **Particulate matter**--Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(76) **Particulate matter emissions**--All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) Part 60,

Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan.

(77) **Petroleum refinery**--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(78) **PM<sub>10</sub>**--Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(79) **PM<sub>10</sub> emissions**--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(80) **Polychlorinated biphenyl compound**--A compound subject to 40 Code of Federal Regulations Part 761.

(81) **Process or processes**--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(82) **Process weight per hour**--“Process weight” is the total weight of all materials introduced or recirculated into any specific process that may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The “process weight per hour” will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during that the equipment used to conduct the process is idle. For continuous operation, the “process weight per hour” will be derived by dividing the total process weight for a 24-hour period by 24.

(83) **Property**--All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(84) **Reasonable further progress**--Annual incremental reductions in emissions of the applicable air contaminant that are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan.

(85) **Regulated entity**--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flowlines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.

(86) **Remote reservoir cold solvent cleaning**--Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(87) **Reportable emissions event**--Any emissions event that in any 24-hour period, results in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(88) **Reportable quantity (RQ)**--Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures by name or Chemical Abstracts Service (CAS) number, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) Part 302, Table 302.4, the column “final RQ”;

(II) listed in 40 CFR Part 355, Appendix A, the column “Reportable Quantity”; or

(III) listed as follows:

(-a-) acetaldehyde - 1,000 pounds, except in the Houston-Galveston-Brazoria (HGB) and Beaumont-Port Arthur (BPA) ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-b-) butanes (any isomer) - 5,000 pounds;

(-c-) butenes (any isomer, except 1,3-butadiene) - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) 1-chloro-1,1-difluoroethane (HCFC-142b) - 5,000

pounds;

(-f-) chlorodifluoromethane (HCFC-22) - 5,000 pounds;

(-g-) 1-chloro-1-fluoroethane (HCFC-151a) - 5,000

pounds;

(-h-) chlorofluoromethane (HCFC-31) - 5,000 pounds;

(-i-) chloropentafluoroethane (CFC-115) - 5,000

pounds;

(-j-) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) -

5,000 pounds;

(-k-) 1-chloro-1,1,2,2 tetrafluoroethane (HCFC-124a) -

5,000 pounds;

(-l-) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-

10mee) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds;

(-n-) 1,1-dichloro-1-fluoroethane (HCFC-141b) - 5,000  
pounds;

(-o-) 3,3-dichloro-1,1,2,2-pentafluoropropane (HCFC-  
225ca) - 5,000 pounds;

(-p-) 1,3-dichloro-1,1,2,2,3-pentafluoropropane  
(HCFC-225cb) - 5,000 pounds;

(-q-) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFR-114)  
- 5,000 pounds;

(-r-) 1,1- dichlorotetrafluoroethane (CFC-114a) - 5,000  
pounds;

(-s-) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a) -  
5,000 pounds;

(-t-) 1,1-difluoroethane (HFC-152a) - 5,000 pounds;

(-u-) difluoromethane (HFC-32) - 5,000 pounds;

(-v-) ethanol - 5,000 pounds;

(-w-) ethylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-x-) ethylfluoride (HFC-161) - 5,000 pounds;

(-y -) 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea);

(-z-) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa) -  
5,000 pounds;

(-aa-) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea) -  
5,000 pounds;

(-bb-) hexanes (any isomer) - 5,000 pounds;

(-cc-) isopropyl alcohol - 5,000 pounds;

(-dd-) mineral spirits - 5,000 pounds;

(-ee-) octanes (any isomer) - 5,000 pounds;

(-ff-) oxides of nitrogen - 200 pounds in ozone

nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County, and 5,000 pounds in all other areas of the state, which should be used instead of the RQs for nitrogen oxide and nitrogen dioxide provided in 40 CFR Part 302, Table 302.4, the column “final RQ”;

(-gg-) pentachlorofluoroethane (CFR-111) - 5,000

pounds;

(-hh-) 1,1,1,3,3-pentafluorobutane (HFC-365mfc) -

5,000 pounds;

(-ii-) pentafluoroethane (HFC-125) - 5,000 pounds;

(-jj-) 1,1,2,2,3-pentafluoropropane (HFC-245ca) -

5,000 pounds;

(-kk-) 1,1,2,3,3-pentafluoropropane (HFC-245ea) -

5,000 pounds;

(-ll-) 1,1,1,2,3-pentafluoropropane (HFC-245eb) -

5,000 pounds;

(-mm-) 1,1,1,3,3-pentafluoropropane (HFC-245fa) -

5,000 pounds;

