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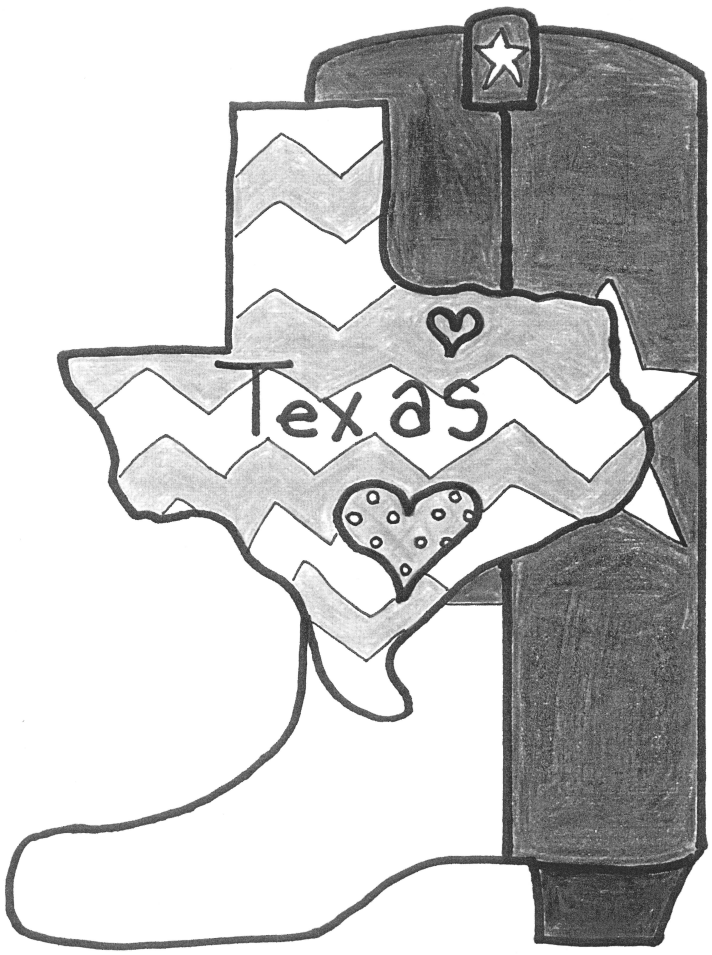
In This Issue


Texas

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

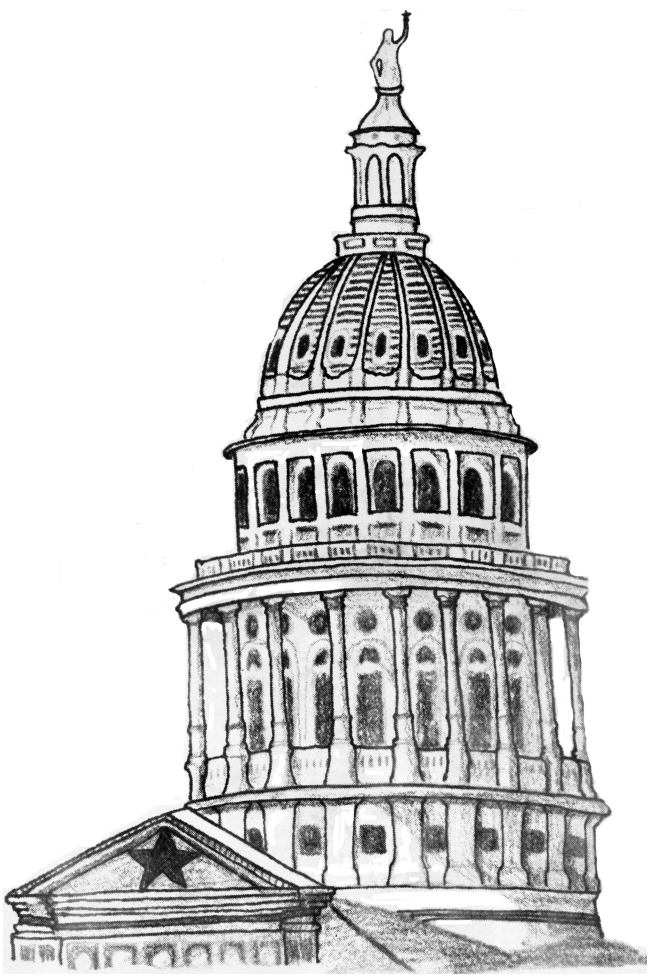
Appointments for October 5, 2022

Appointed to be the Texas State Historian for a term to expire October 5, 2024, Monte L. Monroe, Ph.D. of Lubbock, Texas (Dr. Monroe is being reappointed).

Greg Abbott, Governor

TRD-202204076

♦ ♦ ♦



Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in the Texas Administrative Code (TAC), Title 1, Part 15, Chapter 354, Subchapter A, Division 33, amendments to §354.1430, concerning Definitions; §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations; §354.1434, concerning Home Telemonitoring Benefits and Limitations; and new §354.1435, concerning Provision of Behavioral Health Services through an Audio-Only Platform; and §354.1436, concerning Provision of Non-behavioral Health Services Using an Audio-only Platform; and in Subchapter M, Division 1, amendments to §354.2603, concerning Definitions; §354.2607, concerning Assessment and Service Authorization; and §354.2609, concerning Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary; in Division 2, amendments to §354.2655, concerning Mental Health Targeted Case Management Services; and §354.2657, concerning Documentation Requirements; and in Division 3, amendments to §354.2707, concerning Crisis Intervention Services; §354.2709, concerning Medication Training and Support Services; §354.2711, concerning Psychosocial Rehabilitative Services; and §354.2713, concerning Skills Training and Development Services.

BACKGROUND AND PURPOSE

House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021, amends Chapter 531 of the Texas Government Code by adding new section 531.02161 and requires HHSC to develop and implement policies and procedures for the provision of health care services delivered via telemedicine and telehealth, including certain behavioral health services using an audio-only platform, by implementing changes in state law as described below.

The proposal is necessary to comply with Texas Government Code, §531.02161 added by House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021, to ensure Medicaid recipients, child health plan program enrollees, and other individuals receiving benefits under a public benefits program, regardless of whether receiving benefits through a managed care delivery model or another delivery model, have the option to receive services via telemedicine and telehealth, including certain behavioral health services using an audio-only platform.

The proposal also implements the amendments made in Texas Government Code, §531.001 by Senate Bill (S.B.) 1107, 85th Legislature, Regular Session, 2017; the changes made in Texas Government Code, §531.001 and §531.0217(d) by S.B. 670, 86th Legislature, Regular Session, 2019; and implements Texas Government Code, §531.02164 (c-1) added by H.B. 1063, 86th Legislature, Regular Session, 2019.

The proposed amendment to §354.1430, concerning Definitions, adds a definition for "platform" and amends the definitions for "telehealth service" and "telemedicine medical service" to reference the meanings of these terms as defined in the Texas Occupations Code §111.001.

The proposed amendment to §354.1434 Home Telemonitoring Benefits and Limitations provides that home telemonitoring services are made available to Texas Medicaid pediatric clients who are diagnosed with end-stage solid organ disease, have received an organ transplant, or require mechanical ventilation. HHSC has already implemented this provision in its Texas Medicaid policies but will codify this provision in rule to align with current medical policy and state law.

Additionally, S.B. 922, 85th Legislature, Regular Session, 2017, amended Texas Government Code Chapter 531, by adding §531.02171. Section 531.02171(a) provides a definition for "health professional" as an individual who is licensed, registered, certified, or otherwise authorized in Texas to practice as a social worker, occupational therapist, or speech-language pathologist; a licensed professional counselor; a licensed marriage and family therapist; or a licensed specialist in school psychology. Section 531.02171(b) requires HHSC to ensure that Medicaid reimbursement is provided to a school district or open-enrollment charter school for telehealth services provided through the school district or open-enrollment charter school by a health professional, even if the health professional is not the patient's primary care provider, if the school district or charter school is an authorized health care provider under Medicaid and the parent or legal guardian of the patient provides consent before the service is provided.

SECTION-BY-SECTION SUMMARY

Subchapter A, Division 33, Advanced Telecommunications Services

The proposed amendment to §354.1430 adds definitions for "audio-only," "behavioral health services," "declaration of state of disaster," "in-person," "non-behavioral health services," and "platform." The proposed amendment revises the definitions for "telehealth service" and "telemedicine medical service." The proposed amendment deletes the definitions for "distant site," "established health site," "established medical site," "in-person evaluation," "patient site," "patient site presenter," "readily available," "state mental health facility," and "state supported living center."

The proposed amendment to §354.1432 prohibits a client from being required to receive a telemedicine medical service or telehealth service, rather than an in-person service, except in the event of an active declaration of state of disaster and establishes criteria for determining if a healthcare service may be delivered as a telemedicine or telehealth service, including via an audio-only platform. The proposed amendment also establishes the requirements for providers to be reimbursed for telemedicine medical services, telemedicine medical services provided in a primary or secondary school-based setting, and telehealth services.

The proposed amendment to §354.1434 adds the medical conditions that qualify a client 20 years of age and younger to receive home telemonitoring services.

Proposed new §354.1435 addresses the provision of behavioral health services using an audio-only platform. The proposed rule also requires the provider to obtain informed consent before providing a behavioral health service through an audio-only platform.

Proposed new §354.1436 addresses the provision of non-behavioral health services using an audio-only platform.

Subchapter M, Division 1, General Provisions

The proposed amendment to §354.2603 adds definitions for "audio-only," "platform," "telehealth service," and "telemedicine medical service." The proposed amendment deletes the definition for "in-vivo."

The proposed amendment to §354.2607 allows the assessment and service authorization for mental health targeted case management and mental health rehabilitation services to be performed as a telemedicine medical service or a telehealth service, including via an audio-only platform.

The proposed amendment to §354.2609 allows recovery, treatment planning, treatment plan review, and discharge summaries to be performed as a telemedicine medical service or a telehealth service including via an audio-only platform.

Subchapter M, Division 2, Mental Health Targeted Case Management

The proposed amendment to §354.2655 allows mental health targeted case management to be delivered as a telemedicine medical service or a telehealth service, including via an audio-only platform.

The proposed amendment to §354.2657 requires the documentation of assessments to include the mode of delivery and requires the documentation for mental health targeted case management services to include the mode of delivery used to provide the service and if provided in person, the location where the service was provided.

Subchapter M, Division 3, Mental Health Rehabilitation

The proposed amendment to §354.2707 allows crisis intervention services for mental health targeted case management and mental health rehabilitation to be performed as a telemedicine medical service or a telehealth service, including via an audio-only platform.

The proposed amendment to §354.2709 allows medication training and support services for mental health targeted case management and mental health rehabilitation to be performed as a telemedicine medical service or a telehealth service, including via an audio-only platform.

The proposed amendment to §354.2711 allows psychosocial rehabilitative services for mental health targeted case management and mental health rehabilitation to be performed as a telemedicine medical service or a telehealth service, including via an audio-only platform.

The proposed amendment to §354.2713 allows skills training and development services for mental health targeted case management and mental health rehabilitation to be performed as a telemedicine medical service or a telehealth service, including via an audio-only platform.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there may be an estimated additional cost to state and local government as a result of enforcing and administering the rules as proposed to cover costs to deliver a telemedicine medical service or a telehealth service via an audio-only platform. An influx of available services delivered as a telemedicine medical service or a telehealth service may also increase costs to state government. These costs could be offset by savings in improved health outcomes, avoided healthcare emergencies, and efficiencies achieved using telecommunications. Any impact to payments will be realized in the future rating periods as more experienced data is reported. The total cost to state government cannot be estimated because HHSC lacks data on the costs and savings to be experienced.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) HHSC has insufficient information to determine the proposed rules effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there could be an adverse economic effect on small businesses or micro-businesses, or rural communities.

There could be a cost to comply. HHSC lacks data to determine the number of small businesses, microbusinesses, and rural communities that may adversely be affected by the adoption and implementation of these rules. HHSC is adopting these rules in response to prescriptive legislation and has no regulatory flexibility about the adoption.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, Medicaid recipients will have the option to receive some healthcare services as a telemedicine service or telehealth service, including certain behavioral health services through audio-only, in lieu of in-person visits when it is clinically effective and cost-effective to do so. Receiving certain services via audio-only is expected to be more convenient as well as preferred for many Medicaid recipients.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the proposed rules could have an adverse economic effect on Medicaid providers, small businesses, micro-businesses, or rural communities because providers could incur some cost to comply with the proposed rules. These costs could be offset by savings in improved health outcomes, avoided healthcare emergencies, and efficiencies attained from the use of telecommunications. The total costs cannot be estimated because HHSC lacks data needed to estimate the costs and savings to be experienced.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R075" in the subject line.

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

1 TAC §§354.1430, 354.1432, 354.1434 - 354.1436

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments and new sections affect Texas Government Code §§531.001, 531.02161, 531.0217, 531.02164(c-1), and 531.02171.

§354.1430. Definitions.

The following words and terms, when used in this division, have the following meanings unless the context clearly indicates otherwise.

(1) Audio-only--An interactive, two-way audio communication that uses only sound and meets the privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication.

(2) Behavioral health services--This term includes mental health and substance use disorder services.

(3) Declaration of state of disaster--An executive order or proclamation by the governor declaring a state of disaster in accordance with Texas Government Code §418.014.

(4) In-Person--Within the physical presence of another person. In-person does not include interacting with a client via a telemedicine medical service or a telehealth service.

(5) Non-behavioral health service--Any health service that is not a behavioral health service.

(6) Platform--This term has the meaning assigned by Texas Government Code §531.001(4-d).

~~[(1) Distant site--The place where a physician or health professional is physically located when providing telemedicine medical services or telehealth services.]~~

~~[(2) Established health site--A location where a patient will present to seek a health service where there is a patient site presenter and sufficient technology and medical equipment to allow for an adequate physical evaluation or assessment, as appropriate for the patient's presenting complaint. It requires a defined health provider-patient relationship. A patient's private home is not an established health site.]~~

~~[(3) Established medical site--Has the meaning defined in the rules of the Texas Medical Board at 22 TAC §174.2 (relating to Definitions).]~~

~~[(4) In-person evaluation--Has the meaning defined in the rules of the Texas Medical Board at 22 TAC §174.2.]~~

~~[(5) Patient site--The place where a patient is physically located.]~~

~~[(6) Patient site presenter--An individual at the patient site who:]~~

~~[(A) introduces the patient to the distant site provider for examination, and to whom the distant site provider may delegate tasks and activities; and]~~

~~[(B) is at least one of the following:]~~

~~*[(i)* licensed or certified in Texas to perform health care services and must present and/or be delegated tasks and activities only within the scope of the individual's licensure or certification; or]~~

~~*[(ii)* a qualified mental health professional-community services (QMHP-CS) as defined in 25 TAC §412.303 (relating to Definitions).]~~

[(7) Readily available--Means the patient site presenter is:]

[(A) in the same room as the patient; or]

[(B) at the discretion of the licensed or certified professional providing the service, not in the same room as the patient but within the proximity determined by the licensed or certified professional.]

[(8) State mental health facility--A hospital with an inpatient component funded or operated by the Department of State Health Services.]

[(9) State supported living center--A state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to individuals with intellectual and developmental disabilities a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, as defined at Health and Safety Code §531.002(17).]

(7) [(10)] Telehealth service--This term has the meaning assigned by Texas Occupations Code §111.001. [A health service, other than a telemedicine medical service, delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:]

[(A) compressed digital interactive video, audio, or data transmission;]

[(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and]

[(C) other technology that facilitates access to health care services or medical specialty expertise.]

(8) [(11)] Telemedicine medical service--This term has the meaning assigned by Texas Occupations Code §111.001. [A health care service, initiated by a physician who is licensed to practice medicine in Texas under Title 3, Subtitle B of the Occupations Code or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:]

[(A) compressed digital interactive video, audio, or data transmission;]

[(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and]

[(C) other technology that facilitates access to health care services or medical specialty expertise.]

§354.1432. Telemedicine and Telehealth Benefits and Limitations.

Telemedicine medical services and telehealth services are authorized service delivery methods for [a benefit under the] Texas Medicaid covered services [program] as provided in this section. All telemedicine medical services and telehealth services [and] are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (HHSC) or its designee [(HHSC)].

(1) A client must not be required to receive a covered service as a telemedicine medical service or telehealth service except in the event of an active declaration of state of disaster and at the direction of HHSC.

(2) In the event of a declaration of state of disaster, HHSC may issue direction to providers regarding the use of telemedicine medical services and telehealth services, including the use of an audio-only platform, to provide covered services to clients who reside in the area subject to the declaration of state of disaster.

(3) HHSC considers the following criteria when determining whether a covered service may be delivered as telemedicine medical service or telehealth service, including via an audio-only platform:

(A) clinical effectiveness;

(B) cost effectiveness;

(C) health and safety;

(D) patient choice and access to care; and

(E) other criteria specific to the service.

(4) [(1)] Conditions for reimbursement applicable to telemedicine medical services.

(A) The provider must be enrolled in Texas Medicaid.

(B) The covered services must be provided in compliance with Texas Occupations Code Chapter 111 and Title 22 Texas Administrative Code Chapter 174 (relating to Telemedicine).

(C) A telemedicine medical service must be designated for reimbursement by HHSC. Telemedicine medical services designated for reimbursement are those that are clinically effective and cost-effective, as determined by HHSC and in accordance with paragraph (3) of this section. Covered services that HHSC has determined are clinically effective and cost-effective when provided as a telemedicine medical service can be found in the Texas Medicaid Provider Procedures Manual (TMPPM).

[(A) The telemedicine medical services must be designated for reimbursement by HHSC. Telemedicine medical services designated for reimbursement include:]

[(i) consultations;]

[(ii) office or other outpatient visits;]

[(iii) psychiatric diagnostic interviews;]

[(iv) pharmacologic management;]

[(v) psychotherapy; and]

[(vi) data transmission.]

