

Texas Commission on Environmental Quality
Chapter 101 - General Air Quality Rules
SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 1: EMISSION CREDIT BANKING AND TRADING

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SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 1: EMISSION CREDIT PROGRAM
§§101.300 - 101.306, 101.309, 101.311
Effective June 25, 2015

§101.300. Definitions.

Unless specifically defined in the Texas Clean Air Act or in §3.2 or §101.1 of this title (relating to Definitions), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition, the following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise.

(1) Activity--The amount of activity at a facility or mobile source measured in terms of production, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the economic output and emission rate of the facility or mobile source.

(2) Actual emissions--The total emissions during a selected time period, using the facility's or mobile source's actual daily operating hours, production rates, or types of materials processed, stored, or combusted during that selected time period.

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

(4) Baseline emissions--The facility's emissions, in tons per year, occurring before implementation of an emission reduction strategy calculated as the lowest of the facility's historical adjusted emissions or state implementation plan emissions.

(5) Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(6) Curtailment--A reduction in activity level at any facility or mobile source.

(7) Emission credit--An emission reduction credit or mobile emission reduction credit.

(8) Emission rate--The facility's rate of emissions per unit of activity.

(9) Emission reduction--An actual reduction in emissions from a facility or mobile source.

(10) Emission reduction credit--A certified emission reduction, expressed in tenths of a ton per year, that is created by eliminating future emissions and quantified during or before the period in which emission reductions are made from a facility.

(11) Emission reduction strategy--The method implemented to reduce the facility's or mobile source's emissions beyond that required by state or federal law, regulation, or agreed order.

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

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

(14) Historical adjusted emissions--The facility's emissions occurring before implementation of an emission reduction strategy and adjusted for any local, state, or federal requirement, calculated using the following equation.

Figure: 30 TAC §101.300(14)

$$E_H = \frac{(A_1 \times ER_1) + (A_2 \times ER_2)}{2}$$

Where:

E_H = The historical adjusted emissions for a facility.

A_1 = The facility's activity during the first of any two consecutive calendar years selected in accordance with §101.303(b)(2) of this title (relating to Emission Reduction Credit Generation and Certification), not to exceed any applicable local, state, or federal requirement.

ER_1 = The facility's emission rate during the first of any two consecutive calendar years selected in accordance with §101.303(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

A_2 = The facility's activity during the second of any two consecutive calendar years selected in accordance with §101.303(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

ER_2 = The facility's emission rate during the second of any two consecutive calendar years selected in accordance with §101.303(b)(2) of this title, not to exceed any local, state, or federal requirement.

(15) **Mobile emission reduction credit**-- A certified emission reduction from a mobile source, expressed in tons per year, that is created by eliminating future emissions and quantified during and before the period in which reductions are made from that mobile source.

(16) **Mobile source**--On-road (highway) vehicles (e.g., automobiles, trucks, and motorcycles) and non-road vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).

(17) **Mobile source baseline activity**--The level of activity of a mobile source based on an estimate for each year for which the credits are to be generated. After the initial year, the annual estimates should reflect:

(A) the change in the mobile source emissions to reflect any deterioration in the emission control performance of the participating source;

(B) the change in the number of mobile sources resulting from normal retirement or attrition, and the replacement of retired mobile sources with newer and/or cleaner mobile sources;

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

(D) the change in the expected useful life of the participating population.

(18) **Mobile source baseline emissions**--The mobile source's actual emissions, in tons per year, occurring prior to a mobile emission reduction strategy calculated as the product of mobile source activity and the mobile source emissions rate not to exceed all limitations required by applicable local, state, and federal rules and regulations.

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

(20) **Permanent**--An emission reduction that is long-lasting and unchanging for the remaining life of the facility or mobile source. Such a time period must be enforceable.

(21) Protocol--A replicable and workable method of estimating emission rate or activity level used to calculate the amount of emission reduction generated or credits required for facilities or mobile sources.

(22) Quantifiable--An emission reduction that can be measured or estimated with confidence using replicable methodology.

(23) Real reduction--A reduction in which actual emissions are reduced.

(24) Shutdown--The permanent cessation of an activity producing emissions at a facility or mobile source.

