The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §117.570, Trading. This amendment is also proposed as a revision to the Texas state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Section 117.570 currently refers to 30 TAC §101.29, Emissions Credit Banking and Trading, as a method of meeting emission requirements in Chapter 117. In concurrent rulemaking, §101.29 would be repealed and its requirements transferred and amended to new Chapter 101, Subchapter H, Divisions 1 and 4. This rulemaking would amend §117.570 to cite the correct cross-references and relocate equations and methodologies for calculating emission requirements to comply with Chapter 117 nitrogen oxides (NO_X) emission specifications to Chapter 101, Subchapter H, Divisions 1 and 4. In addition, the amended section would require the user of credits to obtain additional emission credits or achieve lower actual emissions if new lower NO_X emission specifications are established by future amendments to Chapter 117.

The commission solicits comment on additional flexibilities relating to rule content and implementation which have not been addressed in this or other concurrent rulemakings. These flexibilities may be available for both mobile and stationary sources. Additional flexibilities may also be achieved through innovative and/or emerging technology which may become available in the future. Additional sources of funds for incentive programs may become available to substitute for some of the measures considered here.

SECTION BY SECTION DISCUSSION

The revised §117.570 changes the title of the section to "Use of Emissions Credits for Compliance" from "Trading" to more clearly reflect the language in §117.570, which discusses how to use emission reduction credits for alternative compliance, not how to trade emission reduction credits.

The proposed amendment to §117.570(a) removes the reference to §101.29 and replace it with a reference to Chapter 101, Subchapter H, Division 1, Emission Reduction Credit Banking and Trading, or Chapter 101, Subchapter H, Division 4, Discrete Emission Reduction Banking and Trading. In addition, this proposal clarifies that emission reduction credits (ERCs), mobile emission reduction credits (MERCs), discrete emission reduction credits (DERCs), or mobile discrete emission reduction credits (MDERCs) may be used to meet certain control requirements of Chapter 117. This option would be limited to those units not subject to the mass cap and trade requirements of Chapter 101, Subchapter H, Division 3. The term "RC" refers to an ERC, MERC, DERC, or MDERC.

The existing §117.570(b), and the equations located there, would be deleted because the methodology for computing emission credits for compliance with Chapter 117 would be revised to be consistent with existing methodology in §101.29. In concurrent rulemaking, §101.29 would be repealed and its requirements transferred to Chapter 101, Subchapter H, new Divisions 1 and 4.

The existing §117.570(c), and the equations located there, would be deleted. The equations currently in §117.570(c)(1) would be transferred to Chapter 101, Subchapter H, new Divisions 1 and 4 in concurrent rulemaking. The equations in §117.570(c)(2) would be deleted because the methodology for computing emission credits for compliance with Chapter 117 would be revised to be consistent with

existing methodology in §101.29. In concurrent rulemaking, §101.29 would be repealed and its requirements transferred to Chapter 101, Subchapter H, new Divisions 1 and 4.

The amendments to §117.570(d) would redesignate the subsection to §117.570(b) and would remove the requirement to reevaluate used RCs and add language detailing how owners or operators using Chapter 101, Subchapter H, Division 1 or Division 4 to meet the emission control requirements of Chapter 117 must obtain additional RCs or reduce actual emissions if any lower volatile organic compound emission specification is established by Chapter 117 for the unit or units using RCs.

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for any unit of state and local government as a result of administration or enforcement of the proposed amendment.

The proposed amendment will achieve administrative consistency with amendments proposed in concurrent rulemaking by correcting a cross-reference made to sections relating to emission credit banking and trading. The concurrent rulemaking would repeal and transfer requirements, and move equations related to the calculation of emission credits for compliance with emission reduction requirements.

The proposed amendment does not add regulatory requirements, but is proposed to allow compliance flexibility in meeting current or future NO_X emission limitations. The proposed amendment clarifies that ERCs, MERCs, DERCs, or MDERCs may be used to meet any of the requirements for meeting emission requirements. Additionally, the proposed amendment adds language describing how owners or operators using emission credit banking and trading to meet emission control requirements must obtain additional emission credits or reduce actual emissions if any lower NO_X emission specification is established by future amendments.

