

Texas Commission on Environmental Quality

Chapter 101 - General Air Quality Rules

SUBCHAPTER H: EMISSIONS BANKING AND TRADING

DIVISION 6: HIGHLY-REACTIVE VOLATILE ORGANIC COMPOUND EMISSIONS CAP AND TRADE PROGRAM

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SUBCHAPTER H: EMISSIONS BANKING AND TRADING
DIVISION 6: HIGHLY REACTIVE VOLATILE ORGANIC COMPOUND
EMISSIONS CAP AND TRADE PROGRAM
§§101.390 - 101.394, 101.396, 101.399 - 101.401, 101.403
Effective June 25, 2015

§101.390. 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) **Affected facility**--A facility subject to §115.720 or §115.760 of this title (relating to Applicability and Definitions; and Applicability and Cooling Tower Heat Exchange System Definitions) that is located at a site that is subject to this division.

(2) **Allowance**--The authorization to emit one ton of highly reactive volatile organic compounds, expressed in tenths of a ton, during a control period.

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

(4) **Baseline emissions period**--The two consecutive control periods from 2006 - 2009 with the highest monitored average actual highly reactive volatile organic compound emissions for the purpose of establishing baseline emissions used for the allocation of allowances, except as allowed under §101.394(a)(2) and (3) of this title (relating to Allocation of Allowances).

(5) **Broker**--A person not required to participate in the requirements of this division who opens an account under this division only 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 in which allowances held by the owner or operator of a site are recorded for the purposes of meeting the requirements of this division for each 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, 2007.

(9) Highly reactive volatile organic compounds--As defined in §115.10 of this title (relating to Definitions).

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

(11) Industry sector--One of the following sectors of industry in which participants of the Highly Reactive Volatile Organic Compounds (HRVOC) Emissions Cap and Trade program are assigned, according to the process type and products from which the largest share of HRVOC emissions is associated, for the purpose of assigning an industry sector share under the allocation equation located in §101.394(a)(1) of this title (relating to Allocation of Allowances): petroleum refining, non-polymer chemical producers, polymer producers, and storage/loading/other.

(12) Level of activity--The amount of highly reactive volatile organic compounds (HRVOCs) in pounds produced as an intermediate, by-product, or final product or used by a process unit during a given period of time, but excluding any recycled HRVOCs internal to the process unit.

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

(14) Uncontrolled emissions--The total emissions during routine normal operations from each affected facility calculated as pre-control using the applicable control efficiency for the purpose of determining site allocations under §101.394(a)(1) of this title (relating to Allocation of Allowances).

(15) 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 following control period.

Adopted June 3, 2015

Effective June 25, 2015

§101.391. Applicability.

(a) This division applies to each site in the Houston-Galveston-Brazoria ozone nonattainment area with one or more affected facilities. Affected facilities include vent

gas streams, flares, and cooling tower heat exchange systems that emit or have the potential to emit highly reactive volatile organic compounds.

(b) For the purpose of compliance with Chapter 115, Subchapter H, Division 1 or 2 of this title (relating to Vent Gas Control; and Cooling Tower Heat Exchange Systems), each site that meets the applicability requirements of this section will always be subject to this division unless exempted under §101.392 of this title (relating to Exemptions).

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

Adopted June 3, 2015

Effective June 25, 2015

§101.392. Exemptions.

(a) A site in the Houston-Galveston-Brazoria ozone nonattainment area that has the potential to emit, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions), 10 tons per year or less of highly reactive volatile organic compounds from all affected facilities at the site is exempt from the requirements of this division.

(b) A site in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller County is exempt from the requirements of this division except for §101.401(a) - (e) of this title (relating to Level of Activity Certification). The commission may revoke this exemption upon public notice of this revocation. If the exemption is revoked, the owner or operator of a site subject to this division located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller County shall comply within 180 days of public notice.

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§101.393. 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 limitations authorized under Chapter 116, Subchapter B of this title (relating to New Source Review Permits), or any other applicable local, state, or federal 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 highly reactive volatile organic compound (HRVOC) emissions from each affected facility at the site during the control period.

(c) An allowance may not be used to satisfy 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).