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

(26) State implementation plan--A plan that provides for attainment and maintenance of a primary or secondary national ambient air quality standard as adopted in 40 Code of Federal Regulations Part 52, Subpart SS.

(27) State implementation plan (SIP) emissions--The emissions data in the state's emissions inventory (EI) required under 40 Code of Federal Regulations Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The SIP emissions may not exceed any applicable local, state, or federal requirement. A facility's SIP emissions are determined from the EI year that:

(A) was used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the United States Environmental Protection Agency (EPA) for the current National Ambient Air Quality Standard (NAAQS);

(B) if the SIP revisions identified in subparagraph (A) of this paragraph have not been submitted to the EPA, was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS;

(C) if the SIP revisions identified in subparagraphs (A) and (B) of this paragraph have not been submitted to the EPA, corresponds to the EI for the most recent EI SIP revision submitted to the EPA; or

(D) if the SIP revisions identified in subparagraphs (A) - (C) of this paragraph have not been submitted to the EPA, corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA.

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

(29) Surplus--An emission reduction that is not otherwise required of a facility or mobile source by any applicable local, state, or federal requirement and has not been otherwise relied upon in the state implementation plan.

(30) User--The owner or operator of a facility or mobile source that acquires and uses emission credits to meet a regulatory requirement, demonstrate compliance, or offset an emission increase.

Adopted June 3, 2015

Effective June 25, 2015

§101.301. Purpose.

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

Adopted June 3, 2015

Effective June 25, 2015

§101.302. General Provisions.

(a) Applicable pollutants.

(1) An emission reduction credit (ERC) may be generated from a reduction of a criteria pollutant, excluding lead, or a precursor of a criteria pollutant for which an area is designated nonattainment. An ERC generated from the reduction of one pollutant or precursor may not be used to meet the requirements for another pollutant or precursor, except as provided by §101.306(d) of this title (relating to Emission Credit Use).

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

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

(1) facilities, including area sources;

(2) mobile sources; and

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(c) Emission credit requirements.

(1) An ERC is a certified emission reduction that:

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

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

(C) must occur after the year used to determine the state implementation plan (SIP) emissions for the facility.

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

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

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

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

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

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

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

(d) Protocol.

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

(A) The owner or operator of a facility subject to the emission specifications under §§117.110, 117.310, 117.410, 117.1010, 117.1210, 117.1310, 117.2010, or 117.2110 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall use the testing and monitoring methodologies required under Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) to show compliance with the emission specification for that pollutant.

(B) The owner or operator of a facility subject to the requirements under Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) shall use the testing and monitoring methodologies required under Chapter 115 of this title to show compliance with the applicable requirements.

(C) The executive director may approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility or mobile source.

(D) Except as specified in subparagraph (C) of this paragraph, if the executive director has not submitted a protocol for the applicable facility or mobile source to the EPA for approval, the following requirements apply:

(i) the amount of emission credits from a facility or mobile source, in tons per year, will be determined and certified based on quantification methodologies at least as stringent as the methods used to demonstrate compliance with any applicable requirements for the facility or mobile source;

(ii) the generator shall collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the facility's or mobile source's activity level for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

(iii) the owner or operator of a facility with a continuous emissions monitoring system or predictive emissions monitoring system in place shall use this data in quantifying emissions;

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

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

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

(2) If the monitoring and testing data specified in paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine the facility's emissions for the period of time the data is missing or unavailable using the most conservative method for replacing the data and these listed methods in the following order:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

(E) EPA Compilation of Air Pollution Emission Factors (AP-42),
September 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator or user shall submit the justification for not using the methods in paragraph (1) of this subsection and submit the justification for the method used.

(e) Credit certification.

(1) The amount of emission credits in tons per year will be determined and certified to the nearest tenth of a ton per year.

(2) The executive director shall review an application for certification to determine the credibility of the reductions. Each ERC certified will be assigned a certificate number. A new number will be assigned when an ERC is traded or partly used. Reductions determined to be creditable and in compliance with all other requirements of this division will be certified by the executive director.

