

Texas Commission on Environmental Quality

Chapter 101 - General Air Quality Rules

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 3: MASS EMISSIONS CAP AND TRADE PROGRAM

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**SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 3: MASS EMISSIONS CAP AND TRADE PROGRAM
§§101.350 - 101.354, 101.356, 101.357, 101.359, 101.360, 101.363
Effective June 25, 2015**

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

(2) Affected facility--A facility subject to §§117.310, 117.1210, or 117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) that is located at a site that is subject to this division.

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

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

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

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

(7) Compliance account--The account where allowances held by the owner or operator of a site subject to this division are recorded for the purposes of meeting the requirements of this division for an affected facility at that site.

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

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

(10) Houston-Galveston-Brazoria (HGB) ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

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

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

(13) Uncontrolled design capacity to emit--The maximum capacity of a facility to emit nitrogen oxides without consideration for post-combustion pollution control equipment, enforceable limitations, or operational limitations. The owner or operator of a stationary diesel engine may use the lower of 876 hours or a federally enforceable limitation on total hours of operation to calculate uncontrolled design capacity to emit if the engine would otherwise be exempt under §117.2003(a)(2)(I) of this title (relating to Exemptions) except that the engine does not meet the emission standard requirements of §117.2003(a)(2)(I)(ii) of this title.

(14) Vintage allowance--An allowance that is not used for compliance during the control period in which it is allocated and remains available for use only in the control period following the one in which it was allocated.

Adopted June 3, 2015

Effective June 25, 2015

§101.351. Applicability.

(a) This division applies to a site, and each affected facility at that site, in the Houston-Galveston-Brazoria ozone nonattainment area that:

(1) is a major source, as defined in §117.10 of this title (relating to Definitions), with one or more affected facilities subject to §117.310 or §117.1210 of this title (relating to Emission Specifications for Attainment Demonstration); or

(2) is not a major source, as defined in §117.10 of this title, and has one or more affected facilities subject to §117.2010 of this title (relating to Emission

Specifications) with a collective uncontrolled design capacity to emit from these facilities of 10.0 tons or more per year of nitrogen oxides.

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

(c) Once a site becomes subject to this division, the site will remain subject to this division until the site is permanently shut down.

(d) The banking and trading requirements of this division apply to a broker and a broker account.

Adopted June 3, 2015

Effective June 25, 2015

§101.352. General Provisions.

(a) An allowance may be used only for the purposes described in this division and only for an affected facility. An allowance may not be used for any purpose that is not described in this division or to meet or exceed the emission limitations authorized under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) or any other applicable requirement.

(b) No later than March 1 after each control period, the quantity of allowances in a site's compliance account must be equal to or greater than the total tons of nitrogen oxides (NO_x) emitted from all affected facilities at the site during the control period.

(c) The owner or operator of an affected facility may certify reductions from the facility as NO_x emission reduction credits (ERCs), provided that:

(1) an enforceable and permanent reduction of annual allowances is approved by the executive director at a ratio of 1.0 ton of allowances per year for each 1.0 ton per year of ERCs generated; and

(2) all applicable requirements of Division 1 of this subchapter (relating to Emission Credit Program) are met.

(d) An allowance cannot be used for netting requirements under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review).

(e) An allowance may be used to offset NO_x emissions from an affected facility if such use is authorized in a nonattainment new source review (NNSR) permit issued under Chapter 116, Subchapter B of this title with the following conditions.

(1) The owner or operator shall use a permanent allowance allocation equal to the amount specified in the NNSR permit to offset NO_x emissions from an affected facility. A vintage allowance or an allowance allocated based on allowable emissions in accordance with variable (B) (i) in the figure in §101.353(a) of this title (relating to Allocation of Allowances) cannot be used as an offset. An allowance used for offsets may not be banked, traded, or used for any other purpose except as allowed in §101.354(g) of this title (relating to Allowance Deductions).

(2) At least 30 days before the start of operation of an affected facility using allowances as offsets, the owner or operator shall submit an application form specified by the executive director.