(-nn-) pentanes (any isomer) - 5,000 pounds;

(-oo-) propane - 5,000 pounds;

(-pp-) propylene - 5,000 pounds, except in the HGB

and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-qq-) 1,1,2,2-tetrachlorodifluoroethane (CFR -112) -

5,000 pounds;

(-rr-) 1,1,1,2-tetrachlorodifluoroethane (CFC-112a) -

5,000 pounds;

(-ss-) 1,1,2,2-tetrafluoroethane (HFC-134) - 5,000

pounds;

(-tt-) 1,1,1,2-tetrafluoroethane (HFC-134a) - 5,000

pounds;

(-uu-) 1,1,2-trichloro-1,2,2-trifluoroethane (CFR-113) -

5,000 pounds;

(-vv-) 1,1,1-trichloro- 2,2,2- trifluoroethane (CFC-

113a) - 5,000 pounds;

(-ww-) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123)

- 5,000 pounds;

(-xx-) 1,1,1-trifluoroethane (HFC-143a) - 5,000

pounds;

(-yy-) trifluoromethane (HFC-23) - 5,000 pounds; or

(-zz-) toluene - 1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound that equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture that equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this

paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or the associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity from boilers and combustion turbines as defined in this section fueled by natural gas, coal, lignite, wood, fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, opacity that is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only RQ applicable to boilers and combustion turbines described in this paragraph; or

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest regulated entity property line:

(i) less than one-half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(89) **Rubbish**--Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(90) **Scheduled maintenance, startup, or shutdown activity**--For activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity that the owner or operator of the regulated entity whether performing or otherwise affected by the activity, provides prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification by more than an RQ. For activities with unauthorized emissions that are not expected to, and do not, exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown

activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

(91) **Sludge**--Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(92) **Smoke**--Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(93) **Solid waste**--Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.*).

(94) **Sour crude**--A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(95) **Sour gas**--Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(96) **Source**--A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple

processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(97) **Special waste from health care-related facilities**--A solid waste that if improperly treated or handled, may serve to transmit infectious disease(s) and that is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(98) **Standard conditions**--A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals).

(99) **Standard metropolitan statistical area**--An area consisting of a county or one or more contiguous counties that is officially so designated by the United States Bureau of the Budget.

(100) **Submerged fill pipe**--A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters) from the bottom or, when applied to a tank that is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(101) **Sulfur compounds**--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(102) **Sulfuric acid mist/sulfuric acid**--Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as  $H_2SO_4$  and must include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations Part 60, Appendix A.

(103) **Sweet crude oil and gas**--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(104) **Total suspended particulate**--Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

(105) **Transfer efficiency**--The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(106) **True vapor pressure**--The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

(107) **Unauthorized emissions**--Emissions of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen that exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act, §382.0518(g).

(108) **Unplanned maintenance, startup, or shutdown activity**--For activities with unauthorized emissions that are expected to exceed a reportable quantity or with excess opacity, an unplanned maintenance, startup, or shutdown activity is:

(A) a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or

(B) a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective action to minimize or avoid an upset or malfunction.

(109) **Upset event**--An unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions. A maintenance, startup, or shutdown activity that was reported under §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but had emissions that exceeded the reported amount by more than a reportable quantity due to an unplanned and unavoidable breakdown or excursion of a process or operation is an upset event.

(110) **Utility boiler**--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(111) **Vapor combustor**--A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system that can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(112) **Vapor-mounted seal**--A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(113) **Vent**--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(114) **Visible emissions**--Particulate or gaseous matter that can be detected by the human eye. The radiant energy from an open flame is not considered a visible emission under this definition.

(115) **Volatile organic compound**--As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on November 29, 2004 (69 FR 69290).

(116) **Volatile organic compound (VOC) water separator**--Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

**§101.23. Alternate Emission Reduction (“Bubble”) Policy.**

An owner or operator of any facility that is affected by any control requirement of TACB Regulations I, II, III, V, VII, and IX adopted on or after March 30, 1979, may, prior to compliance with such requirement, request the executive director to approve control of emissions from an alternate facility or from alternate facilities located on the affected property and owned or operated by or under the control of the owner or operator of the affected facility in lieu of compliance with the requirement as prescribed in the regulation, provided the alternate proposed controls are not required by any TACB rule, regulation, permit condition, board order or court order. The executive director shall approve control of emissions from alternate facilities if the applicant demonstrates that the alternate controls will yield, by the date specified in the rule, emission reductions that are substantially equivalent to the emissions reductions which would otherwise be required in terms of their quantity, character, air quality impacts including health and welfare effects, and area affected. Facilities which receive the executive director's approval of an alternate emissions control plan will be deemed to have complied with the otherwise applicable TACB rule. However, the executive director may, after notice and opportunity for public hearing, revoke the credit or authority for alternate controls if he determines that

any of the prerequisites for approval of the alternate controls are no longer met or if further emission reductions are needed to meet the intent of the Texas Clean Air Act.