(3) The applicant will be notified in writing if the executive director denies the emission credit application. The applicant may submit a revised application in accordance with the requirements of this division. If a facility's or mobile source's actual emissions exceed any applicable local, state, or federal requirement, reductions of emissions exceeding the requirement may not be certified as emission credits. An application for certification of emission credit from reductions quantified under subsection (d)(1)(D) of this section may only be approved after the EPA's 45-day adequacy review of the protocol.

(f) Geographic scope. Except as provided in §101.305 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in nonattainment areas can be certified. An emission credit must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the executive director and the EPA; and

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

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

generated contribute to a violation of the national ambient air quality standard in the nonattainment area of use.

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

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

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

(3) the certificate number of emission credits used for each facility or mobile source.

(h) Public information. All information submitted with notices, reports, and trades regarding the nature, quantity, and sales price of emissions associated with the use, generation, and transfer of an emission credit is public information and may not be submitted as confidential. Any claim of confidentiality for this type of information, or failure to submit all information, may result in the rejection of the emission credit application. All nonconfidential information will be made available to the public as soon as practicable.

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

(j) Program participation. The executive director has the authority to prohibit a person from participating in emission credit trading either as a generator or user, if the executive director determines that the person has violated the requirements of the program or abused the privileges provided by the program.

(k) Compliance burden. A user may not transfer their compliance burden and legal responsibilities to a third-party participant. A third-party participant may only act in an advisory capacity to the user.

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

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

(2) whether the owner or operator of the facility or mobile source lacks the potential to generate 1/10 ton of credit.

Adopted June 3, 2015

Effective June 25, 2015

§101.303. Emission Reduction Credit Generation and Certification.

(a) Emission reduction strategy.

(1) An emission reduction credit (ERC) may be generated using one of the following strategies or any other method that is approved by the executive director:

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

(B) the installation and operation of pollution control equipment that reduces emissions below baseline emissions for the facility;

(C) a change in a manufacturing process that reduces emissions below baseline emissions for the facility;

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

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

(2) An ERC may not be generated from the following strategies:

(A) reductions from the shifting of activity from one facility to another facility at the same site;

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

(C) reductions from a facility without state implementation plan (SIP) emissions.

(b) ERC baseline emissions.

(1) The baseline emissions may not exceed the facility's SIP emissions.

(2) The activity and emission rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years selected from the ten consecutive years immediately before the emission reduction is achieved.

(3) For a facility in existence less than 24 months or not having two complete calendar years of activity data, a shorter period of not less than 12 months may be considered by the executive director.

(c) ERC calculation. The quantity of ERCs is determined by subtracting the facility's strategic emissions from the facility's baseline emissions, as calculated in the following equation.

Figure: 30 TAC §101.303(c)

$$ERC = BE - SE$$

Where:

ERC = The amount of emission reduction credits generated, in tenths of a ton per year.

BE = The facility's baseline emissions, which is the lowest of the historical adjusted emissions or the state implementation plan emissions.

SE = The facility's strategic emissions, which is the enforceable emission limit for the facility after implementation of the emission reduction strategy.

(d) ERC certification.

(1) The owner or operator of a facility with potential ERCs shall submit to the executive director an application for ERCs no more than two years after the implementation of the emission reduction strategy. Applications will be reviewed to determine the credibility of the reductions. Reductions determined to be creditable will be certified by the executive director and an ERC will be issued to the owner.

(2) ERCs must be quantified in accordance with §101.302(d) of this title (relating to General Provisions). The executive director shall have the authority to inspect and request information to assure that the emissions reductions have actually been achieved.

(3) An application for ERCs must include, but is not limited to, a completed application form specified by the executive director signed by an authorized representative of the applicant along with the following information for each pollutant reduced at each applicable facility:

(A) a complete description of the emission reduction strategy;

(B) the amount of ERCs generated;

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

(D) documentation supporting the activity, emission rate, historical adjusted emissions, SIP emissions, baseline emissions, and strategic emissions;

(E) emissions inventory data for each of the years used to determine the SIP emissions and historical adjusted emissions;

(F) the most stringent emission rate and the most stringent emission level, considering all applicable local, state, and federal requirements;

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

(H) the actual calculations performed by the generator to determine the amount of ERCs generated.