(d) An allowance may be used to offset volatile organic compound (VOC) 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 stream equal to the amount specified in the NNSR permit to offset VOC emissions from an affected facility. A vintage allowance 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 §101.396(e) 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 §101.394(a)(1) or (f) of this title (relating to Allocation of Allowances), 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 except as required in §101.394(a)(1) of this title.

(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 for the affected facility to use an alternative means of compliance for any portion of the VOC 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.

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

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

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

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

(i) The owner or operator of an affected facility may certify reductions from an affected facility as VOC 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 from HRVOC reductions; and

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

(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 §101.399 of this title (relating to Allowance Banking and Trading).

Adopted June 3, 2015

Effective June 25, 2015

§101.394. Allocation of Allowances.

(a) The executive director shall deposit allowances into a compliance account as follows.

(1) For a site located in Harris County, allowances will be determined using the following equation:

Figure: 30 TAC §101.394(a)(1)

$$S = AC^1 \times ISS \times SS$$

Where:

S = the allocation for the site.

*AC*¹ = the amount of highly reactive volatile organic compound (HRVOC) tons defined in (1) - (4) of this figure less the total amount allocated to those sites receiving a minimum allocation under subsection (c) of this section.

(1) For 2014, *AC*¹ = 3,105.9 tons;

(2) For 2015, *AC*¹ = 2,932.9 tons;

(3) For 2016, *AC*¹ = 2,761.2 tons; and

(4) For 2017 and all subsequent control periods, *AC*¹ = 2,588.6 tons.

ISS = Industry Sector Share: Total actual average emissions for the industry sector during the baseline emissions period divided by the total actual average emissions for all participating sites during the baseline emissions period.

SS = Site share: The sum of the total average actual emissions for vents, cooling towers, and other facilities and uncontrolled emissions for flares, heaters, boilers, furnaces, thermal and catalytic oxidizers, and other combustion control devices combusting HRVOC streams, during the baseline emissions period divided by the total uncontrolled actual average emissions for the industry sector during the baseline emission period.

(2) For a site in Harris County not in operation or with HRVOC emissions that are not representative of permitted normal routine operation due to an authorized modification that resulted in an HRVOC emission reduction during the baseline emissions period, the owner or operator may request from the executive director the use of any allowance stream acquired from facilities previously participating in the HRVOC Emissions Cap and Trade program in lieu of reallocation until the alternate baseline emissions are established for the site, according to the following:

(A) this allowance stream is less than the HRVOC permit allowable limit in effect at the time the facility commences operation;

(B) the baseline emissions period for any site under this paragraph will be any consecutive 24 months from 2010 - 2012; and

(C) beginning with the 2014 control period, all sites will receive an allocation in accordance with the methodology under paragraph (1) of this subsection.

(3) A site meeting the following conditions may request to use an alternative baseline emissions period consisting of the two consecutive calendar-year control periods immediately preceding the baseline emissions period defined under §101.390 of this title (relating to Definitions):

(A) the site used continuous flow rate monitoring and speciation of HRVOC to determine HRVOC emissions during the alternative baseline period;

(B) the site had permanent, voluntary, and quantifiable HRVOC emission reductions in an amount equal to or greater than 25 tons resulting in a site-wide reduction in HRVOC emissions of at least 25% as calculated by comparing the average HRVOC emissions from the alternate baseline period to the baseline emissions period defined under §101.390 of this title;

(C) qualifying HRVOC emission reductions must have been made enforceable by a permit application submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or other submittal to the executive director no later than April 1, 2010; and

(D) a request for an alternative baseline period must be received by the executive director no later than July 1, 2010.

(4) For a site located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, allowances will be determined using the following equation.

Figure: 30 TAC §101.394(a)(4)

$$S = \frac{LA}{\sum_{i=1}^n LA_i} \times AC$$

Where:

S = the greater of 5.0 tons or the allocation for the site.
i = each site located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties and subject to this division.
n = the total number of sites subject to this division.
LA = the level of activity baseline for a site, calculated as the annual level of activity for any 12 consecutive months during the period of 2000-2004 for the site, as certified by the executive director.
AC = 4,390.8 tons per year of highly reactive volatile organic compounds less the total amount allocated to those sites receiving a minimum of 5.0 tons.