PUBLIC BENEFIT AND COSTS

Mr. Davis has also determined for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of implementing the amendment will be the increased compliance with NO_X emissions limitations through increased rule flexibility.

There are no anticipated fiscal impacts to persons and businesses as a result of implementation of the proposed amendment because the proposed actions are administrative in nature. The proposed amendment will correct a cross-reference with Chapter 101, clarify the use of ERCs, MERCs, DERCs, and MERCs, and will add language specifying that owners must obtain additional emission credits or lower actual emissions if stricter NO_X requirements are implemented through future amendments.

SMALL AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of administration or enforcement of the proposed amendment. The proposed actions are administrative in nature. The

proposed amendment will correct a cross-reference with Chapter 101, clarify the use of ERCs, MERCs, DERCs, and MERCs, and will add language specifying that owners must obtain additional emission credits or lower actual emissions if stricter NO_X requirements are implemented through future amendments to Chapter 117.

DRAFT REGULATORY ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission has determined that these proposed amendment to Chapter 117 does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission is proposing the amendment to achieve administrative consistency with amendments to Chapter 101 proposed in concurrent rulemaking. The proposed amendment to Chapter 117 does not add regulatory requirements, but is proposed to allow compliance flexibility in meeting current or future NO_X emission limitations in Chapter 117. In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general

powers of the agency instead of under a specific state law. This rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rule does not meet any of the four applicability requirements. Specifically, the emission banking and trading requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA under the Federal Clean Air Act (FCAA), §7409, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established those standards. Under the FCAA, §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through a control program directed to sources of the pollutants involved. This proposal is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS, as authorized under the TCAA, §382.012 (concerning State Air Control Plan). This proposal is intended to help bring the HGA ozone nonattainment area into compliance. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law unless specifically required by federal law, nor exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency, but were specifically developed to meet the air quality standards established under federal law as NAAQS. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the proposed rule. The following is a summary of that assessment. The commission is proposing the amendment to achieve administrative consistency with amendments to Chapter 101 proposed in concurrent rulemaking. The proposed

amendment to Chapter 117 does not add regulatory requirements, but is proposed to allow compliance flexibility in meeting current or future NO_X emission limitations in Chapter 117. The proposed amendment does not affect private real property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, the proposed section does not meet the definition of a takings under Texas Government Code, §2007.002(5).

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12 (1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The proposed amendment to Chapter 117 does not add regulatory requirements, but is proposed to allow compliance flexibility in meeting current or future NO_X emission limitations in Chapter 117. Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Sources which currently have §117.570 listed in their federal operating permit would not be required to amend the permit in response to this amendment. However, those sources that do not have a reference to §117.570 in their operating permit and wish to use RCs must revise their operating permit consistent with the process in 30 TAC Chapter 122, to include the revised §117.570 requirements for each emission unit affected by §117.570 at their site.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations: September 18, 2000, 10:00 a.m., Lone Star Convention Center, 9055 Airport Road (FM 1484), Conroe; September 18, 2000, 7:00 p.m., Lake Jackson Civic Center, 333 Highway 332 East, Lake Jackson; September 19, 2000, 10:00 a.m. and 7:00 p.m., George Brown Convention Center, 1001 Avenida de Las Americas, Houston; September 20, 2000, 9:00 a.m., VFW Hall, 6202 George Bush Drive, Katy; September 20, 2000, 6:00 p.m., East Harris County Community Center, 7340 Spencer, Pasadena; September 21, 2000, 10:00 a.m., Southeast Texas Regional Airport Media Room, 6000 Airline Drive, Beaumont; September 21, 2000, 2:00 p.m., Amarillo City Commission Chambers, City Hall, 509 East 7th Avenue, Amarillo; September 21, 2000, 6:00 p.m., Charles T. Doyle Convention Center, 21st Street at Phoenix Lane, Texas City; September 22, 2000, 10:00 a.m., Dayton High School, 2nd Floor Lecture Room, 3200 North Cleveland Street, Dayton; September 22, 2000, 11:00 a.m., El Paso City Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso; September 22, 2000, 2:00 p.m., North Central Texas Council of Governments, 2nd Floor Board Room, 616 Six Flags Drive, Suite 200, Arlington; and September 25, 2000, 10:00 a.m., Texas Natural Resource Conservation Commission, 12100 North I-35, Building E, Room 201S, Austin. The

hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin one hour prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit will be established at each hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during each hearing; however, agency staff members will be available to discuss the proposal one hour before each hearing, and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Heather Evans, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-4808, or emailed to siprules@tnrcc.state.tx.us. All comments should reference Rule Log Number 1998-089-101-AI. Comments must be received by 5:00 p.m., September 25, 2000. For further information, please contact Matthew R. Baker at (512) 239-1091 or Beecher Cameron at (512) 239-1495.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.017, which provides the commission the authority to

adopt rules consistent with the policy and purposes of the TCAA, and 42 United States Code, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed amendment implements TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; and §382.012, relating to State Air Control Plan.

CHAPTER 117: CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

SUBCHAPTER E : ADMINISTRATIVE PROVISIONS

§117.570

§117.570. Use of Emissions Credits for Compliance [Trading].

(a) An owner or operator of a unit not subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emission Cap and Trade Program) may meet emission control requirements of [may reduce the amount of emission reductions required by] §117.105 or §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), §117.106 or §117.206 of this title (relating to Emission Specifications for Attainment Demonstrations), §117.107 of this title (relating to Alternative System-Wide Emission Specifications), §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), §117.108 of this title (relating to System Cap), §117.223 of this title (relating to Source Cap), or §117.475 of this title (relating to Emission Specifications) in whole or in part, by obtaining an emission reduction credit (ERC), mobile emission reduction credit (MERC), discrete emission reduction credit (DERC), or mobile discrete emission reduction credit (MDERC) [established] in accordance with [this section and §101.29 of this title (relating to Emission Credit Banking and Trading)] Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading) or Chapter 101, Subchapter H, Division 4 of this title (relating to Discrete Emission Reduction Banking and Trading), unless there are federal or state regulations or permits under the same commission account number which contain a condition or conditions precluding such use. [Any ERCs or DERCs for nitrogen oxides (NO_x) generated under the provisions of §101.29 of this title used for the purposes of this chapter

become subject to the limitations and provisions of this section.] For the purposes of this section, the term "reduction credit (RC)" [“RC”] refers to an ERC, MERC, DERC, or MDERC, whichever is applicable.

[(b) Reduction credits (RCs) shall be generated as follows.]

[(1) For sources not subject to the emission specifications of §§117.105, 117.205, or 117.206 of this title, creditable RCs used to meet compliance with those sections shall be established in accordance with the following requirements:]

[(A) The source shall use emissions test data to establish the actual emissions baseline in accordance with the testing requirements of §117.209(b) of this title (relating to Initial Control Plan Procedures), or §117.111 or §117.211 of this title (relating to Initial Demonstration of Compliance), as applicable. The actual emissions baseline is defined as the actual annual emissions, in tons per year, from a source determined by use of data representative of actual operations:]

[(i) in 1990 or later, for compliance with emission specifications required for reasonably available control technology under §117.105 or §117.205(a)-(d) of this title;]

[(ii) after September 10, 1993 for compliance with emission specifications required for the Beaumont/Port Arthur ozone attainment demonstration under §§117.106, 117.205(e), or 117.206 of this title;]

[(iii) after 1997 for compliance with emission specifications required for the Dallas/Fort Worth ozone attainment demonstration under §117.106 or §117.206 of this title;]

[(iv) assuming full compliance with all applicable state and federal rules and regulations;]

[(B) If the source creating the RC has been shut down or irreversibly changed, the source shall use the best available data and good engineering practice to establish the actual emissions baseline.]