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

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

(B) voiding a new source review permit when a facility has been shut down; or

(C) for any facility without a new source review permit that is otherwise authorized by commission rule, certifying the emission reduction and the new maximum emission limit on a Certification of Emission Limits (Form APD-CERT) or other form considered equivalent by the executive director or an agreed order.

Adopted June 3, 2015

Effective June 25, 2015

§101.304. Mobile Emission Reduction Credit Generation and Certification.

(a) Methods of generation.

(1) Mobile emission reduction credits (MERC) may be generated by any mobile source emission reduction strategy that creates actual mobile source emission reductions under these rules and subject to the approval of the commission.

(2) MERCs may not be generated from the following strategies:

(A) that portion of reductions funded through a state or federal program, unless specifically allowed under that program;

(B) through the transfer of emissions from one mobile source to another mobile source within the same nonattainment area and under common ownership or control; or

(C) reduction strategies resulting in secondary emissions increases that exceed limits established under state or federal rules or regulations.

(b) MERC baseline emissions.

(1) Mobile source baseline emissions shall be calculated with either measured emissions of an appropriately sized sample of the participating mobile sources using a United States Environmental Protection Agency (EPA)-approved test procedure, or by estimating emissions of the participating mobile sources using the most recent edition of the EPA on-road or non-road mobile emissions factor models or other model as applicable.

(2) Mobile source baseline emissions for each year of the proposed mobile source reduction strategy must be the same as, or lower than, those used or proposed to be used in the state implementation plan (SIP) in which the reduction strategy is proposed.

(3) Baseline emissions for quantifying MERCs should include, but not be limited to, the following information and data as appropriate:

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

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

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

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

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

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

(c) MERC calculation. The quantity of MERCs must be calculated from the annual difference between the mobile source baseline emissions and the projected emissions level after the MERC strategy has been put in place. The projected emissions must be based on the best estimate of the actual in-use emissions of the modified or substitute on-road or non-road vehicles or transportation system. Any estimate of a projected annual mobile source emissions level based on an assumption of reduced consumer service or transportation service would not be allowed without the support of a convincing analytical justification of the assumption.

(d) Emission offsets. Mobile source reduction strategies that reduce emissions in one criteria pollutant or precursor for which an area is designated nonattainment, yet result in an emissions increase of another criteria pollutant or precursor for which that same area is nonattainment and from the same mobile source, must be required to offset the resulting increase at a 1:1 ratio with ERCs or MERCs.

(e) MERC certification.

(1) Mobile sources with potential MERCs shall submit to the executive director an MEC-1 Form, Application for Mobile Emission Credits, within 180 days of implementation of the strategy. Upon approval of the application, the executive director shall issue a MERC certificate(s) to the person, company, business, organization, or public entity generating the mobile emission reduction. A MERC certificate will indicate

the total amount of certified emission credits, the quantity available on an annual basis, and the date upon which the last annualized emission reduction expires.

(2) MERCs will be determined and certified in accordance with §101.302(d) of this title (relating to General Provisions) using:

- (A) EPA methodologies, when available;
- (B) actual monitoring results, when available;
- (C) calculations using the most current EPA mobile emissions factor model or other model as applicable; or
- (D) calculations using creditable emission reduction measurement or estimation methodologies that satisfactorily address the analytical uncertainties of mobile source emissions reduction strategies.

(3) An application for MERCs must include, but is not limited to, a completed MEC-1 Form signed by an authorized representative of the applicant along with the following information for each pollutant reduced by each applicable mobile source:

- (A) the date of the reduction;
- (B) a complete description of the generation strategy;
- (C) the amount of emission credits generated;
- (D) documentation supporting the mobile source baseline activity, mobile source baseline emission rate, mobile source baseline emissions, and the mobile source strategy emissions;
- (E) a complete description of the protocol used to calculate the emission reduction generated;
- (F) the actual calculations performed by the generator to determine the amount of emission credits generated; and
- (G) a demonstration that the reductions are surplus to all local, state, and federal rules and to emission modeled in the SIP.

(4) MERCs will be made enforceable by obtaining an agreed order that sets a new maximum allowable mobile source emission limit.

Adopted November 10, 2004

Effective December 2, 2004

§101.305. Emission Reductions Achieved Outside the United States.