(A) Except as provided in paragraph (3) of this subsection, the executive director shall permanently set aside in the site's compliance account an allowance used for the one-to-one portion of the offset ratio. If an allowance set aside for offsets devalues in accordance with §101.353(d) of this title, the owner or operator shall submit the application at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. At the end of each control period, the executive director shall deduct from the site's compliance account all allowances set aside as offsets.

(B) The executive director shall permanently retain an allowance used for the environmental contribution portion of the offset ratio. An allowance used for this purpose cannot be used for compliance with this division or devalued due to future regulatory changes.

(3) The owner or operator may submit a request to the executive director to release an allowance used for offsets. If approved, the executive director will release the allowances for use in the control period following the date that the request is submitted. Allowances will not be released retroactively for any previous control periods. A request may be submitted if the owner or operator:

(A) receives authorization in the NNSR permit to use an alternative means of compliance for any portion of the NO_x offset requirement equivalent to the amount of allowances the owner or operator requests to have released for the affected facility; or

(B) permanently shuts down the affected facility, except that an allowance used for the environmental contribution portion of the offset ratio does not qualify for release under this paragraph.

(f) An allowance does not constitute a security or a property right.

(g) An allowance will be allocated, traded, and used in tenths of a ton. The number of allowances will be rounded up to the nearest tenth of a ton when determining allowances used.

(h) The owner or operator shall use one compliance account for all affected facilities located at the same site and under common ownership or control.

(i) The executive director will maintain a registry of the allowances in each compliance account and broker account. The registry will not contain proprietary information.

(j) If there is a change in ownership of a site subject to this division, the new owner of the site is responsible for complying with the requirements of this division beginning with the control period during which the site was purchased. The new owner shall contact the executive director to request a compliance account for the site. The new owner must acquire allowances in accordance with §101.356 of this title (relating to Allowance Banking and Trading).

Adopted June 3, 2015

Effective June 25, 2015

§101.353. Allocation of Allowances.

(a) The executive director shall deposit allowances into a compliance account according to the following equation except as provided by subsection (b) or (g) of this section.

Figure: 30 TAC §101.353(a)

$$A = \frac{LA_{HA} \times EF_{FINAL}}{2000}$$

Where:

A= The number of allowances in tenths of a ton;

LA_{HA} = The historical average level of activity, which:

- (A) for a facility in operation on or before January 1, 1997, is the average level of activity, as certified by the executive director, for 1997, 1998, and 1999;
- (B) for an existing facility that began operation after January 1, 1997, is:
 - (i) the level of activity authorized by the executive director until 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; or
- (C) for a facility using alternative emission specifications in §117.310(a)(17) or §117.2010(c)(6) of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications), is the lower of the level of activity as calculated in variable (A) or (B), or the level of activity limited by an enforceable limit or commitment necessary to qualify for an alternative emission specification in §117.310(a)(17) or §117.2010(c)(6) of this title.

EF_{final} = The emission factor, as listed in §§117.310, 117.1210, or 117.2010 of this title.

(b) The owner or operator of the following affected facilities shall acquire allowances for each control period or the annual allocation from a facility already participating under this division in accordance with §101.356 of this title (relating to Allowance Banking and Trading):

(1) a new or modified facility for which the owner or operator submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), an application that the executive director did not determine to be administratively complete before January 2, 2001;

(2) a new or modified facility that qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) for which the owner or operator did not commence construction before January 2, 2001;

(3) a facility in operation before January 1, 1997 located at a site defined on or before December 31, 2000 as a major source, as defined in §117.10 of this title (relating to Definitions), for which the owner or operator did not submit the application form specified by the executive director in accordance with §101.360(a)(1) of this title (relating to Level of Activity Certification) by March 30, 2010; and

(4) an existing facility located at a site defined before January 1, 2001, as a major source, as defined in §117.10 of this title, for which the owner or operator did not submit the application form specified by the executive director in accordance with §101.360(a)(2) of this title by March 30, 2010.

(c) The executive director will allocate and deposit allowances into each compliance account by January 1 of each year.

(d) The executive director may adjust the deposits for any control period to reflect new or existing state implementation plan requirements.

(e) The executive director may add or deduct allowances from compliance accounts based on the review of reports required under §101.359 of this title (relating to Reporting).