[(B) The services must be provided in compliance with 22 TAC Chapter 174 (relating to Telemedicine).]

[(C) The patient site must be:]

[(i) an established medical site;]

[(ii) a state mental health facility; or]

[(iii) a state supported living center.]

(5) Conditions for telemedicine medical services provided in a primary or secondary school-based setting.

(A) [(D)] For a child receiving telemedicine medical services in a primary or secondary school-based setting, advance parent or legal guardian consent for a telemedicine medical service must be obtained.

(B) [(E)] The patient's primary care physician or provider must be notified of a telemedicine medical service, unless the patient does not have a primary care physician or provider.

(i) The patient receiving the telemedicine medical service, or the patient's parent or legal guardian, must consent to the notification.

(ii) For a telemedicine medical service provided to a child in a primary or secondary school-based setting, the notification must include a summary of the service, including:

(I) exam findings;

(II) prescribed or administered medications; and

(III) patient instructions.

(C) [(F)] If a child receiving a telemedicine medical service in a primary or secondary school-based setting does not have a primary care physician or provider, the child's parent or legal guardian must be offered:

(i) the information in subparagraph (B)(ii) [(E)(ii)] of this paragraph; and

(ii) a list of primary care physicians or providers from which to select the child's primary care physician or provider.

(D) [(G)] Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician or provider, are reimbursed if:

(i) the physician is enrolled as a Medicaid provider;

(ii) the patient is a child who receives the service in a primary or secondary school-based setting; and

(iii) the parent or legal guardian of the patient provides consent before the service is provided.[; and]

[(iv) a health professional as defined by Texas Government Code §531.0217(a)(1) is present with the patient during the treatment.]

(6) [(2)] Conditions for reimbursement applicable to telehealth services.

(A) The provider must be enrolled in Texas Medicaid.

(B) The covered services must be provided in compliance with Texas Occupations Code Chapter 111 and standards established by the respective licensing or certifying board of the professional providing the telehealth service.

(C) Telehealth services must be designated for reimbursement by HHSC. Telehealth services designated for reimbursement are those that are clinically effective and cost-effective, as determined by HHSC and in accordance with paragraph (3) of this section. Covered services that HHSC has determined are clinically effective and cost-effective when provided as a telehealth service can be found in the TMPPM.

[(A) The telehealth services must be designated for reimbursement by HHSC. Designated telehealth services will be listed in the Texas Medicaid Provider Procedures Manual.]

[(B) The services must be provided in compliance with standards established by the respective licensing or certifying board of the professional providing the services.]

[(C) The patient site must be:]

[(i) an established health site;]

[(ii) a state mental health facility; or]

[(iii) a state supported living center.]

[(D) The patient site presenter must be readily available for telehealth services. However, if the telehealth services relate only to mental health, a patient site presenter does not have to be readily available except when the patient may be a danger to himself or to others.]

[(E) Before receiving a telehealth service, the patient must receive an initial evaluation for the same diagnosis or condition by a physician or other qualified healthcare professional licensed in Texas.]

[(i) A required initial evaluation must be performed in-person or as a telemedicine visit that conforms to 22 TAC Chapter 174 (relating to Telemedicine).]

[(ii) If the patient is receiving the telehealth services to treat a mental health diagnosis or condition, the patient is not required to receive an initial evaluation.]

[(F) A patient receiving telehealth services must be evaluated at least annually by a physician or other healthcare professional licensed in Texas and qualified to determine if the patient has a continued need for services.]

[(i) The evaluation must be performed in-person or as a telemedicine visit that conforms to 22 TAC Chapter 174.]

[(ii) This evaluation requirement does not apply to a patient receiving telehealth services for the treatment of a mental health diagnosis or condition from a qualified behavioral health provider licensed in Texas.]

[(G) Both the distant site provider and the patient site presenter must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.]

[(H) Written telehealth policies and procedures must be maintained and evaluated at least annually by both the distant site provider and the patient site presenter and must address:]

[(i) patient privacy to assure confidentiality and integrity of patient telehealth services;]

[(ii) archival and retrieval of patient service records; and]

[(iii) quality oversight mechanisms.]

(7) [(3)] Conditions for reimbursement applicable to both telemedicine medical services and telehealth services.

(A) Preventive health visits under Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment program, are not reimbursed if performed using telemedicine medical services or telehealth services. Health care or treatment provided using telemedicine medical services or telehealth services after a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(B) Documentation in the patient's medical record for a telemedicine medical service or a telehealth service must be the same as for a comparable in-person evaluation.

(C) Providers of telemedicine medical services and telehealth services must maintain confidentiality of protected health information (PHI) as required by Title 42 Code of Federal Regulations (CFR) [CFR] Part 2, 45 CFR Parts 160 and 164, Texas Occupations

Code Chapters [~~chapters~~] 111 and 159 [~~of the Occupations Code~~], and other applicable federal and state law.

(D) Providers of telemedicine medical services and telehealth services must comply with the requirements for authorized disclosure of PHI relating to patients in state mental health facilities and residents in state supported living centers, which are included in, but not limited to, 42 CFR Part 2, 45 CFR Parts 160 and 164, Texas Health and Safety Code §611.004, and other applicable federal and state law.

(E) Telemedicine medical services and telehealth services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

§354.1434. Home Telemonitoring Benefits and Limitations.

(a) Home telemonitoring services are a benefit of the Texas Medicaid Program as provided in this section and are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (HHSC) or its designee [(~~HHSC~~)].

(b) Home telemonitoring services require scheduled remote monitoring of data related to a patient's health and transmission of the data to a licensed home health agency or a hospital, as those terms are defined by Texas Government Code §531.02164(a).

(c) Home telemonitoring service providers must:

(1) comply with all applicable federal, state, and local laws and regulations;

(2) be enrolled and approved for participation in the Texas Medicaid Program as home telemonitoring service providers;

(3) bill for services covered under the Texas Medicaid Program in the manner and format prescribed by HHSC;

(4) share clinical information gathered while providing home telemonitoring services with the patient's physician; and

(5) not duplicate disease management program services provided under Human Resources Code §32.057 and further described in Division 32 of this subchapter (relating to Texas Medicaid Wellness Program).

(d) Home telemonitoring services are available only to Texas Medicaid clients who:

(1) are diagnosed with diabetes, hypertension, or any other conditions allowed by Texas Government Code §531.02164 and determined by HHSC to be cost effective and feasible; and

(2) exhibit two or more of the following risk factors:

(A) two or more hospitalizations in the prior 12-month period;

(B) frequent or recurrent emergency room admissions;

(C) a documented history of poor adherence to ordered medication regimens;

(D) a documented history of falls in the prior six-month period;

(E) limited or absent informal support systems;

(F) living alone or being home alone for extended periods of time; and

(G) a documented history of care access challenges.

(e) Home telemonitoring services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(f) Home telemonitoring services are available to Texas Medicaid clients who are 20 years of age and younger, with one or more of the following conditions:

(1) end-stage solid organ disease;

(2) organ transplant recipient; or

(3) requiring mechanical ventilation.

§354.1435. Provision of Behavioral Health Services through an Audio-Only Platform.

The Texas Health and Human Services Commission (HHSC) recognizes that mental health services are expressly excluded from the provisions of Texas Occupations Code Chapter 111 and further, that the term "mental health services" is not defined in Texas Occupations Code Chapter 111. Additionally, HHSC recognizes the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and the National Institute of Mental Health recognize substance use disorder as a mental disorder. Acknowledging the importance of access to substance use disorder and pursuant to HHSC's broad rulemaking authority in Texas Government Code §531.0055 and §531.033 and Texas Human Resources Code §32.021, for the purposes of this rule, HHSC considers the provision of mental health services, as that term is used in Texas Occupations Code Chapter 111, to be synonymous with the provision of behavioral health services. Conditions for reimbursement applicable to behavioral health services provided through an audio-only platform are described in this section.

(1) The provider must be enrolled in Texas Medicaid.

(2) The provider must obtain informed consent from the client, client's parent, or the client's legally authorized representative prior to rendering a behavioral health service via an audio-only platform; except when doing so is not feasible or could result in death or injury to the client. Verbal consent is permissible and must be documented in the client's medical record.

(3) The covered services must be provided in compliance with the standards established by the respective licensing or certifying board of the professional providing the audio-only telemedicine medical service or audio-only telehealth service.

(4) Behavioral health services provided via audio-only platform must be designated for reimbursement by HHSC. Behavioral health services provided via an audio-only platform designated for reimbursement are those that are clinically effective and cost-effective, as determined by HHSC and in accordance with §354.1432(3) of this subchapter (relating to Telemedicine and Telehealth Benefits and Limitations). Behavioral health services that HHSC has determined are clinically effective and cost-effective when provided via an audio-only platform can be found in the Texas Medicaid Provider Procedures Manual (TMPPM).

§354.1436. Provision of Non-behavioral Health Services Using an Audio-only Platform.

Conditions for reimbursement applicable to non-behavioral health services using an audio-only platform:

(1) Non-behavioral health services provided via an audio-only platform must be designated for reimbursement by The Texas Health and Human Services Commission (HHSC). Non-behavioral health services provided via an audio-only platform designated for reimbursement are those that are clinically effective and cost-effective, as determined by HHSC and in accordance with §354.1432(3) of this subchapter (relating to Telemedicine and Telehealth Benefits and Limitations). Non-behavioral health services that HHSC has determined are clinically effective and cost-effective when provided via

an audio-only platform can be found in the Texas Medicaid Provider Procedures Manual (TMPPM).

(2) The provider must be enrolled in Texas Medicaid.

(3) The covered services must be provided in compliance with Texas Occupations Code Chapter 111 and standards established by the respective licensing or certifying board of the professional providing the audio-only telemedicine medical service or audio-only telehealth service.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER M. MENTAL HEALTH TARGETED CASE MANAGEMENT AND MENTAL HEALTH REHABILITATION
DIVISION 1. GENERAL PROVISIONS

1 TAC §§354.2603, 354.2607, 354.2609

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments affect Texas Government Code §§531.001, 531.02161, 531.0217, 531.02164(c-1), and 531.02171.

§354.2603. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) Adult--An individual who is age 21 or older.

(2) Appeal--A mechanism for an independent review of an adverse determination or a request for a review of an action or failure to act that may result in a fair hearing.

(3) Audio-only--Has the meaning assigned by §354.1430(1) of this chapter (relating to Definitions).

(4) [~~(3)~~] Behavioral health emergency--A situation involving an individual who is behaving in a violent or self-destructive manner and in which preventive, de-escalation, or verbal techniques have been determined to be ineffective and it is immediately necessary to restrain or seclude the individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual is attempting to commit suicide or inflict serious bodily harm; or

(B) imminent physical harm to others because of acts the individual commits.

(5) [~~(4)~~] Case manager--A staff member of the comprehensive provider agency who provides mental health targeted case management services.

(6) [~~(5)~~] CFP--Certified Family Partner. A person who meets the credentialing requirements in §353.1415(d) of this title (relating to Staff Member Credentialing).

(7) [~~(6)~~] CFR--Code of Federal Regulations.

(8) [~~(7)~~] Child or youth--An individual who is under age 21.

(9) [~~(8)~~] Community-based--Mental health targeted case management services that are provided at a location other than the comprehensive provider agency's office.

(10) [~~(9)~~] Community data--Additional information gathered during the uniform assessment.

(11) [~~(10)~~] CSSP--Community services specialist. A staff member of a local mental health authority who has documented full-time experience in the provision of mental health targeted case management and mental health rehabilitative services prior to August 31, 2004. See definition in Title 26 Texas Administrative Code (TAC) §301.303 [~~25 TAC §412.303~~] (relating to Definitions).

(12) [~~(11)~~] Comprehensive provider agency--An entity that provides or subcontracts for the delivery of the full array of mental health targeted case management and mental health rehabilitative services set forth in this subchapter, with the exception of §354.2715 of this subchapter (relating to Day Programs for Acute Needs).

(13) [~~(12)~~] Crisis plan--A plan developed in advance of a crisis and in collaboration with the individual, legally authorized representative (LAR) [~~LAR~~], caregiver, or family of the individual receiving services that identifies circumstances that determine a crisis that would jeopardize the individual's ability to remain in the community and the actions preferred and necessary to avert removal from the community.

(14) [~~(13)~~] CSU--Crisis stabilization unit. A crisis stabilization unit licensed under Chapter 577 of the Texas Health and Safety Code and 26 TAC Chapter 510 [~~25 TAC Chapter 134~~] (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

(15) [~~(14)~~] Family Psychotherapy--Therapy that focuses on the dynamics of the family unit where the goal is to strengthen the family's problem solving and communication skills.

(16) [~~(15)~~] Group Psychotherapy--Therapy that involves one or more therapists working with several clients at the same time.

(17) [~~(16)~~] HHSC--The Texas Health and Human Services Commission, or its designee.

(18) [~~(17)~~] IMD--Institution for mental diseases. Based on 42 CFR §435.1009, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, including medical attention, nursing care, and related services.

(19) [~~(18)~~] Independent Living--A service within psychosocial rehabilitative services that assists an individual in acquiring the most immediate, fundamental functional skills needed to enable the individual to reside in the community and avoid more restrictive

levels of treatment or reducing behaviors or symptoms that prevent successful functioning in the individual's environment of choice. Such services include training in symptom management, personal hygiene, nutrition, food preparation, exercise, money management, and community integration activities.

(20) [~~(19)~~] Individual--A person seeking or receiving mental health targeted case management, mental health rehabilitative services, or both under this subchapter.

(21) [~~(20)~~] Individual Psychotherapy--Therapy that focuses on a single client.

(22) [~~(21)~~] Intensive case management--A level of mental health targeted case management that includes a focused effort to coordinate community resources, uses evidence-based wraparound process planning to address a child's or youth's unmet needs across life domains, and assists a child or youth in gaining access to necessary care and services appropriate to the child's or youth's needs.

(23) [~~(22)~~] Intensive case management plan--A written document that is part of the medical record for a child or youth receiving intensive case management and is developed by a case manager, in collaboration with the child or youth and the child's or youth's LAR or primary caregiver, that identifies services needed by the child or youth and sets forth a plan for how the child or youth may gain access to the identified services.

[~~(23) In-vivo--The individual's natural environment (e.g., the individual's residence, work place, or school).~~]

(24) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(25) Licensed medical personnel--A staff member who is:

(A) a physician;

(B) a physician assistant;

(C) an advanced practice registered nurse;

(D) a registered nurse;

(E) a licensed vocational nurse; or

(F) a pharmacist.

(26) Life domains--Areas of life, including safety, health, emotional, psychological, social, educational, cultural, and legal.

(27) LPHA--Licensed Practitioner of the Healing Arts. A staff member who is:

(A) a physician;

(B) a licensed professional counselor;

(C) a licensed clinical social worker;

(D) a licensed psychologist;

(E) an advanced practice registered nurse;

(F) a physician assistant; or

(G) [~~(F)~~] a licensed marriage and family therapist.

(28) Medication training and support services--Medication training and support services consist of education and guidance about medications and their possible side effects.

(29) Mental health rehabilitative services--Services that are individualized, age-appropriate, and provide training and instructional guidance that restore an individual's functional deficits due to serious mental illness or serious emotional disturbance. The services are designed to improve or maintain the individual's ability to remain in the community as a fully integrated and functioning member of that community.

(30) Mental health targeted case management--Services furnished to assist individuals with severe mental illness and functional impairments or serious emotional disorders and functional impairments to gain access to needed medical, social, educational, and other services.

(31) On-site--Services that are provided at a location operated by a comprehensive provider agency.

(32) Peer provider--Staff with lived experience with a mental health condition who meet the credentialing requirements in §353.1415(c) of this title.

(33) Pharmacological management--In-depth management of psychopharmacological agents to treat an individual's mental health symptoms.

(34) Platform--Has the meaning assigned by Texas Government Code §531.001(4-d).

(35) [~~(34)~~] Primary caregiver--A person 18 years of age or older who has:

(A) actual care, control, and possession of a child or youth; or

(B) assumed responsibility for providing shelter and care for an adult.

(36) [~~(35)~~] Psychiatric diagnostic evaluation--An integrated biopsychosocial assessment, including history, mental status, and recommendations.

(37) [~~(36)~~] Psychosocial rehabilitative services--Social, behavioral, and cognitive interventions provided by members of an adult's therapeutic team that build on strengths and focus on restoring the adult's ability to develop and maintain social relationships, occupational or educational achievements, and other independent living skills that are affected by a serious mental illness in adults. Psychosocial rehabilitative services may also address the impact of co-occurring disorders upon the adult's ability to reduce symptomology and increase daily functioning.

(38) [~~(37)~~] QMHP-CS--Qualified Mental Health Professional-Community Services. Staff who meet the credentialing requirements in §353.1415(a) of this title.

(39) [~~(38)~~] Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(40) [~~(39)~~] Recovery or treatment plan (recovery/treatment plan)--A written plan that:

(A) is developed with the individual, the LAR if required, other persons whose inclusion is requested by the individual or LAR and who agree to participate, and a QMHP-CS or LPHA;

(B) is completed in conjunction with the uniform assessment;

(C) amended at any time based on an individual's needs;

(D) guides the recovery process and fosters resiliency;

(E) identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) identifies services and supports to meet the individual's goals, preferences, needs and desired outcomes.

(41) [~~(40)~~] Recovery or treatment planning (recovery/treatment planning)--A systematic process for engaging the individual, LAR, and the primary caregiver and others to develop goals and identify a course of action to respond to the individual's clinically assessed needs, including medical, social, educational, and other services needed by the individual.

(42) [~~(41)~~] Referral and linkage--Activities that help link an individual with medical, social, educational, and other providers that are capable of providing needed services.

(43) [~~(42)~~] Routine care services--Mental health services provided to an individual who is not in crisis.

(44) [~~(43)~~] Service provider--An entity separate from the comprehensive provider agency which may also provide services to an individual outside of the services performed under this subchapter.