(a) A facility may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section.

(b) A facility may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants and substitute these reductions for reductions in other criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section; and

(1) the reduction is substituted for the reduction of another criteria pollutant and the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area; or

(2) a reduction of an air contaminant for which the area in which the facility is located has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment is substituted for any air contaminant for which the area has been designated as nonattainment or leads to the formation of any criteria pollutant for which the area has been designated as nonattainment.

(c) The use of reductions outside the United States must be approved by the executive director and the United States Environmental Protection Agency (EPA), and the user of the emission reduction must:

(1) demonstrate to the executive director and EPA that the reduction is real, permanent, enforceable, quantifiable, and surplus to any applicable Mexican, federal, state, or local law;

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

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

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

(d) This section does not apply to reductions in emissions of lead.

Adopted October 4, 2006

Effective October 26, 2006

§101.306. Emission Credit Use.

(a) Uses for emission credits. Unless precluded by a commission order or a condition or conditions within an authorization under the same commission account number, emission credits may be used as the following:

(1) offsets for a new source, as defined in §101.1 of this title (relating to Definitions), or major modification to an existing source;

(2) mitigation offsets for action by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans;

(3) an alternative means of compliance with volatile organic compound and nitrogen oxides reduction requirements to the extent allowed in Chapters 115 and 117 of this title (relating to Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds);

(4) reductions certified as emission credits may be used in netting by the original applicant, if not used, sold, reserved for use, or otherwise relied upon, as provided by Chapter 116, Subchapter B of this title (relating to New Source Review Permits); or

(5) compliance with other requirements as allowed in any applicable local, state, and federal requirement.

(b) Credit use calculation.

(1) The number of emission credits needed by the user for offsets shall be determined as provided by Chapter 116, Subchapter B of this title.

(2) For emission credits used in compliance with Chapter 115 or 117 of this title, the number of emission credits needed should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.

Figure: 30 TAC §101.306(b)(2)

$$EC = A \times (ER_p - ER_r)$$

Where:

EC = The amount of emission credits needed.

A = The maximum projected annual activity level during use period.

ER_p = The projected emission rate per unit of activity during use period.

ER_r = The emission rate per unit of activity required by Chapter 115 or 117 of this title (relating to Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds).

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

Figure: 30 TAC §101.306(b)(3)

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

Where:

ECs = The amount of emission credits needed.

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

i = Each emission unit in the source cap.

H_n = The maximum daily heat input, in million British thermal units (MMBtu) per day, expected for an emission unit during the use period.

R_n = The maximum emission factor, in pounds per MMBtu (lb/MMBtu), expected for an emission unit during the use period.

H_i = The actual daily heat input, in MMBtu per day, as calculated according to §§117.123(b)(1) or (2), 117.320(c)(1) - (3), 117.323(b)(1) or (2), 117.423(b)(1) or (2), 117.1020(c)(1) or (2), or 117.1220(c)(1) or (2) of this title.

R_i = The facility's emission factor, in lb/MMBtu, as defined in §§117.123(b)(1) or (2), 117.320(c)(1) - (3), 117.323(b)(1) or (2), 117.423(b)(1) or (2), 117.1020(c)(1) or (2), or 117.1220(c)(1) or (2) of this title.

(4) Emission credits used for compliance with any other applicable program should be determined in accordance with the requirements of that program and must contain at least 10% extra to be retired as an environmental contribution, unless otherwise specified by that program.

(c) Notice of intent to use emission credits.

(1) Application to use ERCs. The executive director will not accept an application to use ERCs before the ERC is available in the compliance account for the site where it will be used. If the ERC will be used for offsets, the executive director will not accept the ERC application before the applicable permit application is administratively complete.

(A) The user shall submit a completed application at least 90 days before the start of operation for an ERC used as offsets in a permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(B) The user shall submit a completed application at least 90 days before the planned use of an ERC for compliance with the requirements of Chapter 115 or 117 of this title or other programs.

(C) If the executive director approves the ERC use, the date the application is submitted will be considered the date the ERC is used.

(2) Application to use mobile emission reduction credits (MERCs).

(A) For MERCs which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title, the MERCs must be identified prior to permit issuance. Prior to construction, the offsets must be provided through submittal of a completed application form specified by the executive director.