(f) The owner or operator of a facility may, due to extenuating circumstances, request a baseline period more representative of normal operation as determined by the executive director. Applications for extenuating circumstances must be submitted by the owner or operator of the facility to the executive director:

(1) no later than 90 days after completion of the baseline period to request up to two additional calendar years to establish a baseline period for a facility whose baseline as described by variable (B)(i) listed in the figure in subsection (a) of this section is not complete by June 30, 2001; or

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

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

Adopted June 3, 2015

Effective June 25, 2015

§101.354. Allowance Deductions.

(a) The executive director shall deduct allowances in tenths of a ton from a site's compliance account in an amount equal to the nitrogen oxides (NO_x) emissions from each affected facility during the previous control period. The amount of NO_x emissions must be quantified using the monitoring and testing protocols established in §§117.335, 117.340, 117.1235, 117.1240, and 117.2035 of this title (relating to Initial Demonstration

of Compliance; Continuous Demonstration of Compliance; and Monitoring and Testing Requirements).

(b) If the monitoring and testing data required under subsection (a) of this section is missing or unavailable, the NO_x emissions from an affected facility may be quantified for that period of time using the following methods in the following order: continuous monitoring data; periodic monitoring data; testing data; manufacturer's data, and *EPA Compilation of Air Pollution Emission Factors* (AP-42), September 2000.

(1) When quantifying NO_x emissions under this subsection, the owner or operator of the affected facility shall submit the justification for not using the methods in subsection (a) of this section and the justification for the method used.

(2) If NO_x emissions are quantified under this subsection due to non-compliance with the monitoring and testing required under subsection (a) of this section, the executive director shall deduct allowances from a site's compliance account in an amount equal to the NO_x emissions quantified under this subsection plus an additional 10%.

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

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

(e) The executive director shall deduct allowances from a site's compliance account in an amount equal to the NO_x emissions increases from a facility not subject to an emission specification under §117.310 or §117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) that result from changes made after December 31, 2000, to a facility subject to this division and §117.310(e)(3) or §117.2010(f) of this title. The owner or operator shall submit detailed documentation on these increases in NO_x emissions with the annual compliance report.

(f) An allowance allocated based on allowable emissions in accordance with variable (B)(i) in the figure in §101.353(a) of this title may only be used by the facility for which it was allocated and may not be used by any other facility.

(g) The amount of allowances deducted from a site's compliance account under subsection (a) of this section will be reduced by the amount of allowances deducted in accordance with §101.352(e)(2)(A) of this title (relating to General Provisions).

(h) If the NO_x emissions from the affected facilities during a control period exceed the amount of allowances in the site's compliance account on March 1 following that control period, the executive director will reduce allowances for the next control period by an amount equal to the emissions exceeding the allowances in the site's compliance account plus an additional 10%.

(1) If the site's compliance account does not hold sufficient allowances to accommodate this reduction, the executive director shall issue a Notice of Deficiency requiring the owner or operator to obtain sufficient allowances within 30 days of the notice.

(2) These actions do not preclude additional enforcement action by the executive director.

Adopted June 3, 2015

Effective June 25, 2015

§101.356. Allowance Banking and Trading.

(a) An allowance not used for compliance in the control period it was allocated may be banked as a vintage allowance for use in the following control period in compliance with §101.354 of this title (relating to Allowance Deductions) or traded except as provided by subsection (g) of this section.

(b) An allowance that has not expired or been used may be traded at any time during a control period after it has been allocated except as provided by subsection (g) of this section.

(c) Only an authorized account representative may trade an allowance.

(d) At least 30 days before the allowances are deposited into the buyer's account, the seller shall submit the appropriate trade application to the executive director. The completed application must show the amount of allowances traded and, except for trades between sites under common ownership or control, the purchase price per ton of allowances traded.

(1) To trade a current allowance or vintage allowance for a single year, the seller shall submit the application form specified by the executive director. Trades involving allowances needed for compliance with a control period must be submitted on or before January 30 of the following control period.

(2) To permanently trade ownership of any portion of the allowances allocated annually to an individual facility, the seller shall submit the application form specified by the executive director.