## **SUBCHAPTER A: GENERAL RULES**

### **§101.22**

#### **STATUTORY AUTHORITY**

The repealed section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repealed section is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

The repealed section implements THSC, §§382.002, 382.011, 382.012, and 382.017.

**SUBCHAPTER H: EMISSIONS BANKING AND TRADING**

**DIVISION 1: EMISSION CREDIT BANKING AND TRADING**

**§101.302, §101.306**

**STATUTORY AUTHORITY**

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the

measuring and monitoring of air contaminant emissions. The amended sections are also adopted under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable 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, 382.014, 382.016, and 382.017.

**§101.302. General Provisions.**

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

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

(1) facilities, including area sources;

(2) mobile sources; and

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).

(c) Emission credit requirements.

(1) Emission reduction credits are certified reductions that meet the following requirements:

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

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

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

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

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

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

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

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

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

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

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

(d) Protocol.

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

(A) Facilities subject to the emission specifications under §§117.110, 117.210, 117.310, 117.410, 117.1010, 117.1110, 117.1210, 117.1310, 117.2010, or 117.2110 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall quantify reductions in nitrogen oxide emissions 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 volatile organic compound 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 shall collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the facility's or mobile source's activity level for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

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

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

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

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

(2) 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), September 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) 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 emission credit application. The applicant may submit a revised application in accordance with the requirements of this division.

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

(5) Applications for certification of emission credit from reductions quantified under subsection (d)(1)(C) of this section may only be approved upon completion of the public comment period.

(f) Geographic scope. Except as provided in §101.305 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in nonattainment areas can be certified. An emission credit must be used in the nonattainment area in which it is

generated unless the user has obtained prior written approval of the executive director and the EPA;  
and

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

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

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

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

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

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

(j) Program participation. The executive director has the authority to prohibit 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) Compliance burden. 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.

(l) 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 1/10 ton of credit.

**§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 and §101.399 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 §§117.123, 117.223, 117.320, 117.323, 117.423, 117.1020, 117.1120, or 117.1220 of this title (relating to Source Cap; and System Cap), the number of emission credits needed for increasing the 30-day rolling average emission cap or maximum daily cap should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.

Figure: 30 TAC §101.306(b)(3)

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 §§117.123(b)(1) or (2), 117.223(b)(1) or (2), 117.320(c)(1) - (3), 117.323(b)(1) or (2), 117.423(b)(1) or (2), 117.1020(c)(1) or (2), 117.1120(c)(1) or (2), or 117.1220(c)(1) or (2) of this title

$R_i$  = the facility's emission factor, in pounds (lb)/MMBtu, is defined as in §§117.123(b)(1) or (2), 117.223(b)(1) or (2), 117.320(c)(1) - (3), 117.323(b)(1) or (2), 117.423(b)(1) or (2), 117.1020(c)(1) or (2), 117.1120(c)(1) or (2), or 117.1220(c)(1) or (2) 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.

**SUBCHAPTER H: EMISSIONS BANKING AND TRADING**

**DIVISION 3: MASS EMISSIONS CAP AND TRADE PROGRAM**

**§§101.350, 101.351, 101.353, 101.354, 101.360**

**STATUTORY AUTHORITY**

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.016, concerning Monitoring Requirements;

Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amended sections are also adopted under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable 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, 382.014, 382.016, and 382.017.

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

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

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

(4) **Banked allowance**--An allowance which is not used to reconcile emissions in the designated year of allocation, but which is carried forward for up to one year and noted in the compliance or broker account as "banked."

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

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

(7) **Compliance account**--The account where allowances held by a facility or multiple facilities at a single site are recorded for the purposes of meeting the requirements of this division.

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

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

(10) **Houston-Galveston-Brazoria (HGB) ozone nonattainment area**--As defined in §101.1 of this title (relating to Definitions).

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

(12) **Person**--For the purpose of issuance of allowances under this division, a person includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation.