(B) For emission credits that are to be used for compliance with the requirements of Chapter 115 or 117 of this title or other programs, the user must submit a completed application at least 90 days prior to the planned use of the MERC. MERCs may be used only after the executive director grants approval of the notice of intent to use. The user must also keep a copy of the notice and all backup in accordance with §101.302(g) of this title (relating to General Provisions).

(3) If the executive director denies the facility or mobile source's use of emission credits, any affected person may file a motion for reconsideration within 60 days of the denial. Notwithstanding the applicability provisions of §50.31(c)(7) of this title (relating to Purpose and Applicability), the requirements of §50.39 of this title (relating to Motion for Reconsideration) shall apply. Only an affected person may file a motion for reconsideration.

(d) Inter-pollutant use of ERCs. With prior approval from the executive director and the United States Environmental Protection Agency, a nitrogen oxides or volatile organic compound ERC may be used to meet the offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

Adopted June 3, 2015

Effective June 25, 2015

§101.309. Emission Credit Banking and Trading.

(a) The credit registry. All emission credit generators, users, and holders will be included in the commission's credit registry.

(1) All notices of generation, use, and transfer will be posted to the credit registry.

(2) The credit registry will assign a unique number to each certificate which will include the amount of emission reductions generated.

(3) The credit registry will maintain a listing of all credits available for each ozone nonattainment area.

(b) Life of an emission credit.

(1) If an emission credit is used before its expiration date, the emission credit is effective for the life of the applicable user facility or mobile source.

(2) Emission credits certified as part of an administratively complete application received after January 2, 2001 shall be available for use for 60 months from the date of the emission reduction.

(3) Notwithstanding paragraph (2) of this subsection, the executive director may invalidate a certificate or portion of a certificate if local, state, or federal

regulatory changes occur after the certification of the emission credit which would or would have affected the generating facility or mobile source.

(c) Creditability review of emission credits. Emission credits may be reviewed for creditability at any time during their banked life to ensure the reductions generating the emission credit are surplus to all current local, state, and federal requirements that would have affected the generating facility or mobile source.

(1) A request for a creditability review may be made by any interested party through the submittal of a completed application form specified by the executive director.

(2) If a creditability review identifies a regulatory change invalidating a certificate or portion of a certificate, the executive director shall void the emission credit certificate and, issue a new certificate with a unique number to the certificate owner in the amount of remaining surplus credit.

(d) Trading. Emission credits are freely transferable in whole or in part, and may be traded or sold to a new owner any time before the expiration date of the emission credit in accordance with the following.

(1) Before the transfer, the seller shall submit a completed application form specified by the executive director.

(2) The executive director will issue a new certificate number to the purchaser reflecting the emission credits purchased, and a new certificate number to the seller reflecting any remaining emission credits available to the original owner. A trade is considered final only after the executive director grants approval of the transaction.

(3) The trading of emission credits may be discontinued by the executive director in whole or in part and in any manner, with commission approval, as a remedy for problems resulting from trading in a localized area of concern.

(e) Emission credit voidance. Emission credits may be voided from the credit registry by the owner at any time prior to the expiration date of the credit and may be held by the owner. Reductions certified as emission credits may still be used by the original owner as an emission reduction for netting purposes after the emission credits have expired, as provided by Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

Adopted June 3, 2015

Effective June 25, 2015

§101.311. Program Audits and Reports.

(a) No later than three years after the effective date of this division, and every three years thereafter, the executive director will audit this program.

(1) The audit will evaluate the timing of credit generation and use, the impact of the program on the state's attainment demonstration and the emissions of hazardous air pollutants, the availability and cost of credits, compliance by the participants, and any other elements the executive director may choose to include.

(2) The executive director will recommend measures to remedy any problems identified in the audit. The trading of emission credits may be discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the United States Environmental Protection Agency (EPA) and made available for public inspection within six months of the date the audit begins.

(b) No later than February 1 of each calendar year, the executive director shall develop and make available to the general public and EPA a report that includes:

(1) the amount of emission credits generated under this division within each nonattainment area;

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

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

Adopted November 10, 2004

Effective December 2, 2004