The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§101.1, 101.23, 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.

The amended sections and repeal 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 PROPOSED RULES

The commission has proposed revisions to Title 30 Texas Administrative Code (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 (DFW) nonattainment areas. Under those revisions, Chapter 117 would be reorganized. Chapter 101, General Air Quality Rules, contains references to sections of Chapter 117 which are changing due to the reorganization, requiring that the cited references in Chapter 101 also change. This proposal also includes revisions identified during the last review of Chapter 101, including 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 proposed changes would delete the definitions of hazardous waste management facility and hazardous waste management unit, add a definition for nitrogen oxides, update references to include the correct title of the commission, and remove an obsolete effective date section.

SECTION BY SECTION DISCUSSION

§*101.1. Definitions.*

The commission proposes to modify the opening paragraph of this section to specify that the definitions in §101.1 apply to all air quality rules. The commission proposes to change 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 commission proposes to delete the definitions of hazardous waste management facility and hazardous waste management unit because they are not found in any of the air rules. The proposed 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 proposes to add the definition from Chapter 117 of nitrogen oxides because this is a common term used throughout the commission's air quality rules. The commission proposes to delete 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 a variable and does not qualify as a standard condition. The commission proposes to change 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 proposes the repeal of this section because it is no longer required.

§*101.23. Alternate Emission Reduction ("Bubble") Policy*.

The commission proposes to replace references to Texas Air Control Board with Texas Commission on Environmental Quality (TCEQ). The commission proposes to replace the reference to "Regulations I, II, III, V, VII, and IX" with "Chapters 111, 112, 113, 115, and 117." The reference to Chapter 119 was removed because this chapter has been repealed. The commission proposes to replace a reference to the obsolete term "board order" with "commission order." In the last sentence of the section, the commission proposes to replace "he" with "the executive director."

§*101.302. General Provisions*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.306. Emission Credit Use*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.350. Definitions*

The commission proposes replacing the definition of Houston/Galveston (HGA) ozone nonattainment area with Houston-Galveston-Brazoria (HGB) ozone nonattainment area because the name of the nonattainment area has changed.

§*101.351. Applicability*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.353. Allocation of Allowances*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.354. Allowance Deductions*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.360. Level of Activity Certification.*

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.372. General Provisions*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.376. Discrete Emission Credit Use*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.383. General Provisions*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§*101.385. Recordkeeping and Reporting*.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules are administrative in nature and will amend sections of Chapter 101 to coincide

correctly with proposed changes to Chapter 117. Fiscal implications pertaining to the proposed rules for Chapter 117 can be found in that rule package.

The commission previously proposed a reorganization and revision of Chapter 117 as part of the SIP for the HGB and DFW nonattainment areas. This proposed revision to Chapter 117 also requires revision of Chapter 101 so that cited references in the two chapters agree with one another. The proposed rule changes to Chapter 101 will also revise definitions of visible emissions, cold solvent cleaning, conveyorized degreasing, open-top vapor degreasing, high-volume low-pressure spray guns, and standard conditions. The proposed rules will also delete the definitions of hazardous waste management facility and hazardous waste management unit, add a definition for nitrogen oxides, and make minor administrative changes to update obsolete information contained in the current rules.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a more correct set of general rules governing air emissions that allow the regulated community to comply with federal and state laws with greater ease and efficiency.

The proposed rules will affect entities that must currently comply with regulations promulgated in Chapter 101. Businesses and individuals are not expected to experience any fiscal implications as a

result of the proposed rules, which make administrative changes to Chapter 101 to coincide with proposed amendments to and reorganization of Chapter 117.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules, which are administrative in nature.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal 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 specific intent is to protect the environment, these proposed amendments are mainly an administrative action only, to correct and update cross-references to Chapter

117, which is being reorganized, modify certain definitions, and make other procedural changes to Chapter 101.

Chapter 117, Control of Air Pollution from Nitrogen Compounds, is currently proposed for reorganization. Chapter 101, General Air Quality Rules, contains extensive references to sections of Chapter 117 that are changing because of the reorganization. The references contained in Chapter 101 must change accordingly. This proposal also includes revisions identified during the last 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 proposed changes would delete the definitions of hazardous waste management facility and hazardous waste management unit, add a definition for nitrogen oxides, update references to the title of the commission, and remove 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 draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory 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 proposal 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 invites public comment on the draft regulatory impact analysis determination.