(45) [~~(44)~~] Staff member--Comprehensive provider agency personnel, including a full-time or part-time employee, contractor, or intern, but excluding a volunteer.

(46) [~~(45)~~] Strengths-based--The concept used in service delivery that identifies, builds on, and enhances the capabilities, knowledge, skills, and assets of the individual, LAR, or primary caregiver, and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(47) Telehealth service--Has the meaning assigned by Texas Occupations Code §111.001(3).

(48) Telemedicine medical service--Has the meaning assigned by Texas Occupations Code §111.001(4).

(49) [~~(46)~~] Therapeutic team--A group of staff members who work together in a coordinated manner for the purpose of providing comprehensive mental health services to an individual.

(50) [~~(47)~~] UA--Uniform assessment. A required assessment that assists in determining the medical necessity of services. For adults, the UA includes the Adult Needs and Strengths Assessment (ANSA), community data, relevant rating scales, diagnostic information, and any other state-required assessment tools and procedures. For children or youth, the UA includes the Child and Adolescent Needs and Strengths (CANS) assessment, community data, relevant rating scales, diagnostic information, and any other state-required assessment tools and processes.

(51) [~~(48)~~] Utilization management guidelines--Guidelines developed by HHSC that establish the type, amount, and duration of mental health targeted case management services and mental health rehabilitative services for each individual.

(52) [~~(49)~~] Wraparound Process Planning--A strengths-based approach used in intensive case management to develop an intensive case management plan that addresses the child's or youth's unmet needs across life domains.

§354.2607. Assessment and Service Authorization.

(a) Assessment [~~and documentation~~].

(1) A QMHP-CS with appropriate supervision and training must perform an [~~a face to face~~] assessment of an [~~the~~] individual in accordance with the requirements of the Texas Medicaid Provider Procedures Manual (TMPPM), including all updates and revisions, and all the handbooks, standards, and guidelines as determined by HHSC or a managed care organization (MCO) with which they contract.

(2) An assessment of an individual may be performed as a telemedicine medical service or a telehealth service, including via an audio-only platform, in accordance with the requirements and limitations of Subchapter A, Division 33 of this chapter (relating to Advanced Telecommunications Services).

(b) Documentation. The assessment must be documented and must include:

(1) the individual's identifying information;

(2) completion of the appropriate uniform assessment(s) and assessment guideline calculations;

(3) the individual's present status and relevant history, including education, employment, housing, legal, military, developmental, and current available social and support systems;

(4) the individual's co-occurring substance use, intellectual or developmental disability, or physical health condition, if any;

(5) the individual's relevant past and current medical and psychiatric information, which may include trauma history;

(6) information from the individual and LAR, if applicable, regarding the individual's strengths, needs, natural supports, community participation, responsiveness to previous treatment, as well as preferences for and objections to specific treatments;

(7) the need or desire of the individual for family member involvement or other identified natural supports in treatment and mental health community services, if the individual is an adult without an LAR[~~,~~];

(8) the identification of the LAR's or family members' need for education and support services related to the individual's mental illness or emotional disturbance and the plan to facilitate the LAR's or family members' receipt of the needed education and support services;

(9) recommendations and conclusions regarding treatment needs; [~~and~~]

(10) the mode of delivery; and

(11) [~~(10)~~] date, signature, and credentials of the staff member completing the assessment.

(c) [~~(b)~~] Diagnostics. The diagnosis of a mental illness must be:

(1) rendered by an LPHA, acting within the scope of his license, who has interviewed the individual [~~face-to-face (either in person or via telemedicine)~~];

(2) based on diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;

(3) documented in writing, including the date, signature, and credentials of the person making the diagnosis; and

(4) supported by and included in the uniform assessment.

(d) [~~(c)~~] Provision of services. The comprehensive provider agency and staff members must provide services in accordance with the requirements of the TMPPM, including all updates and revisions, and all handbooks, standards, and guidelines as determined by HHSC or an MCO with which they contract. [~~implement procedures to ensure that each individual is provided mental health services based on:~~]

[~~(1) the assessment conducted under subsection (a) of this section;~~]

[~~(2) medical necessity as determined by an LPHA; and~~]

[(3) when available, physical health care needs as determined by a physician, physician assistant, or advanced practice registered nurse.]

(e) A service described in this subsection may be delivered as a telemedicine medical service or a telehealth service, including via an audio-only platform, in accordance with the requirements and limitations of Subchapter A, Division 33 of this chapter. The comprehensive provider agency and staff members must implement procedures to ensure that each individual is provided mental health services based on:

(1) the assessment conducted under subsection (a) of this section;

(2) medical necessity as determined by an LPHA; and

(3) when available, physical health care needs as determined by a physician, physician assistant, or advanced practice registered nurse.

(f) [(d)] Prerequisites to provision of services. Except for [With the exception of] crisis intervention services provided under §354.2707 of this subchapter (relating to Crisis Intervention Services), before providing services to an individual under this subchapter a comprehensive provider agency must:

(1) if required by the managed care organization, submit authorization requests to the MCO [managed care organization] with which the individual is enrolled for the type(s), amount, and duration of services to be provided to the individual in accordance with the uniform assessment and the utilization management guidelines; and

(2) in collaboration with the individual and his LAR, if applicable, develop a recovery/treatment plan for the individual that complies with the requirements of this subchapter.

§354.2609. Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary.

(a) Timeframe for recovery/treatment plan.

(1) A comprehensive provider agency must comply with the requirements of the Texas Medicaid Provider Procedures Manual (TMPPM), including all updates and revisions and all handbooks, standards, and guidelines as determined by HHSC or a managed care organization (MCO) with which they contract.

(2) Recovery, treatment planning, treatment plan review, and discharge summaries, as described in this section, may be delivered as a telemedicine medical service or a telehealth service, including via an audio-only platform, in accordance with the requirements and limitations of Subchapter A, Division 33 of this chapter (relating to Advanced Telecommunications Services).

(b) A comprehensive provider agency must develop a written recovery/treatment plan:

(1) before the provision of mental health targeted case management or mental health rehabilitative services; and

(2) within 10 business days after the date the individual is eligible and has been authorized for routine care services.

(c) [(b)] Credentials for completing recovery/treatment plan. A staff member credentialed as a QMHP-CS, at a minimum, is responsible for completing and signing the plan.

(d) [(c)] Content of recovery/treatment plan (plan).

(1) The plan must reflect input from the individual and each of the disciplines of treatment to be provided to the individual based on the assessment. The plan must include:

(A) a description of the individual's presenting problem(s);

(B) a description of the individual's strengths;

(C) a description of the individual's needs arising from the mental illness or serious emotional disturbance;

(D) a description of the individual's co-occurring substance use disorder, intellectual or developmental disability, or physical health condition(s), if any;

(E) a description of the recovery goals and objectives based on the assessment, and expected outcomes of the treatment in accordance with paragraph (2) of this subsection;

(F) the expected date by which the recovery/treatment goals will be achieved; and

(G) a list of the type(s) of intervention(s) within each form of treatment that will be provided to the individual (e.g., psychosocial rehabilitation, medication services, supported employment), and for each type of service listed:

(i) a description of the strategies to be implemented by staff members in providing the service and achieving goals;

(ii) the frequency, number of units (e.g., 10 counseling sessions, two skills training sessions), and duration of each service to be provided (e.g., .5 hour, 1.5 hours); and

(iii) the credentials of the staff member responsible for providing the service.

(2) The goals and objectives with expected outcomes required by paragraph (1)(E) of this subsection must:

(A) specifically address the individual's unique needs, preferences, experiences, and cultural background;

(B) specifically address the individual's co-occurring substance use or physical health disorder, if any;

(C) be expressed in terms of overt, observable actions of the individual;

(D) be objective and measurable using quantifiable criteria; and

(E) reflect the individual's self-direction, autonomy, and desired outcomes.

(3) The plan must be developed in consultation with the individual, and LAR if applicable.

(4) The individual, and LAR if applicable, must be provided, in an understandable format as appropriate, to meet the needs of every [each] individual, a copy of the plan and each subsequent reviewed and revised plan.

(e) [(d)] Review of recovery/treatment plan.

(1) A comprehensive provider agency must:

(A) review an individual's continued eligibility for services as specified in §354.2703 of this subchapter (relating to Continued Eligibility); and

(B) review an individual's plan prior to requesting an authorization for the continuation of services, including:

(i) reviewing the individual's plan in its entirety, considering input from the individual, the individual's LAR, as applicable, and each member of the therapeutic team;

(ii) determining if the plan [~~is~~] adequately addresses [~~addressing~~] the needs of the individual;

(iii) documenting progress on all goals and objectives; and

(iv) documenting any recommendation for continuing services, any change from current services, and any discontinuation of services.

(2) In addition to the required review under paragraph (1)(B) of this subsection, a comprehensive provider agency must review an individual's recovery/treatment plan:

(A) if clinically indicated; and

(B) at the request of the individual, [~~or~~] the LAR, or the primary caregiver of a child or youth.

(3) Any time an individual's recovery/treatment plan is reviewed, the comprehensive provider agency must:

(A) meet with the individual [~~face-to-face~~] to solicit and consider input from the individual regarding a self-assessment of progress toward the recovery goals;

(B) solicit and consider the input from each member of the therapeutic team in assessing the individual's progress toward the recovery goals and objectives with expected outcomes;

(C) solicit and consider input from the LAR or primary caregiver, as applicable, regarding the level of satisfaction with the services provided; and

(D) document all the input described in subparagraphs (A) - (C) of this paragraph.

(f) [~~(e)~~] Revisions to the recovery/treatment plan. If, after any review of the recovery/treatment plan, the individual or comprehensive provider agency determines that the plan does not adequately address the needs of the individual, the comprehensive provider agency, with input from the individual, must appropriately revise the content of the plan.

(g) [~~(f)~~] Discharge Summary. Not later than 21 calendar days after an individual's discharge from services, whether planned or unplanned, a comprehensive provider agency must document in the individual's medical record:

(1) a summary, based on input from each member of the therapeutic team, of all the services provided, the individual's response to treatment, and any other relevant information;

(2) recommendations made to the individual, LAR, or primary caregiver for follow up services, if any; and

(3) the individual's most current diagnosis, based on diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 2. MENTAL HEALTH TARGETED CASE MANAGEMENT

1 TAC §354.2655, §354.2657

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments affect Texas Government Code §§531.001, 531.02161, 531.0217, 531.02164(c-1), and 531.02171.

§354.2655. Mental Health Targeted Case Management Services.

(a) Mental health targeted case management services are provided to eligible individuals to assist them in gaining access to needed medical, social/behavioral, educational, and other services and supports that are appropriate to the individual's needs.

(b) Mental health targeted case management includes:

(1) development and periodic revision of a specific recovery/treatment plan, per §354.2609 of this subchapter (relating to Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary);

(2) making referrals and performing other related activities to help an individual obtain needed services and supports, including activities that help link an individual with:

(A) medical, social/behavioral, and educational providers; and

(B) other providers that provide needed services to address identified needs and achieve goals in the recovery/treatment plan;

(3) monitoring and follow up activities of service effectiveness, with the individual, family members, providers, or other entities or individuals, that occur regularly or at least annually to ensure the recovery/treatment plan is implemented and adequately addresses the individual's needs; and

(4) coordination with, and not duplication of, activities provided as part of institutional services and discharge planning activities that take place at inpatient facilities.

(c) Mental health targeted case management services must be provided, at minimum, by an individual credentialed as a QMHP-CS and in accordance with the requirements of the Texas Medicaid Provider Procedures Manual (TMPPM), including all updates and revisions and all handbooks, standards, and guidelines as determined by HHSC or a managed care organization (MCO) with which they contract.

(d) Mental health targeted case management, as described in this section, may be delivered as a telemedicine medical service or a telehealth service, including via an audio-only platform, in accordance with the requirements and limitations of Subchapter A, Division 33 of this chapter (relating to Advanced Telecommunications Services.)

(e) [~~(d)~~] A mental health targeted case manager must be assigned to an individual within two business days after receiving notification that the individual has been authorized to receive mental health targeted case management services.

(f) [~~(e)~~] The assigned mental health targeted case manager must:

(1) meet [~~face-to-face~~] with the individual and the individual's LAR or primary caregiver within seven [~~7~~] calendar days after the case manager is assigned;

(2) assist the individual in identifying the individual's immediate needs and in determining access to community resources that may address those needs;

(3) identify the individual's strengths, service needs, and assistance required to address identified needs;

(4) identify the goals and actions required to meet the individual's identified needs;

(5) take the steps necessary to accomplish the goals required to meet the individual's identified needs by using referral, linking, advocacy, and monitoring;

(6) meet [~~face-to-face~~] with the individual at the individual's, the LAR's, or the primary caregiver's request, or document why the meeting did not occur;

(7) meet [~~face-to-face~~] with the LAR, with or without the individual present, to provide a service that assists the individual in gaining and coordinating access to necessary care and services;

(8) meet [~~face-to-face~~] with the individual and the LAR or primary caregiver upon notification of a clinically significant change in the individual's functioning, life status, or service needs, or document why the meeting did not occur; and

(9) if notified that the individual is in crisis, coordinate with the appropriate providers of emergency services to respond to the crisis.

(g) [~~(f)~~] Intensive case management services, available only to children and youth, incorporate wraparound process planning in the approach to recovery/treatment planning and recovery/treatment plan implementation. The assigned mental health targeted case manager must:

(1) incorporate wraparound process planning in developing a recovery/treatment plan that addresses the child's or youth's unmet needs across life domains and includes, in addition to the required elements listed in §354.2609 of this subchapter [~~(relating to Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary)~~]:

(A) a list of the child's or youth's natural strengths and supports;

(B) a crisis plan developed in collaboration with the LAR, caregiver, and family;

(C) a prioritized list of the child's or youth's unmet needs that includes a discussion of the priorities and needs expressed by the child or youth and the LAR or primary caregiver;

(D) a description of the objective and measurable outcomes for each of the unmet needs as well as a projected time frame for each outcome;

(E) a description of the actions the child or youth, the case manager, and other designated people must take to achieve those outcomes;

(F) a list of the necessary services, [~~and~~] service providers and the availability of the services; and

(G) a statement of the maximum period [~~of time~~] between [~~face-to-face~~] contacts with the child or youth, and the LAR or primary caregiver, determined in accordance with the utilization management guidelines;

(2) develop and document an intensive case management plan based on the child's or youth's needs that may include information across life domains from relevant sources such as the child or youth, the LAR or primary caregiver, other agencies and organizations providing services to the child or youth, the child's or youth's medical record, and other sources identified by the child or youth, LAR, or primary caregiver;

(3) ensure services are delivered in clinically appropriate, client-centered, community-based settings;

(4) meet [~~face-to-face~~] with the child or youth and the LAR or primary caregiver:

(A) within seven calendar days after the case manager is assigned to the child or youth or document the reasons the meeting did not occur;

(B) within seven calendar days after discharge from an inpatient psychiatric setting or document the reasons the meeting did not occur; and

(C) according to the child's or youth's recovery/treatment plan or document the reasons the meeting did not occur;

(5) take necessary steps to assist the child or youth in gaining access to needed services and service providers, and document these activities, including:

(A) making referrals to potential service providers;

(B) initiating contact with potential service providers;

(C) arranging, facilitating linkages, and accompanying the child or youth to initial meetings and non-routine appointments;

(D) arranging transportation to ensure the child's or youth's attendance at appointments with services providers;

(E) advocating with service providers; and

(F) providing relevant information to service providers; and

(6) monitor the child's or youth's progress toward the outcomes set forth in the recovery/treatment plan, including:

(A) gathering information from the child or youth, current service providers, LAR, primary caregiver, and other resources;

(B) reviewing pertinent documentation, including the child's or youth's clinical records and assessments;

(C) ensuring that the recovery/treatment plan was implemented as agreed upon;

(D) ensuring that needed services were provided;

(E) determining whether progress toward the desired outcomes was made;

(F) identifying barriers to accessing services or to obtaining maximum benefit from services;

(G) advocating for the modification of services to address changes in the needs or status of the child or youth;

(H) identifying emerging unmet service needs;

(I) determining whether the recovery/treatment plan needs to be modified to address the child's or youth's unmet service needs more adequately; and

(J) revising the recovery/treatment plan as necessary to address the child's or youth's unmet service needs.

§354.2657. Documentation Requirements.

(a) Mental health targeted case management documentation. Mental health targeted case management services must be documented in the individual's medical record. Case managers are required to maintain a record of every [~~each~~] individual receiving mental health targeted case management, including:

(1) the name of the individual;

(2) the name of the comprehensive provider agency and the name of the assigned case manager;

(3) the date, nature, content, and units of each service received and whether goals specified in the recovery/treatment plan have been achieved;

(4) whether the individual has declined services in the recovery/treatment plan;

(5) the need for, and occurrences of, coordination with other staff members;

(6) a timeline for obtaining needed services; and

(7) a timeline for reevaluation of the recovery/treatment plan.

(b) Service documentation. The case manager must document the following for each service provided:

(1) the event or behavior that occurs while providing the service or the reason for the specific encounter;

(2) the person, persons, or entity, including other staff members, with whom the encounter or contact occurred;

(3) a collateral contact that is directly related to identifying the needs and supports for helping the individual access services and managing the individual's care, including coordination with other staff members;

(4) the recovery/treatment plan goal(s) that was the focus of the service, including the progress or lack of progress in achieving recovery plan goal(s);

(5) the specific intervention provided;

(6) the date the service was provided;

(7) the start and end time of the service;

(8) the mode of delivery used to provide the service and if provided in person, the location where the service was provided[, ~~and whether it was a face-to-face or telephone contact~~]; and

(9) the signature of the case manager providing the service, including credentials.