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

(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 facilities which emit nitrogen oxides (NO<sub>x</sub>) in the Houston-Galveston-Brazoria ozone nonattainment area, as defined in §101.1 of this title (relating to Definitions) which are subject to the emission specifications under §§117.310, 117.1210, or 117.2010 of this title (relating to 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 design capacity to emit ten tons or more per year of NO<sub>x</sub>.

(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.

**§101.353. 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)

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

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:  $LA_{97}$  = the facility's level of activity, as certified by the executive director for 1997;

$LA_{98}$  = the facility's level of activity, as certified by the executive director for 1998;

$LA_{99}$  = the facility's level of activity, as certified by the executive director for 1999;

$EF_{97}$  = the facility's emission factor for 1997 or the emission

specifications under §§117.310, 117.1210, and 117.2010 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;

EF<sub>98</sub> = 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;

EF<sub>99</sub> = 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<sub>Allowable</sub> = 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<sub>Allowable</sub> = 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:

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

Where:  $LA_{Year-1}$  = 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;

$LA_{Year-2}$  = 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;

$EF_{Year-1}$  = 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;

$EF_{Year-2}$  = 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(14)(A) of this title (relating to Definitions), located in the Houston-Galveston-Brazoria 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 facilities subject to the emission specifications under §117.310(a)(1)(A) and (B), (2)(A), (5), (8)(A)(i), (8)(B), (9)(A)(ii), (10), or (11) of this title:

(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) 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,  $X = 0.389$ ;

(iii) for April 1, 2005 through March 31, 2006,  $X = 0.667$ ;

(iv) for April 1, 2006 through March 31, 2007,  $X = 0.778$ ;

(v) on and after April 1, 2007,  $X = 1.00$ ;

(D) 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, 2005,  $X=0.00$ ;

(ii) on and after April 1, 2005,  $X=1.00$ .

(E) Election to comply with the alternative reduction schedule under subparagraph (D) of this paragraph shall be made by letter to the executive director no later than April 1, 2003.

(F) 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 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 §§117.310, 117.1210, or 117.2010 of this title.

(6) For facilities using alternative emission specifications as allowed in §117.310(a)(17) or §117.2010(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 §117.310(a)(17) or §117.2010(c)(6) of this title.

(b) For a new and/or modified facility that has submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permit for New Construction of Modification), an application which the executive director has not determined to be administratively complete before January 2, 2001, or has qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and has not commenced construction before January 2, 2001, allowances for each control period or the annual allocation rights shall be acquired from facilities already participating under this division, or in accordance with §101.356(g) of this title (relating to Allowance Banking and Trading).

(c) If actual emissions of nitrogen oxides during a control period exceed the amount of allowances held in a compliance account on March 1 following the control period, allowances for the next control period will be reduced by an amount equal to the emissions exceeding the allowances in the compliance account plus an additional 10%. This does not preclude additional enforcement action by the executive director.

(d) Allowances will be allocated by the executive director, who will deposit allowances into each compliance account:

(1) initially, by January 1, 2002; and

(2) subsequently, by January 1 of each following year.

(e) The annual deposit for any control period may be adjusted by the executive director to reflect new or existing state implementation plan requirements.

(f) Allowances may be added or deducted by the executive director from compliance accounts following the review of reports required under §101.359 of this title (relating to Reporting).

(g) The owner or operator of a facility may, due to extenuating circumstances, request a baseline period more representative of normal operation as determined by the executive director.

Applications for extenuating circumstances must be submitted by the owner or operator of the facility to the executive director:

(1) no later than 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; or

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

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

**§101.354. Allowance Deductions.**

(a) Allowances will be deducted in tenths of a ton from a site's compliance account for a control period based upon the monitoring and testing protocols established in §§117.335, 117.340, 117.1235, 117.1240, and 117.2035 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Monitoring and Testing Requirements).

(b) 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), September 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.)

$$A = \frac{LA_{CP} * EF_{CP}}{2000}$$

Where:

A = Allowances to be subtracted from the compliance account in tenths of tons

LA<sub>CP</sub> = the level of activity during the control period

EF<sub>CP</sub> = the emission factor for the control period in lb of nitrogen oxides (NO<sub>x</sub>) per unit of activity

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

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

(e) Allowances shall be deducted from a site's compliance account in an amount equal to the nitrogen oxides (NO<sub>x</sub>) emissions increases from facilities not subject to an emission specification under §117.310 or §117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) which result from changes made after December 31, 2000, to facilities subject to this division and §117.310(e)(3) or §117.2010(f) of this title. Documentation detailing these increases in NO<sub>x</sub> emissions shall be included with the submittal of the ECT-1 Form, Annual Compliance Report.