(3) To trade any portion of the individual future year allowances to be allocated annually to an individual facility, the seller shall submit the application form specified by the executive director.

(e) All information regarding the quantity and sales price of allowances will be made available to the public as soon as practicable.

(f) The executive director will send letters to the seller and buyer if the trade is approved or denied. If approved, the trade is final upon the date of the letter from the executive director.

(g) Allowances that were allocated based on allowable emissions in accordance with variable (B)(i) in the figure in §101.353(a) of this title (relating to Allocation of Allowances) may not be banked for future use or traded.

(h) Nitrogen oxides (NO_x) discrete emission reduction credits (DERCs) or mobile discrete emission reduction credits (MDERCs) generated and acquired in accordance with Division 4 of this subchapter (relating to Discrete Emission Credit Program) may be used in place of allowances for compliance with this division in accordance with this subsection. Volatile organic compound (VOC) DERCs or MDERCs generated and acquired in accordance with Division 4 of this subchapter may be used in place of allowances for compliance with this division in accordance with this subsection if the user satisfies the inter-pollutant requirements in §101.376(g) of this title (relating to Discrete Emission Credit Use).

(1) MDERCs may be used in lieu of allowances at a ratio of one ton of MDERCs for one ton of allowances.

(2) DERCs generated by a stationary source before January 1, 2005 may be used in lieu of allowances at a ratio of ten tons of DERCs for one ton of allowances.

(3) DERCs generated after December 31, 2004 may be used in lieu of allowances at a ratio of one ton of DERCs for one ton of allowances.

(4) The 10% environmental contribution and the 5% compliance margin of Division 4 of this subchapter do not apply.

(5) To use DERCs or MDERCs for the purpose of compliance with this division, the required application must be submitted to the executive director on or

before October 1 of the control period for which the DERCs or MDERCs will be used. In addition, the required application must be submitted by March 31 with the site's annual compliance report.

(6) No more than 10,000 tons of DERCs generated from stationary sources may be used for compliance with this division in any combination totaled over all sites in the Houston-Galveston-Brazoria area during a single calendar year. DERCs may be approved for use with this division according to the following.

(A) The executive director may approve the use of 250 tons or less of DERCs per site, per control period, unless the 10,000 ton per year limit has been reached.

(B) If a site requests the use of more than 250 tons of DERCs in a control period, the amount in excess of 250 tons may be reduced so that the total amount of all DERCs used by all sites does not exceed 10,000 tons. For all requests greater than 250 tons, the excess DERCs up to the 10,000 ton DERC limit may be apportioned based on the percentage of DERCs greater than 250 tons requested for use by those sites relative to the total amount of DERCs available up to the 10,000 ton DERC limit.

Adopted June 3, 2015

Effective June 25, 2015

§101.357. Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP).

(a) An owner or operator of a site as defined in §122.10 of this title (relating to General Definitions) in the Houston/Galveston ozone nonattainment area may use nitrogen oxides (NO_x) emission reductions generated under the TERP in lieu of allowances for compliance with this division provided that:

(1) the owner or operator of the site contributes to the TERP fund \$75,000 per ton of NO_x emissions used, not to exceed 25 tons per year or 0.5 tons per day on a site-wide basis;

(2) the owner or operator of the site demonstrates to the executive director that the site will be in full compliance with the applicable emission reduction requirements of this division and Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) no later than the fifth anniversary of the date on which the emission reductions would otherwise be required;

(3) emissions from the site are reduced by at least 80% of the required reductions;

(4) the reductions accomplished under the TERP have not been previously used to meet reduction requirements under a state implementation plan attainment demonstration;

(5) the reductions accomplished under the TERP are used in the same nonattainment area in which they are generated; and

(6) the executive director approves a petition submitted by the owner or operator of the site that demonstrates that it is technically infeasible to comply with applicable emission reduction requirements of this division and Chapter 117 of this title above 80% of the required reductions. When considering technical infeasibility the executive director may consider, but will not be limited to:

- (A) current technology;
- (B) adaptability of technology to a particular source;
- (C) age and projected useful life of a source; and
- (D) cost benefits at the time of application.