(c) Crisis service documentation. In addition to the general documentation requirements described in subsection (b) of this section, a staff member must document the following for crisis intervention services:

(1) behavioral description of the presenting problem;

(2) lethality (e.g., suicide, violence);

(3) the individual's relevant substance use [~~or abuse~~];

(4) the individual's relevant trauma, abuse, or neglect;

(5) all actions, including rehabilitative interventions and referrals to other agencies, used by the provider of crisis intervention services to address the problems presented;

(6) the response of the individual, and if appropriate, the response of the LAR or primary caregiver and family members;

(7) the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA or a QMHP-CS;

(8) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service;

(9) follow up activities, which may include referral to another provider; and

(10) the outcome of the individual's crisis.

(d) Refusing mental health targeted case management services. If the individual refuses mental health targeted case management services, the assigned case manager must:

(1) document the individual's stated reason for the refusal in the individual's medical record; and

(2) request that the individual sign a waiver of case management services that is filed in the individual's medical record.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2022.

TRD-202204047
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 438-2934

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DIVISION 3. MENTAL HEALTH REHABILITATION

1 TAC §§354.2707, 354.2709, 354.2711, 354.2713

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human

Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments affect Texas Government Code §§531.001, 531.02161, 531.0217, 531.02164(c-1), and 531.02171.

§354.2707. Crisis Intervention Services.

(a) Crisis intervention services are intensive, community-based, one-to-one services provided to an individual who requires services to control acute symptoms that place the individual at immediate risk of hospitalization, incarceration, or placement in a more restrictive treatment setting. The intervention:

(1) is in response to a crisis;

(2) seeks to reduce or manage symptoms of serious mental illness or serious emotional disturbance; and

(3) seeks to prevent admission of the individual to a more restrictive environment.

(b) Crisis intervention services include:

(1) an assessment of dangerousness of the individual to self or others;

(2) the coordination of emergency care services;

(3) behavior skills training to assist the individual in reducing distress and managing symptoms;

(4) problem-solving;

(5) reality orientation to help the individual identify and manage his or her symptoms of serious mental illness or serious emotional disturbance; and

(6) providing instruction, structure, and emotional support to the individual in adapting to and coping with immediate stressors.

(c) Crisis intervention services must be provided one-to-one and in accordance with the requirements of the Texas Medicaid Provider Procedures Manual (TMPPM), including all updates and revisions and all handbooks, standards, and guidelines as determined by HHSC or a managed care organization (MCO) with which they contract.

(d) Crisis intervention services as described in this section may be delivered as a telemedicine medical service or a telehealth service, including via an audio-only platform, in accordance with the requirements and limitations of Subchapter A, Division 33 of this chapter (relating to Advanced Telecommunications Services).

[~~(d) Crisis intervention services may be provided on-site or in-vivo.~~]

(e) Crisis intervention services must be provided by a QMHP-CS, at a minimum.

(f) Crisis intervention services may be provided without a recovery/treatment plan, as described in §354.2609 of this subchapter (relating to Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary).

(g) Crisis intervention services may not be provided to an individual who is currently admitted to a CSU.

§354.2709. Medication Training and Support Services.

(a) Medication training and support services must assist an individual in:

(1) understanding the nature of the individual's [~~his/her~~] serious mental illness or serious emotional disturbance;

(2) understanding the concepts of recovery and resilience within the context of the serious mental illness or serious emotional disturbance;

(3) understanding the role of the individual's [~~his/her~~] prescribed medications in reducing symptoms and increasing or maintaining his/her functioning;

(4) identifying and managing the individual's [~~his/her~~] symptoms and potential side effects of his/her medication;

(5) learning the contraindications of the individual's [~~his/her~~] medication;

(6) understanding the overdose precautions of the individual's [~~his/her~~] medication; and

(7) learning self-administration of the individual's [~~his/her~~] medication.

(b) Medication training and support services may be provided to:

(1) an adult;

(2) a child or youth; or

(3) the LAR or primary caregiver of an adult, child, or youth.

(c) Medication training and support services may be provided individually or in a group, and must be provided in accordance with the requirements of the Texas Medicaid Provider Procedures Manual (TMPPM), including all updates and revisions and all handbooks, standards, and guidelines as determined by HHSC or a managed care organization (MCO) with which they contract [~~on-site or in-vivo~~].

(d) Medication training and support services, as described in this section, may be delivered as a telemedicine medical service or a telehealth service, including via an audio-only platform, in accordance with the requirements and limitations of Subchapter A, Division 33 of this chapter (relating to Advanced Telecommunications Services).

(e) [~~(d)~~] Medication training and support services provided to an adult or an adult's LAR or primary caregiver must be provided by a:

(1) QMHP-CS;

(2) CSSP;

(3) peer provider; or

(4) licensed medical personnel.

(f) [~~(e)~~] Medication training and support services provided to a child or youth or the child's or youth's LAR or primary caregiver must be provided by a:

(1) QMHP-CS;

(2) CSSP;

(3) CFP; or

(4) licensed medical personnel.

(g) [~~(f)~~] Medication training and support services may not be provided to an individual who is currently admitted to a CSU.

§354.2711. Psychosocial Rehabilitative Services.

(a) Psychosocial rehabilitative services must include the following services, as determined necessary for every [~~each~~] individual:

(1) independent living;

(2) coordination;

(3) employment related;

(4) housing related; and

(5) medication related.

(b) Independent living services assist an individual in acquiring the most immediate, fundamental functional skills needed to enable the individual to reside in the community and avoid more restrictive levels of treatment, or assist an individual in reducing behaviors or symptoms that prevent successful functioning in the individual's environment of choice. Such services include training in symptom management, personal hygiene, nutrition, food preparation, exercise, money management, and community integration activities.

(c) Coordination services are training activities that assist an individual in improving the ability to gain and coordinate access to necessary care and services appropriate to the individual's needs. Coordination services include instruction and guidance in such areas as:

(1) assessment--identifying strengths and areas of need across life domains;

(2) recovery/treatment planning--prioritizing needs, establishing life and treatment goals, selecting interventions, and developing and revising recovery/treatment plans that include wellness, relapse prevention, and crisis plans;

(3) access--identifying and initiating contact with potential service providers and support systems across all life domains, including advocacy groups;

(4) coordination--setting appointments, arranging transportation, and facilitating communication between providers; and

(5) advocacy--

(A) asserting treatment needs, requesting special accommodations, and evaluating provider effectiveness and compliance with the agreed upon recovery/treatment plan; and

(B) requesting improvements and modifications to ensure maximum benefit from the services and supports.

(d) Employment related services provide supports and skills training that are not job-specific and focus on developing skills to reduce or manage the symptoms of serious mental illness that interfere with an individual's ability to make vocational choices or obtain or retain employment. Such services consist of:

(1) instruction in dress, grooming, socially and culturally appropriate behaviors, and etiquette necessary to obtain and retain employment;

(2) training in task focus, maintaining concentration, task completion, and planning and managing activities to achieve outcomes;

(3) instruction in obtaining appropriate clothing, arranging transportation, utilizing public transportation, accessing and utilizing available resources related to obtaining employment, and accessing employment-related programs and benefits;

(4) interventions or supports provided on or off the job site to reduce behaviors or symptoms of serious mental illness that interfere with job performance or that interfere with the development of skills that would enable the individual to obtain or retain employment; and

(5) interventions designed to develop natural supports on or off the job site to compensate for skill deficits that interfere with job performance.

(e) Housing related services develop an individual's strengths and abilities to manage the symptoms of the individual's serious mental illness that interfere with the individual's capacity to obtain or maintain independent, integrated housing. Such services consist of:

(1) skills training related to:

(A) home maintenance and cleanliness;

(B) problem-solving with the individual's landlord and neighbors, mortgage lender, or homeowner's [~~homeowners~~] association; and

(C) maintaining appropriate interpersonal boundaries; and

(2) supportive contacts with the individual to reduce or manage the behaviors or symptoms related to the individual's serious mental illness that interfere with maintaining independent, integrated housing.

(f) Medication related services provide training regarding an individual's medication adherence. Such services consist of training in:

(1) the importance of the individual taking the medications as prescribed;

(2) the self-administration of the individual's medication;

(3) determining the effectiveness of the individual's medications;

(4) identifying side-effects of the individual's medications; and

(5) contraindications for medications prescribed.

(g) The requirements of this subsection apply [~~Conditions~~] for the delivery of psychosocial rehabilitative services.

(1) Psychosocial rehabilitative services:

(A) must be provided in accordance with the requirements of the Texas Medicaid Provider Procedures Manual (TMPPM), including all updates and revisions and all handbooks, standards, and guidelines as determined by HHSC or a managed care organization (MCO) with which they contract; and

(B) may be delivered as a telemedicine medical service or a telehealth service, including via an audio-only platform, in accordance with the requirements and limitations of Subchapter A, Division 33 of this chapter (relating to Advanced Telecommunications Services.

(2) [~~(1)~~] Psychosocial rehabilitative services may be provided:

(A) only to adults who are not currently admitted to a CSU;

(B) individually or in a group; and

[~~(C) on-site or in-vivo; and~~]

(C) [~~(D)~~] only by a member of the individual's therapeutic team.

(3) [~~(2)~~] The therapeutic team must be constituted and organized in a manner that ensures:

(A) the team includes a sufficient number of staff to adequately address the rehabilitative needs of individuals assigned to the team;

(B) team members are appropriately credentialed to provide the full array of component services;

(C) team members have regularly scheduled team meetings [~~either in person or by teleconference~~]; and

(D) every member of the team is knowledgeable of the needs and services available to the specific individuals assigned to the team.

(4) [~~(3)~~] Independent living services, coordination services, employment-related services, and housing-related services must be provided by a:

(A) QMHP-CS;

(B) CSSP; or

(C) peer provider.

(5) [~~(4)~~] Only licensed medical personnel acting within the scope of their practice may provide medication-related services.

(6) [~~(5)~~] Crisis-related services must be provided by a QMHP-CS.

(h) An individual receiving psychosocial rehabilitative services [~~rehabilitation~~] is not eligible to simultaneously receive either skills training and development or targeted case management services.

§354.2713. Skills Training and Development Services.

(a) Skills training and development is training provided to an individual or the LAR or primary caregiver of an individual. The training:

(1) addresses serious mental illness or serious emotional disturbance and symptom-related problems that interfere with the individual's functioning;

(2) provides opportunities for the individual to acquire and improve skills needed to function in the community as appropriately and independently as possible; and

(3) facilitates the individual's community integration.

(b) Skills training and development services consist of:

(1) teaching an individual:

(A) skills for managing daily responsibilities, such as paying bills, attending school, and performing chores;

(B) communication skills, such as effective communication and recognizing or changing problematic communication styles;

(C) pro-social skills, such as replacing problematic behaviors with behaviors that are socially and culturally appropriate or developing interpersonal relationship skills necessary to function effectively with family, peer, teachers, or other people in the community;

(D) problem-solving skills;

(E) assertiveness skills, such as resisting peer pressure, replacing aggressive behaviors with assertive behaviors, and expressing one's own opinion in a manner that is socially appropriate;

(F) social skills and expanding the individual's social support network, such as selection of appropriate friends and healthy activities;

(G) stress reduction techniques, such as progressive muscle relaxation, deep breathing exercises, guided imagery, and selected visualization;

(H) anger management skills, such as identification of antecedents to anger, calming down, stopping and thinking before acting, handling criticism, and avoiding and disengaging from explosive situations;

(I) skills to manage the symptoms of serious mental illness or serious emotional disturbance and to recognize and modify unreasonable beliefs, thoughts and expectations;

(J) skills to identify and use community resources and informal supports;

(K) skills to identify and use acceptable leisure time activities; and

(L) independent living skills, such as money management, accessing and using transportation, grocery shopping, maintaining housing, maintaining a job, and decision making; and

(2) increasing the LAR's or primary caregiver's understanding of and ability to respond to the individual's needs identified in the assessment or documented in the recovery/treatment plan.

(c) Skills training and development services provided to an individual, LAR, or primary caregiver may be provided individually or in a group.

(d) Skills training and development services must [~~may~~] be provided in accordance with the requirements of the TMPPM, including all updates and revisions and all handbooks, standards, and guidelines as determined by HHSC or an MCO with which they contract [~~on-site or in-vivo~~].

(e) Skills training and development services, as described in this section, may be delivered as a telemedicine medical service or a telehealth service, including via an audio-only platform, in accordance with the requirements and limitations of Subchapter A, Division 33 of this chapter (relating to Advanced Telecommunications Services.

(f) [~~(e)~~] Skills training and development services provided to an adult or an adult's LAR or primary caregiver must be provided by a:

(1) QMHP-CS;

(2) CSSP; or

(3) peer provider.

(g) [~~(f)~~] Skills training and development services provided to a child or youth or the child's or youth's LAR or primary caregiver must be provided by a:

(1) QMHP-CS;

(2) CSSP; or

(3) CFP.

(h) [~~(g)~~] Skills training and development services may not be provided to an individual who is currently:

(1) admitted to a CSU; or

(2) receiving psychosocial rehabilitative services [~~rehabilitation~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2022.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 438-2934

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CHAPTER 354. MEDICAID HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in the Texas Administrative Code (TAC), Title 1, Part 15, Chapter 354, new Subchapter P, Autism Services, comprised of §§354.5001, concerning Purpose and Applicability; 354.5003, concerning Definitions; 354.5011, concerning Providers of Applied Behavior Analysis (ABA) Services; 354.5021, concerning Service Description, Requirements, and Limitations for Providing Applied Behavior Analysis (ABA) Services; and 354.5023, concerning Additional Medicaid Reimbursement Limitations and Exclusions Specific to Applied Behavior Analysis (ABA) Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the legislative direction in Senate Bill 1, 87th Texas Legislature, Regular Session, 2021 (Article II, HHSC, Rider 28). Rider 28 appropriated funding for Applied Behavior Analysis (ABA) services for autism and directed HHSC to implement the services as soon as practicable, but not later than February 1, 2022. A proposed Medicaid state plan amendment (SPA) was submitted to the Centers for Medicare & Medicaid Services (CMS) on September 3, 2021. The SPA amended the state plan to clarify that, to the extent required by Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), a licensed behavior analyst (LBA) operating within the LBA's state scope of practice and licensure requirements may provide ABA evaluation and treatment services to eligible children under 21 years of age who have a diagnosis of autism spectrum disorder (ASD). On January 27, 2022, CMS approved the SPA with an effective date of February 1, 2022.

The new Subchapter P in Title 1, Part 15, Chapter 354 outlines the requirements for LBAs and other providers of Medicaid ABA services, with a focus on how services should be provided. The proposed rules are consistent with the Medicaid Autism Services section (Austin Section) in the Children's Services Handbook (Children's Handbook) in the Texas Medicaid Provider Procedures Manual (TMPPM) that went into effect on February 1, 2022.

SECTION-BY-SECTION SUMMARY

New Division 1, General Provisions

Proposed new §354.5001, Purpose and Applicability, describes the purpose of the new Subchapter as relating to Medicaid covered ABA services to treat ASD under the Texas Health Steps-Comprehensive Care Program (THSteps-CCP) and identifies authorized service providers. It establishes requirements for these services including limiting covered services to those which are Medicaid reimbursable and medically necessary and clinically appropriate and effective. The rule also indicates that other applicable laws, rules, policies, and initiatives apply.

Proposed new §354.5003, Definitions, defines relevant words and terms used in the Subchapter.

New Division 2, Service Providers

Proposed new §354.5011, Providers of Applied Behavior Analysis (ABA) Services, describes authorized providers of ABA services for ASD, including what licensing, certification or registration is required; the minimum requirements for each provider type; what services each provider is authorized to provide; and a description of certain requirements for providing Medicaid reimbursable ABA services.

New Division 3, Parameters for Service Provision

Proposed new §354.5021, Service Description, Requirements, and Limitations for Providing Applied Behavior Analysis (ABA) Services, describes certain general requirements, parameters, bases, and limitations for an ABA provider providing Medicaid reimbursable ABA services to eligible children with ASD.

Proposed new §354.5023, Additional Medicaid Reimbursement Limitations and Exclusions Specific to Applied Behavior Analysis (ABA) Services, describes additional situations in which Medicaid will not reimburse for ABA services, including activities of Medicaid enrolled individual or performing provider LBAs and ABA groups which are excluded.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Participation in the program is optional.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health,

safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, for individuals receiving the ABA services under the subchapter and the medical policy in the Autism Section in the Children's Handbook in the TMPPM, the public benefit is to support the health and safety of these Medicaid clients by ensuring the services are provided by trained and qualified ABA providers.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because provider participation in the Medicaid ABA program is optional.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code H310, P.O. Box 13247, Austin, Texas 78711-3247, or by email to medicaidbenefitrequest@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R085" in the subject line.

SUBCHAPTER P. AUTISM SERVICES
DIVISION 1. GENERAL PROVISIONS

1 TAC §354.5001, §354.5003

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021(a) and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§354.5001. Purpose and Applicability.

(a) Applied behavior analysis (ABA) services for autism are covered through the Texas Health Steps-Comprehensive Care Program (THSteps-CCP) for Medicaid enrolled children:

(1) who are under 21 years of age;

(2) who have a diagnosis of autism spectrum disorder (ASD); and

(3) for whom ABA services are medically necessary and clinically appropriate and effective.

(b) Providers of ABA services for autism under this subchapter include:

(1) licensed behavior analysts (LBAs);

(2) licensed assistant behavior analysts (LaBAs);

(3) behavior technicians (BTs); and

(4) licensed professionals, other than LBAs, as described in the medical policy in the Medicaid Autism Services section (Autism Section) in the Children's Services Handbook (Children's Handbook) in the Texas Medicaid Provider Procedures Manual (TMPPM), when they are eligible to and participate in Medicaid reimbursable ABA service-related interdisciplinary team meetings.

(c) This subchapter establishes requirements for providing ABA services to treat ASD and applies only to ABA services that are Medicaid reimbursable. Medicaid reimbursement of ABA services for ASD requires compliance with this subchapter, Medicaid, THSteps, any other applicable law or rule, the TMPPM, including the Autism Section, and the National Correct Coding Initiative.