(f) Allowances allocated in accordance with the variables in (a)(2)(B) listed in the figure contained in §101.353(a) of this title 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) 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<sub>x</sub> emissions emitted during the prior control period.

**§101.360. Level of Activity Certification.**

(a) The owner or operator of any facility subject to this division shall certify, no later than June 30, 2001, its historical level of activity 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, emission factors, and production records as follows:

(1) for facilities in operation prior to January 1, 1997, the level of activity averaged over 1997, 1998, and 1999;

(2) for new and modified facilities not in operation prior to January 1, 1997 and either have submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), an application which the executive director has determined to be administratively complete before January 2, 2001, or have qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and have commenced construction before January 2, 2001, the level of activity authorized by the executive director; and

(3) for new and modified facilities not in operation prior to January 1, 1997, that are subject to emission specifications under §§117.310, 117.1210, or 117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) that were first adopted after April 1, 2001, and either have submitted under Chapter 116 of this title an application which the executive director has determined to be administratively complete within 90 days of the effective date of this emission specification, or have qualified for a permit by rule under Chapter 106 of this title and have commenced construction within 90 days of the effective date of the emission specification, the level of activity authorized by the executive director.

(b) The owner or operator 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 the actual level of activity and actual emission factors for the two complete consecutive calendar years chosen as a baseline by submitting to the executive director a completed 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) Owners or operators of a site or facility that becomes subject to this division on or after April 1, 2001 shall certify the level of activity, as determined by the executive director, in accordance with subsections (a) and (b) of this section. Such certification shall be submitted no later than 90 days from the date the site or facility becomes subject to this division or no later than 90 days from the effective date of this rule, whichever is later.

**SUBCHAPTER H: EMISSIONS BANKING AND TRADING**

**DIVISION 4: DISCRETE EMISSION CREDIT BANKING AND TRADING**

**§101.372, §101.376**

**STATUTORY AUTHORITY**

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.016, concerning Monitoring Requirements;

Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amended sections are also adopted under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable 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, 382.014, 382.016, and 382.017.

**§101.372. General Provisions.**

(a) Applicable pollutants. Reductions of volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>) and particulate matter with an aerodynamic diameter of less than or equal to a nominal ten microns (PM<sub>10</sub>) 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 urban airshed modeling demonstrates that one may be substituted for another subject to approval by the executive director and the United States Environmental Protection Agency (EPA).

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

(1) facilities (including area sources);

(2) mobile sources; or

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under §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 reduction strategy 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 §§117.110, 117.210, 117.310, 117.410, 117.1010, 117.1110, 117.1210, 117.1310, 117.2010, 117.2110, or 117.3310 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall quantify reductions in NO<sub>x</sub> 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 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;

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

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

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

(2) 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), September 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 discrete emission credit notification. The applicant may submit a revised discrete emission credit notification in accordance with the requirements of this division.

(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.

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

(1) VOC and NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> discrete emission credits generated in an ozone nonattainment area may not be used in any other ozone nonattainment area, except as provided in this subsection.

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

(5) NO<sub>x</sub> 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<sub>x</sub> discrete emission credits generated in a nonattainment area, except those generated in El Paso, may be used in the covered attainment counties.

(6) CO, SO<sub>2</sub>, and PM<sub>10</sub> 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<sub>x</sub> discrete emission credits generated in other counties, states, or emission reductions in other nations may be used in any attainment or nonattainment county provided a demonstration has been made and approved by the executive director and the EPA, to show that the emission reductions achieved in the other county, state, or nation improve the air quality in the county where the credit is being used.

(g) Ozone season. In areas having an ozone season of less than 12 months (as defined in 40 Code of Federal Regulations Part 58, Appendix D) VOC and NO<sub>x</sub> 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 Federal Clean Air Act, and the Texas Clean Air Act, as well as regulations promulgated thereunder. A discrete emission credit does not constitute a property right. Nothing in this division should be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(k) Program participation. The executive director has the authority to prohibit a 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.

(l) Compliance burden and enforcement.

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

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

(3) 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.