[(2) For sources subject to the emission specifications of §§117.105, 117.106, 117.205, or 117.206 of this title, creditable RCs shall be calculated using the following equations:]

[Figure: 30 TAC §117.570(b)(2)]

Figure: 30 TAC §117.570(b)(2)

$$\text{ERCs (tons per year)} = \sum_{j=1}^{N} \left[H_j \times (R_{Aj} - R_{Bj}) \times \frac{365}{2000} \right]$$

$$\text{DERCs (tons)} = \sum_{j=1}^{N} \left[H_j \times (R_{Aj} - R_{Bj}) \times \frac{d}{2000} \right]$$

or

Where:

j = each emission unit subject to this section generating RCs

N = the total number of emission units subject to this section generating RCs

H_j = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to:

(i) §117.108(c) of this title for compliance with] §117.108 of this title;

(ii) §117.223(b)(1) of this title for compliance with §117.205(e) or §117.206 of this title, except that the term may not include one standard deviation of the average daily heat input for the period; or for units that have been shutdown

(I) prior to June 9, 1993, as calculated according to §117.223(g)(3) of this title, except that the term may not include one standard deviation of the average daily heat input for the period for compliance with §117.105 or §117.205(a)-(d) of this title; or

(II) in accordance with §117.223(h) of this title, for compliance with §117.205(e), or §117.206 of this title.

R_{Aj} = (A) For ERCs:

(i) For compliance with §117.105 or §117.205(a)-(d) of this title, the lowest of

(I) any applicable federally enforceable emission limitation;

(II) the reasonably available control technology (RACT) limit of §117.105 or §117.205(b)-(d) of this title; or

(III) the actual emission rate as of June 9, 1993, in pound (lb)/MMBtu, that apply to emission unit *j* in the absence of trading.

For units that have been shut down prior to June 9, 1993, the actual emission rate shall be considered to be the average annual emission rate occurring over the period used to define the unit's baseline heat input, H_j.

(ii) For compliance with §§117.106, 117.205(e), or §117.206 of this title, the lowest of:

(I) the appropriate limit of §§117.205(e), 117.206, or 117.207(f) of this title;

(II) any permit emission limit for any unit subject to a permit issued pursuant to Chapter 116 of this title, in lb NO_x/MMBtu, that applies to emission unit *I* in the absence of trading, in the:

(-a-) Beaumont Port Arthur ozone nonattainment area, in effect on September 10, 1993; and

(-b-) Dallas/Fort Worth ozone nonattainment area, in effect on September 1, 1997; and

(III) the actual emission rate as of the dates specified in subclause (II) of this clause. All calculations of emission rates shall presume that emission controls in effect on the dates specified in subclause (II) of this clause are in effect for the two-year period used in calculating the actual heat input.

(B) For DERCs, the lower of:

(i) any enforceable emission limitation applicable during the generation period; or

(ii) the baseline emission rate defined in §101.29(a)(7) of this title (relating to Emissions Banking), in lb/MMBtu.

R_{Bj} = (A) For ERCs:

the enforceable emission rate, in lb/MMBtu, for unit *j* established in the registration under subsection (e) of this section;

(B) For DERCs:

the average emission rate, in lb/MMBtu, for unit *j* during the generation period

d = the total number of days in the generation period

[(3) RCs from shutdown units may be generated only by units participating in a source cap in accordance with §117.223 of this title.]

[(4) For units participating in a source cap in accordance with §117.223 of this title, creditable RCs may be generated only under the following conditions:]

[(A) The source cap allowable must be reduced by the amount of any creditable ERCs claimed for the unit or units, and]

[(B) the actual historical average of the daily heat input for the unit or units may not include one standard deviation of the actual average daily heat input for the period for which creditable reductions are claimed.]

[(c) Reduction credits shall be used as follows.]

[(1) An owner or operator complying with §117.223 of this title may reduce the amount of emission reductions otherwise required by complying with the following equations instead of the equations in §117.223(b)(1) and (2) of this title.]