§354.5003. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) ABA--Applied behavior analysis. The practice of applying the principles of learning and behavior, specifically about how behavior affects, and is affected by, past and current environmental events in conjunction with biological variables to improve the human condition through behavior change that is based on current, evidence-based, specialized principles, and delivered by a qualified professional under this subchapter.

(2) APRN--Advanced practice registered nurse. A person who:

(A) is currently licensed without restriction as an advanced practice registered nurse by the Texas Board of Nursing under Texas Occupations Code (TOC), Chapter 301 (relating to Nurses); and

(B) practices under a current, executed prescriptive authority agreement with a qualified physician in accordance with TOC, Chapter 157, Subchapter B (relating to Delegation to Advanced Practice Registered Nurses and Physician Assistants).

(3) ASD--Autism spectrum disorder. Is a condition included in the Diagnostic and Statistical Manual of Mental Disorders (DSM), which is characterized by restricted, repetitive patterns of behavior, interests, or activities and deficits in social communication and social interaction, with onset of symptoms occurring in early childhood.

(4) Authorized primary care provider--Includes a qualified physician, acting as the primary care physician (PCP), or a qualified physician assistant (PA) or APRN, acting as the primary care provider.

(5) Autism--Autism spectrum disorder.

(6) Autism Section--Medicaid Autism Services section. The section in the Children's Services Handbook in the TMPPM that:

(A) addresses authorization to provide ABA to treat ASD and coverage of ABA services;

(B) covers ABA services to the extent required by EPSDT; and

(C) covers coordination of a comprehensive array of services to treat ASD.

(7) BT--Behavior technician. A person who is currently fully registered or certified without restriction as one of the following:

(A) Registered Behavior Technician (RBT);

(B) Board Certified Autism Technician (BCAT); or

(C) Applied Behavior Analysis Technician (ABAT).

(8) CFR--Code of Federal Regulations.

(9) Child--A child is an individual who is under 21 years of age who is Medicaid enrolled and who is eligible for ABA services under this subchapter and the Autism Section in the Children's Handbook in the Texas Medicaid Provider Procedures Manual (TMPPM).

(10) Children's Handbook--The Children's Services Handbook in the TMPPM.

(11) Co-morbid condition--A child who has a co-morbid condition with ASD has a physical, mental, or behavioral health condition, which may include a history of trauma, where diagnosis, symptoms, or treatment of the co-morbid condition occur at the same time as ASD.

(12) Comprehensive diagnostic evaluation--The medical standard of practice for the evaluation process and elements used by a qualified medical or health care professional to make an ASD diagnosis. The qualified medical or health care professional must either meet minimum requirements in the Autism Section in the Children's Handbook in the TMPPM to make a diagnosis of ASD, or be a PCP or other physician, working in consultation with an interdisciplinary diagnostic team that meets minimum requirements in the Autism Section in the TMPPM, to decide whether an ASD diagnosis is clinically appropriate for a child.

(13) DSM--Diagnostic and Statistical Manual for Mental Disorders. The current edition of the publication of the American Psychiatric Association, which is used by a qualified medical or health care provider in the evaluation and diagnosis of mental and behavioral health illnesses and conditions.

(14) Durable--Able to exist for a long time without significant deterioration in quality or value; not occurring only during ABA services or a temporary period thereafter.

(15) EPSDT--Early and Periodic Screening, Diagnosis, and Treatment. The federally mandated Early and Periodic Screening, Diagnosis, and Treatment program defined in Texas Administrative Code (TAC) Title 25, Chapter 33 (relating to Early and Periodic Screening, Diagnosis, and Treatment). The State of Texas has adopted the name Texas Health Steps (THSteps) for its EPSDT program.

(16) EPSDT-CCP--Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program. A program described in Chapter 363 of this title (relating to Texas Health Steps Comprehensive Care Program).

(17) Evidence-based ABA services--ABA services for ASD which are consistently delivered based on rigorous and reliable clinical research outcomes that are widely recognized as effective by medical professionals.

(18) Family-centered--An approach to service delivery that uses a set of values, attitudes, and practices for working with children, which assures the health and well-being of the child and the people closest to the child, including the legally authorized representative (LAR), parent, caregiver, or other appropriate person, as applicable, through a respectful family-professional partnership, which honors the strengths, cultures, traditions, and expertise that everyone brings to this relationship.

(19) Generalizable--Able to be applied across the child's natural settings and not be limited to the specific locations where the ABA services are delivered.

(20) HHSC--The Texas Health and Human Services Commission. The single state agency charged with administration and oversight of the Texas Medicaid program, or its designee.

(21) In-person--Within the physical presence of another person. In-person does not include interacting with a member via a telemedicine or telehealth service.

(22) LaBA--Licensed assistant behavior analyst. A person who is currently licensed without restriction as a licensed assistant behavior analyst by the Texas Department of Licensing and Regulation (TDLR) under TOC, Chapter 506 (relating to Behavior Analysts), and 16 TAC Chapter 121 (relating to Behavior Analyst) and provides ABA services in accordance with state scope of practice and licensing requirements.

(23) LAR--Legally authorized representative. A person who is authorized by law to act on behalf of an individual regarding a matter described in this chapter, and may, depending on the circumstances, include a parent, caregiver, guardian, or managing conservator of a minor, or the guardian of an adult, or a representative designated pursuant to 42 CFR §435.923 (relating to Authorized Representatives).

(24) LBA--Licensed behavior analyst. A person who is currently licensed without restriction as a licensed behavior analyst by TDLR under TOC, Chapter 506, and 16 TAC Chapter 121, and provides ABA services in accordance with state scope of practice and licensing requirements.

(25) LD--Licensed dietitian. A person who is currently licensed without restriction as a licensed dietitian by TDLR under TOC, Chapter 701 (relating to Dietitians).

(26) Medicaid--The medical assistance program authorized and funded pursuant to Title XIX of the Social Security Act (Title 42, United States Code (U.S.C.), 1396 et seq.) (relating to Grants to States for Medical Assistance Programs) and administered in Texas by HHSC.

(27) Medically necessary--This term has the meaning set forth in §353.2 of this title (relating to Definitions).

(28) NCCI--National Correct Coding Initiative. The initiative of the Centers for Medicare & Medicaid Services for using the Current Procedural Terminology codes of the American Medical Association to promote national correct coding methodologies and to control improper coding.

(29) Nutrition services--Medicaid covered nutrition services provided by an LD.

(30) ORP--Ordering, referring, or prescribing physician. The ORP, including an authorized primary care provider, may request prior authorization, or authorization, as applicable, for a specific amount, duration, and scope of ABA services for a child, including Medicaid ABA evaluation, treatment, and ABA-related interdisciplinary team meeting services to treat ASD, and the ORP may receive formal authorization for a specific amount, duration, and scope of ABA services for a child.

(31) OT--Occupational therapy. OT is the discipline and services of occupational therapy, where the services are regulated by the Executive Council of Physical Therapy and Occupational Therapy

Examiners, Texas Board of Occupational Therapy Examiners, under TOC, Chapter 454 (relating to Occupational Therapists).

(32) PA--Physician assistant. A person who:

(A) is currently licensed without restriction as a physician assistant by the Texas Medical Board-Physician Assistant Board, under TOC, Chapter 204 (relating to Physician Assistants); and

(B) practices under a current and executed prescriptive authority agreement with a qualified physician in accordance with TOC, Chapter 157, Subchapter B.

(33) PCP--Primary care physician. A person who is a qualified physician who:

(A) has agreed with a Medicaid health care managed care organization to provide a medical home to Medicaid enrolled members; and

(B) is responsible for providing on-going primary care services to Medicaid members, maintaining the continuity of patient care, and initiating referrals for care.

(34) Person-centered--An approach to health care services that:

(A) is based on the clinically assessed needs of the child, in collaboration with all relevant and available service providers, that focuses on the child as an individual and supports those who are closest to the child, as applicable;

(B) uses a documented service planning process that includes the child and those who are closest to the child, as applicable, that:

(i) is directed by the child to the greatest extent possible;

(ii) enables the child to make choices and decisions, including who provides the services and supports they receive;

(iii) reflects cultural considerations;

(iv) includes strategies for solving conflict or disagreement within the service provision process;

(v) provides services which are timely and occur at times and locations convenient to the child and those closest to the child; and

(vi) includes a method for them to require updates to the treatment plan; and

(C) involves a continual process by the provider of listening, testing new approaches, and changing routines and organizational approaches to individualize and de-institutionalize the care environment.

(35) Physician--A medical doctor or a doctor of osteopathy who is currently licensed without restriction by the Texas Medical Board under TOC, Chapter 155 (relating to License to Practice Medicine) to practice medicine or osteopathy.

(36) PT--Physical therapy. PT is the discipline and services of physical therapy, where the services are regulated by the Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Physical Therapy Examiners, under TOC, Chapter 453 (relating to Physical Therapists).

(37) Rendering provider--For the purposes of Medicaid claim submission for ABA evaluation and treatment services for ASD, an LBA is the only Medicaid enrolled rendering provider as described in §354.5011 of this subchapter (relating to Providers of Applied Behavior Analysis (ABA) Services).

(38) Speech-language pathology--The discipline and services of speech-language pathology. In documents related to services under this subchapter and the Autism Section, these services are also called speech therapy, interchangeably. These services are regulated by TDLR under TOC, Chapter 401 (relating to Speech-Language Pathologists and Audiologists).

(39) ST--Speech therapy. The discipline and services of speech therapy or speech-language pathology. In documents related to services under this subchapter and the Autism Section, these services are also called speech-language pathology, interchangeably. These services are regulated by TDLR under TOC, Chapter 401.

(40) Supervision of ABA services rendered by an LaBA or BT--Means:

(A) the LBA must:

(i) provide direct and indirect supervision of the ABA services of the LaBA or BT, who is included in the formal ABA supervision documentation; and

(ii) deliver appropriate supervision in accordance with state licensing requirements, in TOC, Chapter 506 (relating to Behavior Analysts) and 16 TAC Chapter 121 (relating to Behavior Analyst), and the Autism Section in the TMPPM;

(B) the LaBA, if applicable, must:

(i) provide direct and indirect supervision of the ABA services of the BT, where both the LaBA and BT are identified in the formal ABA supervision documentation and in which the services delegated to each are specified; and

(ii) deliver appropriate supervision in accordance with state licensing requirements, in TOC, Chapter 506 (relating to Behavior Analysts) and 16 TAC Chapter 121 (relating to Behavior Analyst); and

(C) a Medicaid reimbursable direct supervision session by the LBA, or LaBA, as applicable, must occur when the LaBA or BT is currently and actively providing in-person ABA treatment services to a child, and requires the LBA, or LaBA, as applicable, to consider any necessary ABA service protocol modification, as described in the appropriate Current Procedural Terminology code.

(41) TAC--Texas Administrative Code.

(42) TDLR--Texas Department of Licensing and Regulation. The Texas licensing agency that regulates and issues licenses for LBAs, LaBAs, and certain other professionals.

(43) THSteps--Texas Health Steps. A Medicaid program defined in 25 TAC Chapter 33. The State of Texas has adopted the name Texas Health Steps for its EPSDT program.

(44) THSteps-CCP--Texas Health Steps-Comprehensive Care Program. The Texas Medicaid EPSDT-CCP, described in Chapter 363 of this title.

(45) TMHP--Texas Medicaid and Healthcare Partnership.

(46) TMPPM--Texas Medicaid Provider Procedures Manual. The current manual published by TMHP, that:

(A) is a comprehensive guide for Texas Medicaid providers for fee-for-service benefits, policies, and procedures; and

(B) is updated monthly to include all published updates, including those made available to providers through bulletins, banners,

or other means, and any revisions of published updates which became effective in the month prior.

(47) TOC--Texas Occupations Code.

(48) Trauma-informed--A program, organization, or system that is trauma-informed realizes the widespread impact of trauma and:

(A) understands potential paths for recovery from trauma;

(B) recognizes the signs and symptoms of trauma in members, families, staff, and others involved with the system; and

(C) responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist traumatization and re-traumatization.

(49) Treatment plan--A plan for ABA services for a child that:

(A) is tailored to the specific needs of the child, and those who are closest to the child, as applicable;

(B) meets all requirements under this subchapter and the Autism Section in the TMPPM; and

(C) must be authorized.

(50) U.S.C.--United States Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2022.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 438-2958

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DIVISION 2. SERVICE PROVIDERS

1 TAC §354.5011

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021(a) and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The new section affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§354.5011. Providers of Applied Behavior Analysis (ABA) Services.

(a) Providers of ABA services include:

(1) LBAs who:

(A) practice within the LBA's state scope of practice and licensure requirements, meet all relevant provider qualifications, and comply with all applicable law, rules, and requirements under this subchapter;

(B) are currently enrolled in Texas Medicaid through TMHP;

(C) for claims submission purposes, serve as the Medicaid enrolled rendering provider for all ABA evaluation, treatment, and supervision services, including those ABA services rendered under the LBA's supervision by an LaBA or a BT, as applicable, where the rendering provider for the specific service, which may be the LBA, LaBA, or BT, may or must, as applicable, be indicated on the claim with an appropriate Medicaid modifier; and

(D) may provide the following Medicaid reimbursable ABA services when authorized:

(i) ABA evaluation and treatment services to the child;

(ii) education and training services to the LAR, parent, or caregiver, as applicable;

(iii) supervision services for the LaBA or BT, as applicable, to whom the LBA has delegated service delivery; and

(iv) required participation in ABA-related interdisciplinary team meetings, if utilized.

(2) LaBAs who:

(A) practice within the LaBA's state scope of practice and licensure requirements, meet all relevant provider qualifications and comply with all applicable law, rules, and requirements under this subchapter; and

(B) are not Medicaid enrolled but rather render in-person ABA treatment services, parent or caregiver education and training services, or supervision services for a BT, under the supervision of the enrolled LBA.

(3) BTs who:

(A) are currently fully registered or certified as a BT under this subchapter and meet all other relevant provider qualifications;

(B) practice in accordance with their national certification or registration requirements and as directed by the supervising LBA or LaBA, to ensure compliance with all applicable law, rules, and requirements under this subchapter; and

(C) are not Medicaid enrolled but rather render in-person ABA treatment services under the supervision of the enrolled LBA or the LaBA.

(4) Licensed professionals who:

(A) are described in the Autism Section in the TMPPM as eligible licensed professionals for participation in ABA-related interdisciplinary team meetings, other than LBAs; and

(B) participate in Medicaid reimbursable ABA-related interdisciplinary team meetings to coordinate care for the child when eligible.

(b) Providers of ABA services must comply with:

(1) all applicable state and federal law or rule, such as:

(A) Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) (relating to Grants to States for Medical Assistance Programs);

(B) 42 CFR §440.40(b) (relating to EPSDT) and §§441.50 - 441.62 (relating to Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals Under Age 21);

(C) Texas Human Resources Code Chapter 32 (relating to Medical Assistance Program);

(D) Texas Government Code Chapter 531 (relating to Health and Human Services Commission);

(E) Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);

(F) Chapter 353 of this title (relating to Medicaid Managed Care);

(G) Chapter 354 of this title (relating to Medicaid Health Services);

(H) Chapter 363 of this title (relating to Texas Health Steps Comprehensive Care Program); and

(I) 25 TAC Chapter 33 (relating to Early and Periodic Screening, Diagnosis, and Treatment);

(2) the Texas Medicaid Provider Agreement, as applicable;

(3) the NCCI;

(4) the current TMPPM, including:

(A) all published updates, including updates made available through bulletins, banners, or other means, and any revisions of published updates;

(B) all published handbooks, standards, and guidelines; and

(C) the specific ABA service requirements in this subchapter and the Autism Section in the TMPPM;

(5) Texas Family Code Chapter 261 (relating to Investigation of Report of Child Abuse or Neglect); and

(6) retrospective reviews, which include reviews of providers and provider locations, activities, and records to confirm compliance with all applicable law or rule, and other applicable requirements under this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 3. PARAMETERS FOR SERVICE PROVISION

1 TAC §354.5021, §354.5023

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021(a) and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§354.5021. Service Description, Requirements, and Limitations for Providing Applied Behavior Analysis (ABA) Services.

(a) This subsection describes ABA services and Requirements for providing ABA services.

(1) ABA services under this subchapter may be available only when the documentation of the diagnosis of ASD, or re-evaluation of the diagnosis:

(A) identifies current ASD symptoms and symptom severity level using the DSM, as determined by a qualified medical or health care professional under the Autism Section of the TMPPM, including a member of an interdisciplinary diagnostic team who is authorized by licensure to use the DSM;

(B) includes data from use and interpretation of an additional ASD diagnostic tool or tools, as clinically and age appropriate, as determined by a qualified medical or health care professional under the Autism Section of the TMPPM, including a member of an interdisciplinary diagnostic team who is authorized by licensure to use the ASD diagnostic tool or tools;

(C) includes a determination that the diagnosis of ASD is clinically appropriate, made by a qualified medical or health care professional, or a PCP or other physician working in collaboration with an authorized interdisciplinary diagnostic team under this subchapter and the Autism Section of the TMPPM, and confirms that the analysis of all elements of a comprehensive diagnostic evaluation at a minimum is the basis for the determination;

(D) is current (within three years of the request for ABA services) to provide timely age- and developmentally-appropriate information;

(E) includes all additional required items for the documentation of the diagnosis in the Autism Section in the TMPPM; and

(F) may facilitate delivery of holistic health care services for the child.

(2) The ABA services of the LBA and the supervised LaBA or BT must:

(A) focus on treating core ASD behavior difficulties and shaping behavior patterns through environmental adaptations and consistent reinforcement and consequences across the child's natural settings and situations;

(B) effect meaningful behavior change related to the core symptoms of ASD (to be meaningful, the behavior change must be durable and generalizable, in socially significant behaviors, which affect health, safety, or independence, in everyday settings); and

(C) maintain behavior change and prevent regression as medically necessary.