**§101.376. Discrete Emission Credit Use.**

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

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

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

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

(4) 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 ten tons for nitrogen oxides or five tons for volatile organic compounds in a 12-month period as approved by the executive director. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested; or

(B) at permitted facilities in counties or portions of counties designated as attainment or 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 (CFR) §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 shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested;

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

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

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

(C) the NSR permit must meet the following requirements:

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

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

(iii) prior to start of operation the user shall submit a completed 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 (as codified in 42 United States Code (USC), Federal Clean Air Act (FCAA)) requirements for:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) to authorize a facility whose emissions are enforceably limited to below applicable major source threshold levels, as defined in §122.10 of this title (relating to General Definitions), to operate with actual emissions above those levels without triggering applicable requirements that would otherwise be triggered by such major source status; 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 shall 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 shall also be sent to the federal land manager 30 days prior to use if the user is located within 100 kilometers of a Class I area, as listed in 40 CFR Part 81 (2001).

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

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

(ii) the amount of discrete emission credits needed;

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

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

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

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

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

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

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

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

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

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

(2) DERC use calculation.

(A) To calculate the amount of discrete emission credits necessary to comply with §§117.123, 117.223, 117.320, 117.323, 117.423, 117.1020, 117.1120, 117.1220, or 117.3020 of this title (relating to Source Cap; and System Cap), a user may use the equations listed in those sections, or the following equations.

(i) For the rolling average cap:

Figure: 30 TAC §101.376(d)(2)(A)(i)

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

Where:

$d$  = the number of days in the use period

$i$  = each emission unit in the source or system cap

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

$H_i$  = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), 117.1220(c)(1), or 117.3020(c) of this title (relating to Source Cap; and System Cap) as applicable

$R_i$  = actual emission rate, in pounds (lb)/MMBtu, as defined in §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable

$EH_i$  = 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)

$$\text{Amount of DERCS Required (tons)} = \sum_{i=1}^N [(EH_{Mi} \times ER_i) - (H_{Mi} \times R_i)] \frac{1}{2000}$$

Where:

$i$  = each emission unit in the source or system cap

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

$R_i$  = in lb/MMBtu, is defined as in §§117.123(b)(2), 117.223(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), 117.1120(c)(2), or 117.1220(c)(2) of this title (relating to Source Cap; and System Cap) as applicable

$H_{Mi}$  = the maximum daily heat input, in MMBtu/day, as defined in §§117.123(b)(2), 117.223(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), 117.1120(c)(2), or 117.1220(c)(2) of this title as applicable

$EH_{Mi}$  = 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) (No change.)

	$(ELA) \times (EER - RER) = \text{discrete emission credits needed}$
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 exceed an allowable emissions level is calculated as follows.

Figure: 30 TAC §101.376(d)(2)(C) (No change.)

	$(ELA - PLA) \times (PER) = \text{discrete emission credits needed}$
Where:	
	ELA = expected level of activity
	PLA = permitted level of activity
	PER = permitted emission rate per unit activity

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

(E) If the amount of discrete emission credits needed to meet a regulatory requirement or to demonstrate compliance is greater than 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 shall include a complete description of the emergency situation in the notice of intent to use. All other notices submitted less than 45 days prior to use, or 90 days prior to use for a mobile source, will be considered late and in violation.

(4) The user is responsible for determining the credits it will purchase and notifying the executive director of the selected generating facility or mobile source in the 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) (No change.)

Where:	$(ALA) \times (AER - RER) = \text{discrete emission credits used}$
	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) (No change.)

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

Where:

ALA = actual 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, shall 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, except for transfers between sites under common ownership or control;

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

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

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

(v) the actual environmental contribution; and

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

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

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

**SUBCHAPTER H: EMISSIONS BANKING AND TRADING**

**DIVISION 5: SYSTEM CAP TRADING**

**§101.383, §101.385**

**STATUTORY AUTHORITY**

The amended sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.016, concerning Monitoring Requirements;

Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amended sections are also adopted under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable 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, 382.014, 382.016, and 382.017.

**§101.383. General Provisions.**

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

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

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

(b) System cap limits for units within an electric power generating system as regulated under §117.3020 of this title (relating to System Cap) may be exceeded with surplus emission allowables obtained for that calendar year from another source owner or operator participating in a system cap.

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

**§101.385. Recordkeeping and Reporting.**

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

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

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

(3) The report shall detail the following:

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

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

(b) The owner or operator of a source participating in a system cap limit for sources subject to §117.3020 of this title (relating to System Cap) shall submit to the executive director an annual report.

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

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

(3) The report shall detail the following:

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

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

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

(1) cause of the exceedence with supporting data;

(2) date or period of exceedence;

(3) amount of exceedence with data to demonstrate the amount of emissions in excess of the applicable limit; and

(4) number of surplus emission allowables traded on the date of or during the period of the exceedence.