(5) Uncontrolled emissions for affected facility types for use in determining site allocations under paragraph (1) of this subsection must be calculated as follows.

(A) For flares, the uncontrolled emissions are equal to actual average HRVOC emissions from routine normal operation during the baseline emissions period for that facility divided by one minus the average percent control efficiency specifications for flares in §115.725(d) of this title (relating to Monitoring and Testing Requirements).

(B) For heaters, boilers, furnaces, thermal and catalytic oxidizers, and other combustion control devices combusting HRVOC streams, the uncontrolled emissions must be calculated by dividing actual average emissions from routine normal operation during the baseline emissions period for each facility by one minus 99%, or by one minus the actual monitored HRVOC control efficiency for the facility, not to exceed 99.9%, if that facility has demonstrated the actual monitored HRVOC control efficiency through stack performance testing.

(C) For any other facility without a demonstrated combustion control efficiency, the control efficiency is equal to zero; therefore, the uncontrolled emissions will be equal to the actual HRVOC emissions from routine normal operation.

(D) For a site that employs a flare or vent gas recovery or flare minimization control strategy that is not requesting the use of an alternative baseline emissions period under paragraph (3) of this subsection, the owner or operator may request to include the amount of any quantifiable reduction in actual HRVOC emissions attributable to the use of flare or vent gas recovery as uncontrolled emissions, subject to approval by the executive director. The amount of quantified reductions is equal to the difference of the average actual HRVOC emissions from routine normal operation during a consecutive 12-month period before the 2006 - 2009 baseline emissions period

and the implementation of the HRVOC gas recovery or flare minimization control strategy and the enforceable allowable HRVOC permit limit for the affected facility after the recovery-based emissions reduction strategy implementation. The average actual HRVOC emissions used for quantifying the reductions under this subparagraph must be determined through continuous flow rate monitoring and HRVOC speciation testing. This allowable emissions limit must be made enforceable through a permit application submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) to the executive director no later than April 1, 2010. Credit allocated for reductions due to flare or vent gas recovery cannot also be creditable if the HRVOC stream is sent to another control device. The creditable emissions from flare gas recovery calculated in this subparagraph are then converted to uncontrolled emissions through the use of the average control efficiency specifications under §115.725(d) of this title.

(E) For a site that has purchased HRVOC allowance streams, uncontrolled emissions must be the greater of the uncontrolled emissions calculated under subparagraphs (A) - (C) of this paragraph, or the sum of the original existing HRVOC allowance allocated according to the previous allocation methodology and the amount of the allowance stream in tons. If a site's actual two-high year emissions is less than the sum of its original existing HRVOC allowance and the amount of the allowance stream in tons, the owner or operator shall add the difference to the uncontrolled emissions as actual emissions.

(b) The level of activity of a site will be determined by summing the levels of activity from the chosen 12 consecutive month period for each process unit, as defined in §115.10 of this title (relating to Definitions), located at the site that produce one or more HRVOCs as an intermediate, by-product, or final product or that use one or more HRVOCs as a raw material or intermediate to produce a product.

(c) A site in Harris County subject to the requirements of this division that receives an HRVOC allocation of less than 5.0 tons will be eligible to receive a minimum allocation of 5.0 tons of HRVOC allowances per year. A site subject to the requirements of this division that receives an HRVOC allocation of greater than or equal to 5.0 tons but less than 10.0 tons will be eligible to receive a minimum allocation of 10.0 tons of HRVOC allowances per year. This provision does not apply if the site's allocation falls below a minimum allocation only because of a transfer of part or all of the site's allocation.

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

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

(f) The executive director may add or deduct allowances from compliance accounts based on the review of reports required under §101.400 of this title (relating to Reporting).

Adopted June 3, 2015

Effective June 25, 2015

§101.396. Allowance Deductions.

(a) The executive director shall deduct from a site's compliance account an amount of allowances equal to the total highly reactive volatile organic compounds (HRVOC) emissions from each affected facility at the site during the previous control period. The amount of HRVOC emissions must be quantified using the monitoring and testing protocols established in §115.725 and §115.764 of this title (relating to Monitoring and Testing Requirements), as appropriate.