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 is being 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. Therefore, promulgation and enforcement of these proposed 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 proposed rulemaking and found the proposal 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 proposed 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. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The amended sections are applicable requirements under the Federal Operating Permits Program, but no revisions to operating permits will be required.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on March 20, 2007, at 10:00 a.m. in Building B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. All comments should reference Rule Project Number 2006-053-101-PR. The comment period closes

March 26, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Becky Southard, Air Permits Division, at (512) 239-1638 or Tara Capobianco, Air Permits Division, at (512) 239-1117.

SUBCHAPTER A: GENERAL RULES

§101.1, §101.23

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; 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 proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission 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 control of the state's air. The amended sections are also proposed 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 §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended sections are also proposed 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, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§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 relation to air quality rules in this title [chapter], 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) - (11) (No change.)

(12) **Cold solvent cleaning**--A batch process that uses liquid solvent to remove soils from the surfaces of [metal] 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) - (21) (No change.)

(22) **Conveyorized degreasing**--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of [metal] 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) - (41) (No change.)

[(42) **Hazardous waste management facility**--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.]

[(43) **Hazardous waste management unit**--A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.]

(42) [(44)] **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) [(45)] **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) [(46)] **High-bake coatings**--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(45) [(47)] **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) [(48)] **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) [(49)] **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) [(50)] **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) [(51)] **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) [(52)] **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) [(53)] **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) [(54)] **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) [(55)] **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) [(56)] **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) [(57)] **Maintenance plan**--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(56) [(58)] **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) [(59)] **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) [(60)] **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) [(61)] **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) [(62)] **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 [E or] F of this title ([relating to Low Emission Vehicle Fleet Requirements and] Vehicle Retirement and Mobile Emission Reduction Credits), and that has been banked in accordance with Subchapter H, Division 1 of this chapter.

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

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

(63) [(65)] **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) [(66)] **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) [(67)] **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) [(68)] **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) [(69)] **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) [(70)] **New source**--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(69) **Nitrogen oxides (NO_x)**--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(70) [(71)] **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 Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds 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_{10}). El Paso PM_{10} nonattainment area (56 FR 56694)--Classified as a Moderate PM_{10} 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) [(72)] **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) [(73)] **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) [(74)] **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 [metal] parts through condensation of the hot solvent vapors on the colder metal parts.

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

(75) [(76)] **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) [(77)] **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) [(78)] **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) [(79)] **PM_{10}**--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) [(80)] **PM_{10} 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) [(81)] **Polychlorinated biphenyl compound**--A compound subject to 40 Code of Federal Regulations Part 761.

(81) [(82)] **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) [(83)] **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) [(84)] **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) [(85)] **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) [(86)] **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) [(87)] **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) [(88)] **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) [(89)] **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) [(71)(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) [(71)(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) [(71)(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) [(71)(E)(i) and (iii)] of this section, where the RQ must be 100 pounds;

(-qq-) 1,1,2,2-terachlorodifluoroethane (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- trilfloroethane (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) [(71)(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) [(90)] **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) [(91)] **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) [(92)] **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) [(93)] **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) [(94)] **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) [(95)] **Sour crude**--A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(95) [(96)] **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) [(97)] **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) [(98)] **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) [(99)] **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). [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.]

(99) [(100)] **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) [(101)] **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) [(102)] **Sulfur compounds**--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(102) [(103)] **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) [(104)] **Sweet crude oil and gas**--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

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

(105) [(106)] **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) [(107)] **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) [(108)] **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) [(109)] **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) [(110)] **Upset event**--An [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) [(111)] **Utility boiler**--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(111) [(112)] **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) [(113)] **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) [(114)] **Vent**--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

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

(115) [(116)] **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) [(117)] **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 Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter; Control of Air Pollution from Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds) [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 Texas Commission on Environmental Quality (TCEQ) [TACB] rule, regulation, permit condition, commission

[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 TCEQ [TACB] rule. However, the executive director may, after notice and opportunity for public hearing, revoke the credit or authority for alternate controls if the executive director [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 proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; 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 proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission 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 control of the state's air.

The repealed section implements THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

[§101.22. Effective Date.]