(3) ABA evaluation, treatment, and supervision service planning, design, and delivery must:

(A) be:

(i) based on authorized ABA services, where the ORP has submitted the order, referral, or prescription for ABA evaluation or treatment services for authorization;

(ii) person-centered;

(iii) family-centered;

(iv) evidence-based;

(v) trauma informed;

(vi) informed by co-morbid conditions of the child and their intersection with ABA services, understanding that co-morbid conditions may mimic or exacerbate ASD symptoms;

(vii) provided in the primary language of the child, or those who are closest to the child, as applicable, when required for effective communication and service delivery;

(viii) in compliance with all applicable law or rule and additional requirements for Medicaid reimbursable ABA services, including when these requirements are more restrictive than state scope of practice or licensing requirements for LBAs and LaBAs, or certification or registration entity requirements for BTs, as applicable; and

(ix) ethical;

(B) use functional goals, for meaningful behavior change, that are specific, measurable, and realistically attainable;

(C) involve the LBA routinely assessing progress in implementing the ABA treatment plan and achieving goals, based on measurable treatment data, and amending the treatment plan, as appropriate;

(D) involve the LBA routinely assessing and amending the formal ABA supervision documentation, as appropriate, including specifying:

(i) the available LaBA or BT who may provide supervised ABA services under the treatment plan;

(ii) the ABA services delegated to the supervised LaBA or BT; and

(iii) the current supervisory instructions for the LaBA or BT based on the initial or modified treatment plan, to ensure provision and facilitation of clinically appropriate and effective ABA services by the LaBA or BT;

(E) only allow an LaBA or a BT to provide in-person ABA services; and

(F) include participation by the LAR, parent, or caregiver, as applicable, in parent or caregiver education and training sessions, in a frequency and duration agreed to by the LAR, parent, or caregiver. The LAR, parent, or caregiver determines the appropriateness and what is realistic for the individual circumstances, unless an exception from participation in parent or caregiver education and training services is made in the service authorization process, conforming to the Autism Section in the TMPPM, where:

(i) the treatment plan for ABA services must contain goals specific to LAR, parent, or caregiver education and training unless exempted, and the progress towards the goals for LAR, parent, or caregiver education and training must be considered when evaluating ABA services; and

(ii) it is expected that the participation of the LAR, parent, or caregiver in education and training sessions may result in their delivery of the ABA services outside of Medicaid reimbursable ABA service delivery sessions and contribute to durability and generalizability of meaningful behavior change.

(b) Medicaid medically necessary ABA services for ASD are one of a comprehensive array of potentially available Medicaid medically necessary services and treatment methodologies for children with ASD.

(1) Other potential medically necessary services or covered treatment methodologies for ASD may include:

(A) nutrition services provided by an LD;

(B) outpatient behavioral health services, including a history of trauma related to ASD;

(C) physician services, including medication management;

(D) speech-language pathology or ST services;

(E) OT services;

(F) PT services;

(G) other evidence-based forms of behavioral therapy, including parent-implemented models that use a developmental relationship-based approach;

(H) service coordination or service management services; and

(I) any other medically necessary services or treatment methodologies which meet Medicaid requirements to treat ASD.

(2) Use of ABA services in no way precludes the child from participating in other medically necessary services, treatments, and interventions for ASD.

(c) When providing ABA services to a child, a provider of ABA services must not:

(1) cause harm to or be exploitative of the child, or to those who are closest to the child, as applicable;

(2) include the use of aversive interventions, including the use of pain, discomfort, social humiliation, or seclusion; or

(3) involve use of physical restraints, except to the extent described in the Autism Section in the TMPPM.

(d) LBAs and LaBAs may allow a BT to be referred to as a behavior technician (BT), a Registered Behavior Technician (RBT), a Board Certified Autism Technician (BCAT), an Applied Behavior Analysis Technician (ABAT), or a similar term but must prohibit the BT from:

(1) using a title, being called or referred to as, or referring to oneself as a "therapist" in interactions with:

(A) the child;

(B) those who are closest to the child; and

(C) other professionals who serve the child who provide any service other than ABA; and

(2) conducting any part of the initial evaluation; creating or amending any part of the treatment plan; and interpreting the treatment plan to any of the individuals as detailed in this paragraph.

§354.5023. Additional Medicaid Reimbursement Limitations and Exclusions Specific to Applied Behavior Analysis (ABA) Services.

(a) Texas Medicaid will not reimburse ABA services when ABA services:

(1) address academic goals;

(2) address goals only related to performative social norms that do not significantly impact health, safety, or independence;

(3) are not expected to result in improvements in the child's level of functioning, other than medically necessary services at the maintenance or consultative level;

(4) do not require the specific skills and judgment of an LBA to perform or supervise;

(5) do not meet evidence-based standards of practice for ABA for effective treatment of ASD;

(6) use any experimental or investigational treatment methods even with legally effective consent;

(7) are not generally accepted as clinically effective or appropriate, or not within the normal course and duration of treatment for medically necessary ABA services;

(8) are for the convenience of those who are closest to the child or the provider (e.g., as respite care, or limiting treatment to a setting chosen by provider for convenience);

(9) do not include the child age- and developmentally-appropriately engaging in a clinical ABA therapeutic relationship;

(10) are provided by a clinic or agency owned or partially owned by the child (if the child is legally authorized to represent his/herself)) or the child's LAR (e.g., biological, adoptive, or foster parents, guardians, court-appointed managing conservators, other family members by birth or marriage, or others serving as the LAR);

(11) are provided directly by the child's LAR (e.g., biological, adoptive, or foster parents, guardians, court-appointed managing conservators, other family members by birth or marriage, or others serving as the LAR);

(12) are delivered by a BT in the school setting as a shadow or an aide or to provide general support to the child; and

(13) include separate billing for:

(A) indirect ABA service time related to ABA treatment; parent or caregiver education and training; ABA-related interdisciplinary team meetings; or supervision of an LaBA or BT; for example, pre- and post-work for a session are not reimbursed separately, other than the pre- and post-work that is allowable for ABA evaluation services; or

(B) any indirect supervision, or direct supervision which does not otherwise meet all requirements in this subchapter, the Autism Section of the TMPPM, and the relevant Current Procedural Terminology code.

(b) Medicaid enrolled LBAs, as individual or performing providers, and ABA groups will not be reimbursed for:

(1) equipment and supplies used during ABA services as they are considered part of the Medicaid services provided;

(2) the services of more than one ABA provider (LBA, LaBA, or BT) during one ABA session with a child, when more than one ABA provider is present (concurrent billing);

(3) concurrent billing for ABA services except where the LAR, parent, or caregiver and the child are receiving separate services, specifically when the LAR, the parent, or caregiver, as appropriate, participates in parent or caregiver education and training, and the child participates in any ABA service for the child in the treatment plan where the child is not present in the parent or caregiver education and training session; or

(4) services billed that do not meet minimum requirements, exceed the limitations outlined in relevant law, rule, and other requirements under this subchapter, the Autism Section in the TMPPM, and the NCCI, or are excluded.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §371.212, concerning Minimum Data Set Assessments; §371.214, concerning Resource Utilization Group Classification System; and §371.216, concerning Waiver of Extrapolation; and proposes new §371.212, concerning Utilization Review of Nursing Facilities; §371.214, concerning HHSC-Approved Online RUG or Other HHSC-Required Training Course; §371.216, concerning Nursing Facility Clinical Records; §371.218, concerning Onsite and Desk Utilization Reviews of Nursing Facilities; §371.220, concerning Exit Conferences; §371.222, concerning Reconsideration of Utilization Review Results; §371.224, concerning Appeals of Reconsideration Results; §371.226, concerning Calculation of Overpayments and Underpayments; §371.228, concerning Recoveries; and §371.230, concerning Waiver of Extrapolation.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update procedures, modernize language, remove unnecessary or duplicative language, and add the option for desk reviews.

The Office of Inspector General (OIG) Nursing Facility Utilization Review (NFUR) unit performs reviews to evaluate the quality of care, medical necessity, appropriateness, and efficiency of healthcare or services to nursing facility residents. Utilization review may include the assessment of the accuracy of coded items by review of clinical records, business records, observation of the recipient, interviews and other relevant sources of information.

The proposed replacement of Sections 371.212, 371.214, and 371.216 with the proposed new sections updates and re-organizes the OIG nursing facility utilization review procedures and provider requirements by: re-organizing the structure of the NFUR rules; providing procedures for desk reviews; deleting redundant language excerpted from the Resident Assessment Instrument (RAI) User's Manual; adding language that links

OIG's use of extrapolation with existing Texas Administrative Code rule §371.35; and providing for the use of a case mix classification system that succeeds resource utilization groups (RUGs).

SECTION-BY-SECTION SUMMARY

The proposed repeal of §371.212 deletes the rule as no longer necessary because some of the content of the rule has been added to proposed new §371.212 and §371.216 and some of the content is outdated or redundant language taken from a prior Centers for Medicare & Medicaid Services RAI User's Manual.

The proposed repeal of §371.214 deletes the rule as no longer necessary because much of the content of the rule has been reorganized and added to the proposed new sections.

The proposed repeal of §371.216 deletes the rule as no longer necessary because the content of the rule has been added to proposed new §371.230.

Proposed new §371.212 specifies nursing facility provider requirements for conducting minimum data set (MDS) assessments and expands the definition of Resource Utilization Group (RUG) to include the contingency of a case mix classification system selected by the state that would replace the current 34-group case mix classification system (i.e. RUG classification system).

Proposed new §371.214 describes the training requirements for registered nurse (RN) assessment coordinators.

Proposed new §371.216 enumerates the nursing facility provider requirements for maintaining clinical records, including specific content requirements and applicable law and policy.

Proposed new §371.218 establishes an option for OIG to conduct a desk utilization review and describes the procedures related to desk reviews and on-site reviews.

Proposed new §371.220 describes the process for exit conferences related to onsite and desk utilization reviews, including a description of the documentation OIG provides to the nursing facility provider prior to the telephone exit conference.

Proposed new §371.222 specifies the requirements a nursing facility provider must meet to submit a complete request to OIG for reconsideration of the results of an onsite or desk utilization review.

Proposed new §371.224 describes the appeal process by which a nursing facility provider may appeal the results of a reconsideration review.

Proposed new §371.226 specifies (i) the timing of the reclassification of a RUG and overpayment recovery, following a utilization review and (ii) that OIG may use statistical sampling and extrapolation for nursing facility utilization review cases in accordance with the general OIG extrapolation rule in §371.35.

Proposed new §371.228 states that OIG recovers overpayments identified during a utilization review and reimburses providers for underpayments identified during a utilization review.

Proposed new §371.230 restates most of the content in existing §371.216 to make clear that OIG may waive extrapolation of an overpayment using the waiver procedure currently outlined in §371.216.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals and new rules will be in effect, there will be an estimated reduction in cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the repeals and new rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed repeals and new rules are in effect is an estimated reduction in cost of $43,878 in each fiscal year from 2023 to 2027.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeals and new rules will be in effect:

(1) the proposed repeals and new rules will not create or eliminate a government program;

(2) implementation of the proposed repeals and new rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals and new rules will result in no assumed change in future legislative appropriations;

(4) the proposed repeals and new rules will not affect fees paid to HHSC;

(5) the proposed repeals and new rules will create new rules;

(6) the proposed repeals and new rules will repeal existing rules;

(7) the proposed repeals and new rules will not change the number of individuals subject to the rules; and

(8) the proposed repeals and new rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses or micro-businesses as there is no requirement for small businesses or micro-businesses to alter current business practices in order to comply with the new rules. No rural communities contract with HHSC in any program or service affected by the proposed rule.

LOCAL EMPLOYMENT IMPACT

The proposed repeals and new rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals and new rules because they are necessary to protect the health, safety, and welfare of the residents of Texas; and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Maureen Power, Deputy Inspector General, HHSC-OIG Surveillance Utilization Review, has determined that for each year of the first five years the proposed repeals and new rules are in effect, the public will benefit from adoption of the proposed repeal and new rules. The public benefit anticipated as a result of enforcing or administering the proposed repeals and new rules will be a utilization review program that is both cost- and resource-efficient.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the repeals and new rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals and new rules because the repeals and new rules do not require a change to business practices and do not create additional costs to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 11501 Burnet Road, Building 902, Austin, Texas 78758; or by email to IG_Rules_Comments_Inbox@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R061" in the subject line.

SUBCHAPTER C. UTILIZATION REVIEW

1 TAC §§371.212, 371.214, 371.216

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.102 (a), which grants HHSC-OIG the responsibility to conduct reviews of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides HHSC-OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the executive commissioner, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e) which provides HHSC with the authority to adopt rules necessary to implement this section; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

The repeals affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§371.212. Minimum Data Set Assessments.

§371.214. Resource Utilization Group Classification System.

§371.216. Waiver of Extrapolation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
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1 TAC §§371.212, 371.214, 371.216, 371.218, 371.220, 371.222, 371.224, 371.226, 371.228, 371.230

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.102 (a), which grants HHSC-OIG the responsibility to conduct reviews of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides HHSC-OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the executive commissioner, in consultation with the office, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e) which provides HHSC with the authority to adopt rules necessary to implement this section; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

The new rules affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§371.212. Utilization Review of Nursing Facilities.

(a) OIG conducts utilization reviews of nursing facility providers for residents enrolled in fee-for-service and managed care.

(b) For purposes of this subchapter, Resource Utilization Group (RUG) means the 34-group case mix classification system selected by the state and established by CMS or a successor case mix classification system selected by the state.

(c) A nursing facility provider must conduct accurate, standardized, and reproducible assessments of each resident's functional capacity, using a minimum data set (MDS) assessment and the guidance of the Resident Assessment Instrument (RAI) User's Manual. These assessments must be conducted on the schedule required by HHSC. All MDS items coded on an MDS assessment must be in accordance with all applicable state and federal law, rules, and policy, including:

(1) the RAI User's Manual;

(2) CMS updates to the RAI User's Manual;

(3) 42 C.F.R. §483.20 (relating to Resident Assessment);

(4) administrative rules applicable to Medicaid providers, including 26 TAC Chapter 554 (relating to Nursing Facility Requirements for Licensure and Medicaid Certification); and

(5) HHSC and CMS policy guidance.

(d) A nursing facility provider must code on the MDS assessment only those events occurring during the look-back period. The look-back period is the assessment timeframe preceding the assessment reference date (ARD) that is used when coding each item on the MDS assessment. The ARD is the last day of the look-back period.

(e) Any information on the MDS assessment is part of each corresponding claim for Medicaid reimbursement.

(f) Electronic or digital signatures on an MDS assessment must comply with the RAI Manual and Texas Business and Commerce Code Chapter 322.

(g) A complete MDS assessment must include:

(1) a valid, supporting Long-Term Care Medicaid Information (LTCMI) form, or successor form required by HHSC, which the nursing facility provider must maintain with the corresponding MDS; and

(2) the signature and title of each person completing any section of the MDS assessment for Medicaid reimbursement and the sections and completion dates corresponding to each signature.

(h) Each individual signing the signature section of the MDS assessment is certifying that the information entered on the MDS assessment is accurate. Any individual or nursing facility provider that submits false or inaccurate information is subject to sanctions under Subchapter G of this chapter (relating to Administrative Actions and Sanctions).

(i) Upon request, a complete MDS assessment must be provided to the OIG nurse reviewer during the onsite or desk utilization review.

(j) When correcting errors in an MDS assessment prior to the start of an OIG utilization review, the nursing facility staff must use the MDS Correction Policy in the MDS RAI User's Manual. The nursing facility provider must maintain documentation in the clinical record that supports the corrected MDS assessment. Nursing facility staff must not correct or modify any MDS assessment reviewed during an OIG utilization review until after any reconsideration review and appeal has been finally determined.

§371.214. HHSC-Approved Online RUG or Other HHSC-Required Training Course.

All nursing facility registered nurse (RN) assessment coordinators must successfully complete the HHSC-approved online RUG, or an HHSC-approved successor training, within the HHSC-required time period. An RN assessment coordinator who signs the Long-Term Care Medicaid Information (LTCMI) or successor form or certifies the completeness of a minimum data set (MDS) assessment for Medicaid reimbursement must, at the time of signing, be current on his or her HHSC-approved RUG, or other HHSC-required, training.

§371.216. Nursing Facility Clinical Records.

(a) All coded items on minimum data set (MDS) assessments must be accurate and supported by documentation in the recipient's clinical record. Completion of the MDS assessment does not remove the nursing facility provider's responsibility to document in the clinical record a detailed assessment of all relevant issues that affect the recipient.

(1) Clinical documentation must contain individualized care plans and document pertinent facts, findings, and observations about an individual's health history, including past and present illnesses, treatments, and outcomes to support the assessment and the care provided.

(2) Sources of information, such as other health care professionals and family members, utilized for the MDS assessment must be identified in the clinical record.

(3) Clinical records must include the recipient's name and the signatures, dates of signatures, and titles of individuals providing care for the recipient.

(4) Documents, such as grids and flow sheets that include entries by multiple staff members at different times, must include complete dates with initials or signatures to clearly identify who provided the care. For purposes of this paragraph, a signature may be an original handwritten signature or an electronic signature as set out in Texas Business and Commerce Code Chapter 322 (relating to the Uniform Electronic Transactions Act).

(b) MDS items that are inaccurate or unsupported by documentation in the recipient's clinical record may result in an adjustment in the RUG classification of a recipient.

(c) A nursing facility provider that utilizes an electronic clinical record system must maintain MDS assessments in the recipient's clinical record in accordance with the Resident Assessment Instrument (RAI) User's Manual.

(d) Nursing facility resident records must be maintained in accordance with the nursing facility provider's contract with HHSC and all applicable state and federal law, rules, and policy, including:

(1) 26 TAC Chapter 554 (relating to Nursing Facility Requirements for Licensure and Medicaid Certification);

(2) 1 TAC §354.1004 (relating to Retention of Records);

(3) 45 C.F.R. Parts 160 and 164; and

(4) the RAI User's Manual.

§371.218. Onsite and Desk Utilization Reviews of Nursing Facilities.