(b) The emissions reductions funded under the TERP, and used to offset commission requirements, shall be used to benefit the community in which the site using the emissions reductions is located. If there are no eligible emissions reduction projects within the community, the commission may authorize projects in an adjacent community. For purposes of this section, a community means a Justice of the Peace precinct.

Adopted March 13, 2002

Effective April 4, 2002

§101.359. Reporting.

(a) No later than March 31 after each control period, the owner or operator of a site subject to this division shall submit a completed annual compliance report specified by the executive director to the executive director, which must include the following:

(1) the amount of actual nitrogen oxides (NO_x) emissions from applicable facilities at the site during the preceding control period;

(2) the method of determining NO_x emissions from applicable facilities, including, but not limited to, any monitoring protocol and results, calculation methodology, level of activity, and emission factor;

(3) a summary of all final trades for the preceding control period;

(4) detailed documentation supporting the reported level of activity and emission factor for each affected facility. It is acceptable to reference documentation supporting a level of activity or an emission factor if previously submitted with an annual compliance report or level of activity certification form; and

(5) detailed documentation on NO_x emissions from each facility not subject to an emission specification under §117.310 or §117.2010 of this title (relating to Emission Specifications for Attainment Demonstration and Emission Specifications) that result from changes made after December 31, 2000, to an affected facility as required in §101.354(e) of this title (relating to Allowance Deductions).

(b) For the owner or operator of a site failing to submit an annual compliance report by the required deadline in subsection (a) of this section, the executive director may withhold approval of any proposed trades from that site involving allowances allocated for the control period for which the report is due or to be allocated in subsequent control periods.

(c) The owner or operator of a site subject to this division that no longer has authorization to operate any affected facilities may request a waiver from the reporting requirements in this section. If approved, the annual compliance report will not be required until a new affected facility is authorized at the site.

Adopted June 3, 2015

Effective June 25, 2015

§101.360. Level of Activity Certification.

(a) The owner or operator of any site subject to this division shall certify the historical level of activity for each affected facility by submitting to the executive director a completed application along with any supporting information such as usage records, testing or monitoring data, emission factors, and production records. The historical level of activity must be determined as follows:

(1) for a facility in operation before January 1, 1997, the level of activity averaged over 1997, 1998, and 1999;

(2) for an existing facility the level of activity authorized by the executive director; and

(3) for a new or modified facility not in operation before January 1, 1997, that is subject to an emission specification under §§117.310, 117.1210, or 117.2010 of this

title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) first adopted after April 1, 2001, and either has submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) an application determined by the executive director to be administratively complete within 90 days of the effective date of this emission specification, or has qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and commenced construction within 90 days of the effective date of the emission specification, the level of activity authorized by the executive director.

(b) The owner or operator that certified a facility's allowable level of activity under subsection (a)(2) of this section shall:

(1) no later than 90 days after the end of the fifth year of operation, certify the actual level of activity and actual emission factors for the two complete consecutive calendar years chosen as a baseline by submitting to the executive director a completed application, along with any supporting information such as usage records, testing or monitoring data, and production records; and

(2) receive no benefit of allowances allocated based on actual operation until January 1 of the control period following the certification in paragraph (1) of this subsection.

(c) The owner or operator of a site or facility that becomes subject to this division after March 31, 2001 shall certify the level of activity, as determined by the executive director, in accordance with subsections (a) and (b) of this section. The certification must be submitted no later than 90 days after the date the site or facility becomes subject to this division.

Adopted June 3, 2015

Effective June 25, 2015

§101.363. 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 impact of the program on the state's ozone attainment demonstration, the availability and cost of allowances, 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 allowances, discrete emission reduction credits (DERCs), and/or mobile discrete emission reduction credits (MDERCs) may be

discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the EPA and made available for public inspection within six months after the audit begins.

(b) No later than June 30 following the end of each control period, the executive director shall develop and make available to the general public and EPA, a report that includes:

- (1) number of allowances allocated to each compliance account;
- (2) total number of allowances allocated under this division;
- (3) number of actual nitrogen oxides (NO_x) allowances subtracted from each compliance account based on the actual NO_x emissions from the site; and
- (4) a summary of all trades completed under this division.

Adopted September 26, 2001

Effective October 18, 2001