[Figure: 30 TAC §117.570(c)(1)]

Figure: 30 TAC §117.570(c)(1)

ERCs or MERCS:

$$\text{New 30-day rolling average emission limit (lb/day)} = \sum_{i=1}^{N} \left[(H_i \times R_i) + \left(RC_i \times \frac{2000}{365} \right) \right]$$

or

DERCs or MDERCS:

$$\text{New 30-day rolling average emission limit (lb/day)} = \sum_{i=1}^{N} \left[(H_i \times R_i) + \left(\frac{RC_i \times 2000}{d} \right) \right]$$

Where:

R_i, in lb/MMBtu, is defined as in §117.223(b)(1) of this title

i = each emission unit in the source cap

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

H_i = actual daily heat input, in MMBtu per day, as calculated according to:

(i) §117.108(c) of this title for compliance with §117.108 of this title;

(ii) §117.223(b)(1) of this title for compliance with §117.205(e) or §117.206 of this title, except that the term may not include one standard deviation of the average daily heat input for the period;

RC_i = RC used for each unit, in tons per year (for ERCs or MERCs) or tons (for DERCs), generated in accordance with subsection (b) of

this section. If RC_i is from a unit not subject to the emission specifications of §§117.105, 117.106, §117.205, or 117.206 of this title, this term becomes Rc_i/F, where F is the offset ratio for the ozone nonattainment area where the unit is located (e.g. 1.2 for Beaumont/Port Arthur and 1.3 for Houston/Galveston).

d = the total number of days in the use period

and

ERCs or MERCs:

$$\text{New maximum daily emission limit (lb/day)} = \sum_{i=1}^{N}\left[(H_{Mi} \times R_i) + \left(RC_i \times \frac{2000}{365}\right)\right]$$

or

DERCs or MDERCs:

$$\text{New maximum daily emission limit (lb/day)} = \sum_{i=1}^{N}\left[(H_{Mi} \times R_i) + \left(\frac{RC_i \times 2000}{d}\right)\right]$$

Where:

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

R_i, in lb/MMBtu, is defined as in §117.223(b)(1) of this title

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

d = the total number of days in the use period

[(2) An owner or operator complying with §§117.105, 117.106, 117.107, 117.205, 117.206, §117.207 of this title may reduce the amount of emission reduction otherwise required by those sections for a unit or units at a major source by complying with individual unit emission limits calculated from the following equation:]

[Figure: 30 TAC §117.570(c)(2)]

Figure: 30 TAC §117.570(c)(2)

DERCs or MDERCs:

$$\text{New emission limit for unit i (lb/MMBtu)} = R_{Ai} + \left(\frac{RC_i}{H_{Mi}} \times \frac{2000}{365} \right)$$

Where:

DERCs or MDERCs:

$$\text{New emission limit for unit i (lb/MMBtu)} = R_{Ai} + \left(\frac{RC_i}{H_{Mi}} \times \frac{2000}{d} \right)$$

i = each emission unit subject to this section

N = the total number of emission units subject to this section

R_{Ai} = (A) For ERCs:

(i) For compliance with §117.105 or §117.205(a)-(d) of this title, the lowest of

(I) any applicable federally enforceable emission limitation;

(II) the RACT limit of §117.105 or §117.205(b)-(d) of this title; or

(III) the actual emission rate as of June 9, 1993, in lb/MMBtu, that apply to emission unit *i* in the absence of trading.

For units that have been shut down prior to June 9, 1993, the actual emission rate shall be considered to be the average annual emission rate occurring over the period used to define the unit's baseline heat input.