(a) OIG selects nursing facilities for utilization review by conducting a comprehensive annual review of all facilities, considering factors such as:

(1) length of time since the last review;

(2) whether the nursing facility has ever been reviewed;

(3) previous review results;

(4) compliance history of the nursing facility;

(5) nursing facilities with claims in high-dollar reimbursement categories such as rehabilitation, extensive services, and special care services;

(6) variances in billing patterns;

(7) data analytics indicating potential fraud, waste, or abuse; and

(8) complaints and referrals.

(b) Onsite Utilization Reviews.

(1) Onsite utilization reviews (onsite reviews) may be announced or unannounced.

(2) The onsite review period begins when an OIG nurse reviewer presents an entrance letter to the nursing facility provider and ends when the nurse reviewer informs the provider that the onsite review is completed. The onsite review period does not include the onsite exit conference.

(3) During the onsite review, the nurse reviewer informs the facility staff which minimum data set (MDS) assessments were selected for review.

(4) The nursing facility provider must ensure an assigned staff member knowledgeable of the MDS assessments and clinical records is available at the facility to the nurse reviewer during the entire onsite review.

(5) A nursing facility provider must make reasonable efforts to begin providing requested documents to the nurse reviewer immediately after entrance to the facility. For records stored on-site, a nursing facility provider must provide all requested documents to the nurse reviewer within a reasonable time, not to exceed three hours, after the nurse reviewer's request for documents and during regular business hours. If OIG determines the requested records are stored off-site or otherwise unavailable for immediate retrieval, OIG may extend the three-hour deadline.

(6) During the onsite review, when the nurse reviewer identifies a potential MDS assessment error, the nurse reviewer requests supporting documentation from the assigned nursing facility staff member.

(7) The nursing facility provider must provide to OIG all requested documentation, including supporting documentation described in paragraph (6) of this subsection, in the format requested, during business hours of the onsite review period and prior to the onsite exit conference, except when OIG determines that the provider has made reasonable efforts to provide such documentation during the onsite review period but has been unable to do so.

(8) If OIG determines that the nursing facility provider has made reasonable efforts to provide requested documentation during the onsite review period but has been unable to do so, OIG allows the provider to provide the requested documentation in the format and time frame determined by OIG.

(9) When requested, the nursing facility provider must provide, for each requested record, a signed and notarized OIG-approved records affidavit that properly authenticates the documents provided to OIG as business records pursuant to Texas Rules of Evidence Rule 803(6) and Rule 902(10).

(10) If a nursing facility provider does not produce records requested by the nurse reviewer, the provider must provide a written statement explaining why the records were not produced.

(11) If a nursing facility provider refuses to provide a records affidavit, the nursing facility provider must state the refusal in writing and attach the statement to the records provided to the nurse reviewer.

(12) Failure to produce requested records and affidavits may result in an OIG enforcement action under Subchapter G of this chapter (relating to Administrative Actions and Sanctions).

(c) Desk Utilization Reviews.

(1) For a desk utilization review, OIG sends the nursing facility provider a written request for records. The written request for records specifies the date the requested records must be received by OIG. The written request for records gives the provider 30 calendar days to provide the requested records to OIG.

(2) The nursing facility provider must provide all requested records in the format requested, and, when requested, a signed and notarized OIG-approved records affidavit for each requested record that properly authenticates the documents as business records pursuant to Texas Rules of Evidence Rule 803(6) and Rule 902(10) to OIG by the date specified in the written request for records.

(3) If a nursing facility provider does not produce the requested records by the date specified in the OIG records request, the provider must provide a written statement explaining why the records were not produced.

(4) If a nursing facility provider refuses to provide a records affidavit, the nursing facility provider must state the refusal in writing and attach the statement to the records provided to OIG.

(5) Failure to produce requested records and affidavits may result in OIG enforcement action under Subchapter G of this chapter (relating to Administrative Actions and Sanctions).

§371.220. Exit Conferences.

(a) For onsite reviews:

(1) OIG conducts an onsite, and subsequent telephone, exit conference after the onsite review is complete.

(2) The nurse reviewer communicates preliminary findings to the nursing facility staff during the onsite exit conference.

(3) OIG conducts a telephone exit conference after the onsite exit conference.

(b) For desk reviews, OIG conducts a telephone exit conference after the desk review is complete.

(c) For onsite and desk reviews, OIG provides the following information in writing to the nursing facility staff prior to the telephone exit conference:

(1) a list of reviewed assessments with proposed RUG changes;

(2) a preliminary statement of findings;

(3) the notification of potential RUG changes letter;

(4) the estimated recovery amount; and

(5) the requirements for submission of a reconsideration request.

§371.222. Reconsideration of Utilization Review Results.

(a) The nursing facility provider may submit a request to OIG for reconsideration of the results of the onsite or desk utilization review.

(b) A complete reconsideration request must:

(1) be in writing;

(2) clearly identify the specific minimum data set (MDS) assessment errors for which reconsideration is requested;

(3) contain a detailed description of the basis for each objection to the MDS assessment errors for which reconsideration is requested;

(4) include any documents the nursing facility provider believes are necessary to support each objection to the identified MDS assessment errors for which reconsideration is requested, including the documents the nursing facility provider provided during the review;

(5) when requested, include a signed and notarized OIG-approved records affidavit, for each record, that properly authenticates the documents described in paragraph (4) of this subsection as business records pursuant to Texas Rules of Evidence Rule 803(6) and Rule 902(10);

(6) be sent to the OIG Utilization Review unit at the electronic or physical address indicated on the formal notification of RUG changes, or successor notification; and

(7) be electronically submitted or postmarked on or before the 15th calendar day after the telephone exit conference; or, if the 15th calendar day falls on a Sunday or national holiday as defined in Texas Government Code §662.003(a), the following business day.

(c) Untimely or incomplete reconsideration requests are denied. MDS assessment errors not specifically identified in the reconsideration request are not reconsidered. MDS assessment errors that do not result in a RUG change are not reconsidered.

(d) If, as part of the reconsideration request, the nursing facility provider submits documents that were not provided to OIG prior to the telephone exit conference, these documents must be accompanied by:

(1) when requested, a signed and notarized OIG-approved records affidavit, for each record, that properly authenticates the documents as business records pursuant to Texas Rules of Evidence Rule 803(6) and Rule 902(10); and

(2) a signed and notarized affidavit, for each record, specifying why the record was not previously produced and the circumstances under which the documents were found, including the date found, the person who found the documents, and the location of the documents when found.

(e) At the conclusion of the reconsideration review, OIG Utilization Review issues written results of the review to the nursing facility provider.

§371.224. Appeals of Reconsideration Results.

If a nursing facility provider disagrees with the results of a reconsideration review, the provider may request a hearing to appeal a RUG change pursuant to Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act). A nursing facility provider may not request a hearing to appeal a RUG change unless the provider made a timely and complete request for a reconsideration review.

§371.226. Calculation of Overpayments and Underpayments.

(a) For each specific RUG that is found to be in error during the review and for which no timely and complete reconsideration review was requested, OIG may direct the reclassification of the RUG and recover an overpayment, or reimburse an underpayment, after the reconsideration request deadline has passed.

(b) For each specific RUG for which a reconsideration review was granted and for which no hearing was requested, OIG may direct the reclassification of the RUG and recover an overpayment after the hearing request deadline has passed.

(c) For each specific RUG for which a timely request for a hearing is made, OIG may direct the reclassification of the RUG and recover an overpayment after a final decision regarding the appeal is issued.

(d) OIG may recover overpayments and reimburse underpayments after due process has been concluded for all RUGs in the review.

(e) OIG may use statistical sampling and extrapolation for nursing facility utilization review cases in accordance with §371.35 of this title (relating to Use of Statistical Sampling and Extrapolation).

§371.228. Recoveries.

(a) OIG recovers any overpayments associated with a minimum data set (MDS) assessment error. OIG may recover an overpayment if the overpayment was identified during an OIG utilization review of a nursing facility provider. The provider is reimbursed for any underpayments.

(b) An overpayment amount is a debt owed to the Texas Medicaid program.

§371.230. Waiver of Extrapolation.

(a) The OIG may waive the calculation of an overpayment by extrapolation for any of the RUG classifications found in error.

(b) A provider must request a waiver of extrapolation in writing on or before the 15th calendar day after receipt of the final notice of overpayment. The provider's request for waiver of extrapolation must include sufficient evidence to demonstrate good cause for the waiver. The OIG may request additional evidence or documentation from the provider or other sources in evaluating the request.

(c) The OIG is vested with the sole discretion to evaluate the provider's showing of good cause and to determine whether waiver of extrapolation is warranted.

(d) The decision to grant, deny, or modify a request for waiver of extrapolation is not subject to administrative or judicial review.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §372.355, concerning Treatment of Resources in SNAP; §372.406, concerning Countable and Excluded Income in SNAP; and §372.410, concerning Allowable Deductions from Countable Income in SNAP.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with the Food and Nutrition Service (FNS) decision to discontinue the Texas Integrated Eligibility Redesign System (TIERS) Rules Waiver. This waiver allowed HHSC to modify certain eligibility criteria for SNAP to align agency SNAP policy and system functionality with other HHSC programs. Because the waiver expired, HHSC must now follow federal regulations regarding excluded resources and income.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §372.355 aligns HHSC policy with federal regulations by deleting §372.355(d)(3) and §372.355(d)(4). As amended, HHSC will follow 7 CFR 273.8(e). Section 372.355(d)(3) and §372.355(d)(4) are proposed to be deleted because the exclusion for certain Native American payments and Volunteers in Service to America (VISTA) program payments when determining countable resources are already referenced in §273.8(e)(11). The paragraphs are renumbered to account for the deletions.

The proposed amendment to §372.406 aligns HHSC policy with federal regulations by deleting §372.406(b)(1). As amended, HHSC will follow 7 CFR 273.9(c)(10) when excluding certain VISTA program payments. Section 372.406(b)(1) is redundant and proposed to be deleted because the exclusion for certain VISTA program payments when determining countable income is stated in the federal regulations already referenced in §372.406(a).

The proposed amendment to §372.410 aligns HHSC policy with federal regulations by modifying §372.410(1) and deleting §372.410(2). As amended, HHSC will follow 7 CFR 273.9 when allowing deductions for self-employment expenses and uncapped shelter deductions for certain SNAP households. Section 372.410(2) is redundant and proposed to be deleted because the uncapped shelter deduction for certain SNAP households are stated in the federal regulations already referenced in §372.410.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rules are in effect, there will be minimal impact on the public. Waiver evaluations conducted prior to the waiver expiration showed that these exclusions applied to very few households.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because waiver evaluations conducted prior to the waiver expiration showed that these exclusions applied to very few households.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R089" in the subject line.

SUBCHAPTER B. ELIGIBILITY

DIVISION 6. RESOURCES

1 TAC §372.355

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §33.002, which requires the Executive Commissioner to adopt rules related to distribution of SNAP benefits.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §33.002.

§372.355. Treatment of Resources in SNAP.

(a) In SNAP, the Texas Health and Human Services Commission (HHSC) follows 7 CFR §273.8(a) and (b) to determine the countable resources limit. Unless a household is considered categorically eligible for SNAP under 7 CFR §273.2(j) by receiving Supplemental Security Income, TANF cash, or TANF non-cash benefits, the countable resource limit for a household is the amount of liquid resources and excess vehicle values specified in 7 CFR §273.8(b).

(b) HHSC follows 7 CFR §273.8 to determine whose resources to count in SNAP.

(c) HHSC follows 7 CFR §273.8 to determine what resources are counted, and 7 CFR §273.8(e) and 7 U.S.C. §2014(g) to determine what resources are excluded.

(d) HHSC also excludes:

(1) up to $2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(2) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

~~[(3) funds from payments up to $2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);]~~

~~[(4) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973 (regardless of whether the recipient was receiving SNAP benefits at the time of receipt);]~~

(3) [~~(5)~~] funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(4) [~~(6)~~] funds from insurance policy dividends;

(5) [~~(7)~~] funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(6) [~~(8)~~] $15,000 for the first vehicle and $4,650 for each additional vehicle;

(7) [~~(9)~~] resources of categorically eligible households as described in 7 CFR §273.8(a); and

(8) [~~(10)~~] funds held in a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §33.0291 of the Texas Human Resources Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 7. INCOME

1 TAC §372.406, §372.410

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §33.002, which requires the Executive Commissioner to adopt rules related to distribution of SNAP benefits.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §33.002.

§372.406. Countable and Excluded Income in SNAP.

(a) In SNAP, the Texas Health and Human Services Commission (HHSC) follows 7 CFR §273.9 to determine what income to count, and 7 CFR §273.9(c) and 7 U.S.C. §2014(d) to determine what income to exclude.

(b) HHSC also excludes:

~~[(1) payments described in §372.404(7) of this division (relating to Countable and Excluded Income in TANF);]~~

(1) [~~(2)~~] any income described in §372.355(d) of this subchapter (relating to Treatment of Resources in SNAP);

(2) [~~(3)~~] amounts deducted from royalties for production expenses and severance taxes; and

(3) [~~(4)~~] interest earned on a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §33.0291 of the Texas Human Resources Code.

§372.410. Allowable Deductions from Countable Income in SNAP.

In SNAP, the Texas Health and Human Services Commission (HHSC) allows a deduction for expenses as required by 7 CFR §273.9, and HHSC:

(1) allows actual self-employment expenses [~~but does not deduct expenses related to income from illegal activities~~];

~~[(2) allows an uncapped excess shelter deduction for households with an elderly or disabled member, even if the member is disqualified;]~~

(2) [~~(3)~~] deducts a standard utility allowance (SUA) for households that qualify;

(3) [~~(4)~~] deducts a basic utility allowance (BUA) for households with utility expenses that do not qualify for the SUA in paragraph (2) [~~(3)~~] of this section;

(4) [~~(5)~~] deducts a telephone allowance for households with a telephone expense that do not qualify for the SUA in paragraph (2) [~~(3)~~] of this section or the BUA in paragraph (3) [~~(4)~~] of this section;

(5) [~~(6)~~] allows a standard shelter deduction for homeless households;

(6) [~~(7)~~] does not allow a deduction for actual utility expenses; and

(7) [~~(8)~~] gives elderly or disabled households the option of deducting actual allowable medical expenses (as explained in 7 CFR §273.9(d)(3)) or using a standard medical deduction of an amount HHSC negotiates annually with the U.S. Department of Agriculture, Food and Nutrition Service.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. APPLICATION PROCESS
DIVISION 2. INTERVIEW

1 TAC §372.957

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §372.957, concerning Periodic Eligibility Review.

BACKGROUND AND PURPOSE

The purpose of the proposal is to align the section with the implementation of Senate Bill (S.B.) 224, 87th Legislature, Regular Session, 2021, which requires HHSC to provide a 36-month Supplemental Nutrition Assistance Program (SNAP) certification period for eligible households in which all members are elderly (60 years of age or older) or disabled and have no earned income who are certified on or after September 1, 2021.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §372.957 changes the 36-month certification period to apply to eligible households containing all elderly or disabled members, and removes language concerning the SNAP Supplemental Security Income (SNAP-SSI) waiver that expired in 2021. The SNAP-SSI waiver only allowed a 36-month certification period for households receiving SSI.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand existing rules;

(7) the proposed rule will increase the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not apply to and will not impose any additional costs on small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to §372.957 because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be that more eligible households will be certified for SNAP benefits for 36 months. This will also reduce eligibility staff workload, as benefit recertification will occur less frequently for this population.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there is no requirement to alter business practices. The proposed rule only affects the length of the certification period for certain people receiving SNAP benefits.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following

business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R086" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §33.002, which requires the Executive Commissioner to adopt rules related to distribution of SNAP benefits.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §33.002.

§372.957. Periodic Eligibility Review.

(a) In some TANF cases, the Texas Health and Human Services Commission (HHSC) elects to review eligibility every 12 months, but in most cases, HHSC reviews eligibility every six months.

(b) SNAP eligibility periods vary from one to 12 months, based on household circumstances and as determined by HHSC, except:

(1) as explained in §372.654 of this chapter (relating to SNAP-CAP Certification Process); and

(2) for a [~~categorically~~ ~~eligible~~] household in which all members are elderly or disabled with no earned income [~~receive~~ ~~Supplemental~~ ~~Security~~ ~~Income~~], the eligibility period is 36 months (as approved by the U.S. Department of Agriculture, Food and Nutrition Service).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 3, 2022.

TRD-202203975
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 206-4621

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §§133.2 - 133.4, 133.9 - 133.11, 133.14, 133.15, 133.19 - 133.23

The Texas State Securities Board proposes the repeal of thirteen rules, concerning forms adopted by reference. These forms would be repealed, and new replacement forms are being currently proposed that are updated to standardize and improve the forms through nonsubstantive changes. Specifically, the State Securities Board proposes the repeal of §133.2, a form concerning Public Information Charges--Billing Detail; §133.3, a form concerning The State Securities Board Adopts by Reference the ADA Accommodations Request Form; §133.4, a form concerning Request for Consideration of a Registration Application by a Military Applicant; §133.9, a form concerning Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises; §133.10, a form concerning Investment Company Report of Sales; §133.11, a form concerning Sales Report for Non-continuous Offerings; §133.14, a form concerning Consent of Independent Accountants; §133.15, a form concerning Texas Crowdfunding Portal Registration; §133.19, a form concerning Waiver or Refund Request by a Military Applicant; §133.20, a form concerning Texas Crowdfunding Portal Registration by an Authorized Small Business Development Entity; §133.21, a form concerning Crowdfunding Exemption Notice (SEC Rule 147A Offerings using §139.26); §133.22, a form concerning Waiver or Refund Request by a Military Spouse for a Renewal Fee; and §133.23, a form concerning Request for Recognition of Out-Of-State License or Registration by a Military Spouse.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the repeals are in effect, there will be no foreseeable fiscal implications for state or local government as a result of administering the repeals.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed repeals are in effect the public benefit expected as a result of adoption of the proposed repeals will be that forms that are no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeals will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeals of the rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; they do not positively or negatively affect the state's economy; and they do not create a new regulation, or expand, limit, or repeal an existing regulation. Although the rulemaking involves repealing existing forms, the net effect is to merely replace the forms with new forms that are being concurrently proposed, while leaving the scope and the content of the current regulations that relate to these forms unchanged.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeals in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeals are proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and

reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The repeal of rule §133.3 is also proposed under the authority of the Texas Occupations Code, §54.003, which provides that agencies shall adopt rules to provide reasonable examination accommodations to examinees diagnosed as having dyslexia for each licensing examination administered by the agency. The repeals of rules §§133.4 and 133.19 are also proposed under the authority of Chapter 55 of the Texas Occupations Code, which authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria. The repeal of rule §133.20 is also proposed under the authority of the Texas Government Code, §4003.252(a), which provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities. The repeals of rules §§133.22 and 133.23 are also proposed under the authority of the Texas Occupations Code, §55.0041, which requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The proposal affects Chapters 4003 to 4006 of the Texas Government Code, particularly the statutes contained in Chapter 4003, Subchapters A and F; Chapter 4004, Subchapters A-D and F; Chapter 4005, Subchapter A; and Chapter 4006, Subchapters A-C and E; as well as Texas Government Code, §4007.105.