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 1: EMISSION CREDIT BANKING AND TRADING

§101.302, §101.306

STATUTORY ATHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; 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 proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission 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 control of the state's air. The amended sections are also proposed 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 §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended sections are also

proposed under 42 USC, §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, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.302. General Provisions.

(a) - (c) (No change.)

(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, 117.2110, or 117.3310

[§§117.106, 117.206, or 117.475] of this title (relating to Emission Specifications for Attainment Demonstration [Demonstrations]; 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) - (C) (No change.)

(2) - (3) (No change.)

(e) - (l) (No change.)

§101.306. Emission Credit Use.

(a) (No change.)

(b) Credit use calculation.

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

(3) For emission credits used to comply with §§117.123, 117.223, 117.320, 117.323, 117.423, 117.1020, 117.1120, 117.1220, or 117.3123 [§§117.108, 117.210, or 117.223] of this title

(relating to [System Cap; and] Source Cap; System Cap; and Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements), 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), 117.223(b)(1), 117.320(c)(1), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), or 117.1220(c)(1) [§117.108(c)(1), §117.210(c)(1), or §117.223(b)(1)] of this title

R_i = the facility's emission factor, in pounds (lb)/MMBtu, is defined as in §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), or 117.1220(c)(1) [§117.108(c)(1), §117.210(c)(1), or §117.223(b)(1)] of this title

H_n = the maximum daily heat input, in MMBtu per day, expected for an emission unit during the use period

R_n = the maximum emission factor, in lb/MMBtu, expected for an emission unit during the use period

(4) (No change.)

(c) (No change.)

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 proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; 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 proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission 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 control of the state's air. The amended sections are also proposed 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; §382.016, concerning Monitoring Requirements, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue

preconstruction and operating air permits. The amended sections are also proposed under 42 USC, §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, 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) - (9) (No change.)

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

(11) - (14) (No change.)

§101.351. Applicability.

(a) This division applies to all facilities which emit nitrogen oxides (NO_x) in the Houston-Galveston-Brazoria [Houston/Galveston] ozone nonattainment area, as defined in §101.1 of this title (relating to Definitions) which are subject to the emission specifications under §§117.310, 117.1210, or 117.2010 [§§117.106, 117.206, or 117.475] of this title (relating to Emission Specifications for Attainment Demonstration [Demonstrations] 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) (No change.)

(b) (No change.)

§101.353. Allocation of Allowances.

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

Figure: 30 TAC §101.353(a)

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

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: LA97 = the facility's level of activity, as certified by the executive director for 1997;

LA98 = the facility's level of activity, as certified by the executive director for 1998;

LA99 = the facility's level of activity, as certified by the executive director for 1999;

EF97 = the facility's emission factor for 1997 or the emission specifications under §§117.310, 117.1210, and 117.2010 [§§117.106, 117.206, and 117.475] of this title (relating to Emission Specifications for Attainment Demonstration [Demonstrations]; and Emission Specifications) (ESAD) whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director;

EF98 = the facility's emission factor for 1998 or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director;

EF99 = the facility's emission factor for 1999 or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director.

(B) For existing facilities not in operation prior to January 1, 1997 and that have been in operation less than five complete consecutive calendar years beginning after the end of the adjustment period and have not established two years of baseline data:

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

Where: LAAllowable = The level of activity authorized by the executive director until such time two consecutive calendar years of actual level of activity data is available;

EFAllowable = 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: LAYear-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;

LAYear-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;

EFYear-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;

EFYear-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 [Houston/Galveston] nonattainment area:

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

(ii) for April 1, 2003 through March 31, 2004, X = 0.50;

(iii) on or after April 1, 2004, X = 1.00;

(B) For 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) [§117.206(c)(1)(A) and (B), (2)(A), (5), (8)(A)(i), (8)(B), (9)(A)(ii), (10), or (11)] of this title [(relating to Emission Specifications for Attainment Demonstrations)]:

(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) LAHA = 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, LAHA 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) EFfinal = emission factor, as listed in §§117.310, 117.1210, or 117.2010 [§§117.106, 117.206, or 117.475] of this title.

(6) For facilities using alternative emission specifications as allowed in §117.310(a)(17) [§117.206(c)(17)] or §117.2010(c)(6) [§117.475(c)(6)] of this title, the level of activity for any formula will be the lowest of the level of activity as calculated in variables (2)(A), (2)(B), or the level of activity limited by an enforceable limit or commitment necessary to qualify for an alternative emission specification in §117.310(a)(17) [§117.206(c)(17)] or §117.2010(c)(6) [§117.475(c)(6)] of this title.