(ii) For compliance with §§117.106, 117.205(e), or 117.206 of this title, the lowest of:

(I) the appropriate limit of §§117.205(e), 117.206, or 117.207(f) of this title;

(II) any permit emission limit for any unit subject to a permit issued pursuant to Chapter 116 of this title, in lb NO_x/MMBtu, that applies to emission unit *i* in the absence of trading, in the:

(-a-) Beaumont Port Arthur ozone nonattainment area, in effect on September 10, 1993; or

(-b-) Dallas/Fort Worth ozone nonattainment area, in effect on September 1, 1997; or

(III) the actual emission rate as of the dates specified in subclause (II) of this clause. All calculations of emission rates shall presume that emission controls in effect on the dates specified in subclause (II) of this clause are in effect for the two-year period used in calculating the actual heat input.

(B) For DERCs, the lower of:

(i) any enforceable emission limitation applicable during the generation period; or

(ii) the baseline emission rate defined in §101.29(a)(7) of this title, in lb/MMBtu.

d = the total number of days in the use period

and

H_{Mi} and RC_i are defined as in paragraph (1) of this subsection.

The appropriate compliance averaging period specified in §§117.105, 117.106, 117.107, 117.205, 117.206, §117.207 of this title shall be assigned to unit *i* using a RC in accordance with the provisions of this paragraph.

[(3) RCs from shutdown units may be used only by units participating in a source cap in accordance with §117.223 of this title]

(b) [(d)] Any lower NO_x emission specification established under this chapter [by rule or permit] for the unit or units using RCs [generating an ERC] shall require the user of the RCs [ERC] to obtain additional RCs in accordance with Chapter 101 Subchapter H, Division 1 of this title or Chapter 101,

Subchapter H, Division 4 of this title and/or [an approved new reduction credit or] otherwise reduce emissions prior to the effective date of such rule [or permit] change. For units using RCs [an ERC] in accordance with this section which are subject to new, more stringent rule [or permit] limitations, the owner or operator using the RCs [ERC] shall submit a revised final control plan to the executive director in accordance with §117.117 or §117.217 of this title (relating to Revision of Final Control Plan) to revise the basis for compliance with the emission specifications of this chapter. The owner or operator using the RCs [ERC] shall submit the revised final control plan as soon as practicable, but no later than 90 days prior to the effective date of the new, more stringent rule [or permit limitations]. The owner or operator of the unit(s) currently using RCs shall calculate the necessary emission reductions per unit as follows. [In addition, the owner or operator of a unit generating the ERC shall submit a revised registration application to the executive director, in accordance with subsection (e)(1) of this section, within 90 days prior to the effective date of any new, more stringent rule or permit limitations affecting that unit. If a more stringent NO_X emission specification is established by rule or permit for the unit or units generating the ERC, the value of the ERC shall be recalculated as follows:]

Figure: 30 TAC §117.570(b)

[Figure: 30 TAC §117.570(d)]

Figure: 30 TAC §117.570(b)

$$\Delta E = \left[LA \times \left(ER_{old} - ER_{new} \right) \times \frac{d}{2000} \right]$$

Where:

ΔE	=	the differential of emissions
LA	=	the maximum level of activity
ER_{old}	=	the existing NO_X emission rate for the affected in lb per unit of activity
ER_{new}	=	the new NO_x emission rate for the affected unit in lb per unit of activity
d	=	(i) to calculate annual emission reductions, d = 365 (ii) to calculate emission reductions for the remainder of a control period, d = the number of days remaining in the control period

[(e) The RC program established by this section shall be administered as follows:]

[(1) For emission units subject to the emission specifications of this chapter, which generate ERCs, MERCs, DERCs, or MDERCs and for which the owner or operator elects to comply with the individual emission specifications of §§117.105, 117.106, 117.107, 117.205, 117.206, or 117.207 of this title, the enforceable emission limit RBj shall be calculated using the maximum rated capacity.]

[(2) For emission units subject to the emission specifications of this chapter, which generate ERCs, MERCs, DERCs, or MDERCs, and for which the owner or operator elects to achieve compliance using §117.223 of this title, the enforceable emission limit RBj shall be substituted for Rj in

the source cap allowable mass emission rate equations of §117.223(b)(1) and (2) of this title, and those allowable rates shall be the enforceable limits for those sources.]