(b) The amount of HRVOC emissions from an affected facility must be calculated for each hour of the year and summed to determine the annual emissions for compliance. For emissions from emissions events subject to the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) or emissions from scheduled maintenance, startup, or shutdown activities subject to the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), the hourly emissions to be included in the summation may not exceed the short-term limit of §115.722(c) or §115.761(c) of this title (relating to Site-wide Cap and Control Requirements; and Site-wide Cap).

(c) If the monitoring and testing data required under subsection (a) of this section does not exist or is unavailable, the owner or operator of the site shall determine the HRVOC emissions 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 engineering calculations.

(1) When reporting the amount of HRVOC emissions under this subsection, the owner or operator of the site shall also submit the justification for not using the methods in subsection (a) of this section and the justification for the method used.

(2) If 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 equivalent to the HRVOC emissions quantified under this subsection plus an additional 10%.

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

(e) 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 §101.393(d)(2)(A) of this title (relating to General Provisions).

(f) If the total actual HRVOC 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

§101.399. Allowance Banking and Trading.

(a) An allowance allocated for a control period that is not used for compliance for that control period may be banked as a vintage allowance for use in demonstrating compliance for the next control period under §101.396 of this title (relating to Allowance Deductions) or traded.

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

(c) 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 include the amount of allowances to be traded and, except for transactions 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 an 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 an application form specified by the executive director.

(3) To trade any portion of the allowances that are scheduled to be allocated to an individual facility in a future control period, the seller shall submit an application form specified by the executive director.

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

(e) 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.

(f) Allowances that were provided under §101.394(a)(2) of this title (relating to Allocation of Allowances) are not eligible for trade.

(g) Allowances generated from a site located in counties other than Harris County may not be used at a site located in Harris County. Allowances generated from a site located in Harris County may not be used at a site located in counties other than Harris County.

(h) Only an authorized account representative may trade allowances.

(i) Allowances subject to an approved transaction will be deposited into the buyer's account within 30 days of receipt of a completed trade application.

Adopted June 3, 2015

Effective June 25, 2015

§101.400. Reporting.

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

(1) the total amount of actual HRVOC emissions from each affected facility at the site during the preceding control period;

(2) the method or methods used to determine the actual HRVOC emissions for each affected facility, including, but not limited to, monitoring protocol and results, calculation methodologies, and emission factors; and

(3) a summary of all final transactions for the preceding control period.

(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

§101.401. Level of Activity Certification.

(a) No later than April 30, 2005, the owner or operator of each site subject to this division will submit to the executive director a completed Form ECT-3H, Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Level of Activity Certification Form.

(b) For each process unit subject to this division, the owner or operator will certify in the ECT-3H form the level of activity for the selected 12 consecutive months during the period of 2000 through 2004.

(c) The owner or operator will attach to the ECT-3H form information and documentation necessary to support the proposed level of activity baseline.

(d) The owner or operator of the site may mark any portion of the ECT-3H form, or supporting information and documentation, as confidential under Texas Health and Safety Code, §382.041.

(e) In conjunction with submission of the ECT-3H form, the owner or operator of the site subject to this division will provide enforceable documentation of the maximum allowable emission rate of highly-reactive volatile organic compounds from facilities located at that site.

(f) No later than July 1, 2010, the owner or operator of each site subject to this division will submit to the executive director a completed Form ECT-6H, Highly Reactive Volatile Organic Compound Emissions Cap and Trade Baseline Emissions Certification Form.

(g) For each site subject to this division, the owner or operator will certify in the ECT-6H form the two highest consecutive calendar-year control periods selected from the period of 2006 - 2009 to establish the baseline emissions period.

Adopted March 10, 2010

Effective April 1, 2010

§101.403. 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 may be limited or 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 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 the United States Environmental Protection Agency, 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 highly-reactive volatile organic compound allowances subtracted from each compliance account based on the actual highly-reactive volatile organic compound emissions from the site; and

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

Adopted December 1, 2004

Effective December 23, 2004