(b) - (h) (No change.)

§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 §§117.340, 117.1240, and 117.2035 [§§117.114, 117.214, and 117.479] of this title (relating to Continuous Demonstration of Compliance; and Monitoring and Testing Requirements [Emission Testing and Monitoring for the Houston/Galveston Attainment Demonstration; and Monitoring, Recordkeeping, and Reporting Requirements]).

(b) - (d) (No change.)

(e) Allowances shall be deducted from a site's compliance account in an amount equal to the nitrogen oxides (NO_x) emissions increases from facilities not subject to an emission specification under §117.310 or §117.2010 [§117.206 or §117.475] of this title (relating to Emission Specifications for Attainment Demonstration [Demonstrations]; and Emission Specifications) which result from changes made after December 31, 2000, to facilities subject to this division and §117.310(e)(3) [§117.206(h)(3)] or §117.2010(f) [§117.475(f)] of this title. Documentation detailing these increases in NO_x emissions shall be included with the submittal of the ECT-1 Form, Annual Compliance Report.

(f) - (g) (No change.)

§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) - (2) (No change.)

(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 [§§117.106, 117.206, or

117.475] of this title (relating to Emission Specifications for Attainment Demonstration [Demonstrations]; 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 [(relating to Permits by Rule)] 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) - (c) (No change.)

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 4: DISCRETE EMISSION CREDIT BANKING AND TRADING

§101.372, §101.376

STATUTORY ATHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; 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 proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission 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 control of the state's air. The amended sections are also proposed 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 §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended sections are also proposed under 42 USC, §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, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.372. General Provisions.

(a) - (c) (No change.)

(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 [§§117.106, 117.206, or 117.475] of this title (relating to Emission Specifications for Attainment

Demonstration [Demonstrations]; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall quantify reductions in NO_x using the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) Facilities subject to the requirements under §§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542 of this title (relating to [Emission Specifications; and] 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) (No change.)

(2) - (3) (No change.)

(e) - (m) (No change.)

§101.376. Discrete Emission Credit Use.

(a) - (c) (No change.)

(d) Notice of intent to use.

(1) (No change.)

(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, 117.3020, or 117.3123 [§§117.108, 117.138, 117.210, or 117.223] of this title (relating to [System Cap; and] Source Cap; System Cap; and Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements), 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)

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

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) [§§117.108(c)(1), 117.138(c), 117.210(c)(1) or (2), or 117.223(b)(1)] of this title (relating to Source Cap; and System Cap[;and Source 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) [§§117.108(c)(1), 117.138(c), 117.210(c)(1) or (2), or 117.223(b)(1)] 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)

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

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)(1), 117.223(b)(1), 117.320(c)(3), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(2), 117.1120(c)(2), or 117.1220(c)(2) [§§117.108(c)(2), 117.210(c)(3), or 117.223(b)(1)] of this title (relating to [System Cap; and] Source Cap; Emission Specifications for Attainment Demonstration; and System Cap) as applicable

H_{Mi} = the maximum daily heat input, in MMBtu/day, as defined in

§§117.123(b)(1), 117.223(b)(1), 117.320(c)(3), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(2), 117.1120(c)(2), or 117.1220(c)(2) [§§117.108(c)(2), 117.210(c)(3), or 117.223(b)(1)] of this title as applicable

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

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

(B) - (E) (No change.)

(3) - (5) (No change.)

(e) (No change.)

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 5: SYSTEM CAP TRADING

§101.383, §101.385

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; 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 proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission 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 control of the state's air. The amended sections are also proposed 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 §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended sections are also proposed under 42 USC, §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, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.383. General Provisions.

(a) (No change.)

(b) System cap limits for units within an electric power generating system as regulated under §117.3020 [§117.138] of this title (relating to System Cap) may be exceeded with surplus emission allowables obtained for that calendar year from another source owner or operator participating in a system cap.

(c) (No change.)

§101.385. Recordkeeping and Reporting.

(a) (No change.)

(b) The owner or operator of a source participating in a system cap limit for sources subject to §117.3020 [§117.138] of this title (relating to System Cap) shall submit to the executive director an annual report.

(1) - (3) (No change.)

(c) (No change.)