§133.2. Public Information Charges--Billing Detail.

§133.3. The State Securities Board Adopts by Reference the ADA Accommodations Request Form.

§133.4. Request for Consideration of a Registration Application by a Military Applicant.

§133.9. Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises.

§133.10. Investment Company Report of Sales.

§133.11. Sales Report for Non-continuous Offerings.

§133.14. Consent of Independent Accountants.

§133.15. Texas Crowdfunding Portal Registration.

§133.19. Waiver or Refund Request by a Military Applicant.

§133.20. Texas Crowdfunding Portal Registration by an Authorized Small Business Development Entity.

§133.21. Crowdfunding Exemption Notice (SEC Rule 147A Offerings using §139.26).

§133.22. Waiver or Refund Request by a Military Spouse for a Renewal Fee.

§133.23. Request for Recognition of Out-Of-State License or Registration by a Military Spouse.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2022.

TRD-202204042
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 305-8303

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7 TAC §§133.2 - 133.4, 133.9 - 133.11, 133.14, 133.15, 133.19 - 133.23

The Texas State Securities Board proposes thirteen new rules, concerning forms adopted by reference. Specifically, the State Securities Board proposes new §133.2, a form concerning Public Information Charges - Billing Detail; §133.3, a form concerning ADA Accommodations Request; §133.4, a form concerning Request for Consideration of a Registration Application by a Military Applicant; §133.9, a form concerning Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises; §133.10, a form concerning Investment Company Report of Sales in the State of Texas; §133.11, a form concerning Sales Report for Non-continuous Offerings; §133.14, a form concerning Consent of Independent Accountants; §133.15, a form concerning Texas Crowdfunding Portal Registration; §133.19, a form concerning Waiver or Refund Request by a Military Applicant; §133.20, a form concerning Texas Crowdfunding Portal Registration by an Authorized Small Business Development Entity; §133.21, a form concerning Crowdfunding Exemption Notice; §133.22, a form concerning Waiver or Refund Request by a Military Spouse for a Renewal Fee; and §133.23, a form concerning Request for Recognition of Out-Of-State License or Registration by a Military Spouse.

The new sections would adopt by reference forms that would be updated to standardize and improve the forms through nonsubstantive changes. Additionally, the names of three forms would be changed: the name of Form 133.3 would be changed to more concisely describe the form; the name of Form 133.10 would be changed to add "in the State of Texas" to remind the reporting party that only sales in Texas need be included in the report; and Form 133.21 would be changed to remove an unnecessary parenthetical. Existing forms §§133.2, 133.3, 133.4, 133.9, 133.10, 133.11, 133.14, 133.15, 133.19, 133.20, 133.21, 133.22, and 133.23 are being concurrently proposed for repeal.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed forms are used there will be no foreseeable fiscal implications for state or local government as a result of using the proposed forms.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed forms are used the public benefit expected as a result of adoption of the proposed forms will be that outdated forms will be replaced with new, improved, and updated forms. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed forms will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to use the forms as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid

to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; they do not positively or negatively affect the state's economy; and they do not create a new regulation, or expand, limit or repeal an existing regulation. Although the rulemaking involves the creation of new forms, there would be no new regulation created since the net effect is to merely replace forms that are being concurrently proposed for repeal, while leaving the scope and the content of the current regulations that relate to these forms unchanged.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rules are proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. New rule §133.3 is also proposed under the authority of the Texas Occupations Code, §54.003, which provides that agencies shall adopt rules to provide reasonable examination accommodations to examinees diagnosed as having dyslexia for each licensing examination administered by the agency. New rules §§133.4 and 133.19 are also proposed under the authority of Chapter 55 of the Texas Occupations Code, which authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria. New rule §133.20 is also proposed under the authority of the Texas Government Code, §4003.252(a), which provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities. New rules §§133.22 and 133.23 are also proposed under the authority of the Texas Occupations Code, §55.0041, which requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The proposal affects Chapters 4003 to 4006 of the Texas Government Code, particularly the statutes contained in Chapter 4003, Subchapters A and F; Chapter 4004, Subchapters A-D and F; Chapter 4005, Subchapter A; and Chapter 4006, Subchapters A-C and E; as well as Texas Government Code, §4007.105.

§133.2. Public Information Charges - Billing Detail.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.3. ADA Accommodations Request.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.4. Request for Consideration of a Registration Application by a Military Applicant.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.9. Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.10. Investment Company Report of Sales in the State of Texas.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.11. Sales Report for Non-continuous Offerings.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.14. Consent of Independent Accountants.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.15. Texas Crowdfunding Portal Registration.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.19. Waiver or Refund Request by a Military Applicant.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.20. Texas Crowdfunding Portal Registration by an Authorized Small Business Development Entity.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.21. Crowdfunding Exemption Notice.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.22. Waiver or Refund Request by a Military Spouse for a Renewal Fee.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.23. Request for Recognition of Out-Of-State License or Registration by a Military Spouse.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2022.

TRD-202204041
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 55. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER G. MANAGEMENT OF VEHICLES

16 TAC §§55.110 - 55.112

The Texas Department of Licensing and Regulation (Department) proposes new rules to 16 Texas Administrative Code (TAC), Chapter 55, Subchapter G, §§55.110 - 55.112, regarding the Rules for Administrative Services. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under new Subchapter G establish new rules to comply with section 2171.1045 of the Texas Government Code, which requires the adoption of rules relating to the assignment and use of the Department vehicles.

The rules under 16 TAC, Chapter 55, implement Texas Government Code, Chapter 2155, Purchasing: General Rules and Procedures; Chapter 2156, Purchasing Methods; Chapter 2161, Historically Underutilized Businesses; Chapter 2260, Resolution of Certain Contract Claims Against the State; Chapter 2261, State Contracting Standards and Oversight; Chapter 552, Public Information; and Chapter 2009, Alternative Dispute Resolution for use by Governmental Bodies. Chapter 55 also implements Civil Practice and Remedies Code, Chapter 107, Permission to Sue the State; and Chapter 154, Alternative Dispute Resolution Procedures.

SECTION-BY-SECTION SUMMARY

The proposed rules add new Subchapter G. Management of Vehicles.

The proposed rules add new §55.110, Vehicle Management Plan. The proposed rules adopt the Texas State Vehicle Fleet Management Plan developed by the Office of the Vehicle Fleet Management, Statewide Procurement Division of the Texas Comptroller of Public Accountants to the extend applicable.

The proposed rules add new §55.111, Motor Pool. The proposed rules establish that each Department vehicle, that is not assigned to a field employee, or used for undercover or surveillance activities, must be assigned to the Department motor pool and available for checkout.

The proposed rules add new §55.112, Assignment of Vehicles. The proposed rules establish the process to be used to assign a vehicle to an individual on a regular basis.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs to state or local government as a result of enforcing or administering the proposed rules. Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be reductions in costs to the state or local government as a result of enforcing or administering the proposed rules.

The proposed rules require for a motor pool vehicle to be used by an agency employee instead of a rental vehicle or the employee's personal vehicle, which necessitates reimbursement to the employee, will reduce the agency's travel costs and costs to the State. However, the amount of this reduction cannot be estimated as it will depend on how many vehicles are available at any given time, how many days a vehicle will be needed or miles it will be driven, and how many employees will be able to avail themselves of the vehicles. The proposed rules will not reduce the number of employees or resources needed by the agency.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the agency will reduce travel costs and ultimately costs to the state.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules create a new regulation. The proposed rules create a new regulation with requirements for the agency in the management of its vehicles.

6. The proposed rules do not expand, limit, or repeal an existing regulation.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a taking impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules;* by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter. The proposed rules are also proposed under Texas Government Code, Chapter 2271, which requires the adoption of rules related to the assignment and use of the Department vehicles.

No other statutes, articles, or codes are affected by the proposed rules.

§55.110. Vehicle Management Plan.

To the extent applicable, the department adopts the Texas State Vehicle Fleet Management Plan developed by the Office of Vehicle Fleet Management, Statewide Procurement Division of the Texas Comptroller of Public Accountants.

§55.111. Motor Pool.

(a) Each department vehicle, except a vehicle assigned to a field employee or a vehicle used for undercover activities, or a vehicle used for surveillance activities, must be assigned to the department motor pool.

(b) A vehicle assigned to the department motor pool must be available for check-out, as needed and as available.

(c) A vehicle assigned to the department motor pool must be used whenever possible, rather than relying on a rental vehicle or employee reimbursement for the use of a personal vehicle.

§55.112. Assignment of Vehicles.

(a) The department must assign a vehicle to a specific user location, organizational unit, or individual, to properly account for, track, and monitor the vehicle.

(b) If the department assigns a vehicle to an individual administrative or executive employee, on a permanent or daily basis, the department must keep on file a document signed by the executive director stating that the assignment is critical to the mission of the department.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2022.

TRD-202204045
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 463-7750

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.11

The Texas Behavioral Health Executive Council proposes amendments to §463.11, relating to Supervised Experience Required for Licensure as a Psychologist.

Overview and Explanation of the Proposed Rule. The proposed amendment to subsection (b) adds the Psychological Clinical Science Accreditation System to the list of accredited programs where an applicant can count supervised experience obtained in excess of the 1,750 hours required as part of the applicant's internship. Subsection (c)(2) is proposed to be deleted, doing away with any time requirements between when a degree is awarded and when the individual applies for licensure. Corresponding amendments have been made in subsection (f) because of the deletion of subsection (c)(2).

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for

each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via the Council's Contact Us webpage (https://www.bhec.texas.gov/contact-us/index.html). To submit a comment via the Contact Us webpage simply click on the "Email Us" link on that page and select "Submission of Public Comment for Proposed Rule(s) or Open Meeting" from the drop-down menu. Please use the subject line "Public Comment for (enter rule number here)" to ensure your comments are associated with the correct rule and directed accordingly. The deadline for receipt of comments is 5:00 p.m., Central Time, on November 21, 2022, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§463.11 Supervised Experience Required for Licensure as a Psychologist.

(a) Required Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been obtained through a formal internship that occurred within the applicant's doctoral degree program and at least 1,750 of which must have been received as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(1) A formal internship completed after the doctoral degree was conferred, but otherwise meeting the requirements of this rule, will be accepted for an applicant whose doctoral degree was conferred prior to September 1, 2017.

(2) The formal internship must be documented by the Director of Internship Training. Alternatively, if the Director of Internship Training is unavailable, the formal internship may be documented

by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program.

(3) Following conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological services in an exempt setting, while licensed or authorized to practice in another jurisdiction, or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisionally licensed psychologist if the experience was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained without a provisional license or trainee status prior to September 1, 2016, may also be used to satisfy, either in whole or in part, the post- doctoral supervised experience required by this rule if the experience was obtained under the supervision of a licensed psychologist.

(b) Satisfaction of Post-doctoral Supervised Experience with Doctoral Program Hours.

(1) Applicants who received their doctoral degree from a degree program accredited by the American Psychological Association (APA), the Canadian Psychological Association (CPA), Psychological Clinical Science Accreditation System (PCSAS), or a substantially equivalent degree program, may count the following hours of supervised experience completed as part of their degree program toward the required post-doctoral supervised experience:

(A) hours in excess of 1,750 completed as part of the applicant's formal internship; and

(B) practicum hours certified by the doctoral program training director (or the director's designee) as meeting the following criteria:

(i) the practicum training is overseen by the graduate training program and is an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and ultimately licensure;

(ii) the practicum training is governed by a written training plan between the student, the practicum training site, and the graduate training program. The training plan must describe how the trainee's time is allotted and assure the quality, breadth, and depth of the training experience through specification of the goals and objectives of the practicum, the methods of evaluation of the trainee's performance, and reference to jurisdictional regulations governing the supervisory experience. The plan must also include the nature of supervision, the identities of the supervisors, and the form and frequency of feedback from the agency supervisor to the training faculty. A copy of the plan must be provided to the Council upon request;

(iii) the supervising psychologist must be a member of the staff at the site where the practicum experience takes place;

(iv) at least 50% of the practicum hours must be in service-related activities, defined as treatment or intervention, assessment, interviews, report-writing, case presentations, and consultations;

(v) individual face-to-face supervision shall consist of no less than 25% of the time spent in service-related activities;

(vi) at least 25% of the practicum hours must be devoted to face-to-face patient or client contact;

(vii) no more than 25% of the time spent in supervision may be provided by a licensed allied mental health professional or a psychology intern or post-doctoral fellow; and

(viii) the practicum must consist of a minimum of 15 hours of experience per week.

(2) Applicants applying for licensure under the substantial equivalence clause must submit an affidavit or unsworn declaration from the program's training director or other designated leader familiar with the degree program, demonstrating the substantial equivalence of the applicant's degree program to an APA, PCSAS, or CPA accredited program at the time of the conferral of applicant's degree.

(3) An applicant and the affiant or declarant shall appear before the agency in person to answer any questions, produce supporting documentation, or address any concerns raised by the application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of substantial equivalency under this rule.

(c) General Requirements for Supervised Experience. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(1) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

~~[(2) Gaps Related to Supervised Experience.]~~

~~[(A) Unless a waiver is granted by the Council, an application for a psychologist's license will be denied if a gap of more than seven years exists between the date an applicant's doctoral degree was officially conferred and the date of the application.]~~

~~[(B) The Council shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:]~~

~~*[(i)* proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act, during any gap period;]~~

~~*[(ii)* proof of professional development, which at a minimum meets the Council's professional development requirements, during any gap period;]~~

~~*[(iii)* proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or]~~

~~*[(iv)* proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.]~~

(2) [~~(3)~~] A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(3) [~~(4)~~] The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(4) [~~(5)~~] All supervised experience must be received from a psychologist licensed at the time supervision is received.

(5) [~~(6)~~] The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(6) [~~(7)~~] Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(7) [~~(8)~~] All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Council rules.

(8) [~~(9)~~] Unless authorized by the Council, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(9) [~~(10)~~] The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use that title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use that title so long as the supervised experience takes place within a school, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Council rule.

(d) Formal Internship Requirements. The formal internship hours must be satisfied by one of the following types of formal internships:

(1) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(2) The successful completion of an organized internship meeting all of the following criteria:

(A) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(B) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(C) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(D) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(E) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(F) At least 25% of trainee's time must be in direct patient/client contact.

(G) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(H) Training must be post-clerkship, post-practicum and post-externship level.

(I) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(J) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(3) The successful completion of an organized internship program in a school district meeting the following criteria:

(A) The internship experience must be provided at or near the end of the formal training period.

(B) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(C) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(D) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(E) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(F) The internship experience must occur under conditions of appropriate supervision. Field- based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(G) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(H) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(I) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(J) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(K) The internship experience must be conducted in a manner consistent with the current legal- ethical standards of the profession.

(L) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(M) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(e) Industrial/Organizational Requirements. Individuals from an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have taken place after conferral of the doctoral degree and in accordance with subsection (a) of this section. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Council rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(f) Licensure Following Respecialization.

(1) In order to qualify for licensure after undergoing respecialization an applicant must demonstrate the following:

(A) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing respecialization;

(B) completion of a formal post-doctoral respecialization program in psychology which included at least 1,750 hours in a formal internship; and

[~~(C) completion of respecialization within the two year period preceding the date of application for licensure under this rule; and~~]

(C) [~~(D)~~] upon completion of the respecialization program, at least 1,750 hours of supervised experience obtained as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(2) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

[~~(3) The rules governing the waiver of gaps related to supervised experience shall also govern any request for waiver of a gap following respecialization.~~]

(g) Remedy for Incomplete Supervised Experience.

(1) An applicant who has completed at least 1,500 hours of supervised experience in a formal internship, 1,500 hours of supervised experience following conferral of a doctoral degree, and who does not meet all of the supervised experience qualifications for licensure set out in subsections (a), (c), and (d) of this section or §465.2 of this title (relating to Supervision), may petition for permission to remediate an area of deficiency. An applicant may not however, petition for the waiver or modification of the requisite doctoral degree or passage of the requisite examinations.

(2) The Council may allow an applicant to remediate a deficiency identified in paragraph (1) of this subsection if the applicant can demonstrate:

(A) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41; and

(B) the remediation would not adversely affect the public welfare.

(3) The Council may approve or deny a petition under this subsection, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice as a licensed psychologist.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2022.

TRD-202204024
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 305-7706

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.404

The Texas Behavioral Health Executive Council proposes amendment §781.404, relating to Recognition as a Council-approved Supervisor and the Supervision Process.

Overview and Explanation of the Proposed Rule. The proposed amendment provides more specific details regarding the minimum standards for the 40 hours of education required to apply for supervisor status. Additionally, the proposed change deletes some duplicative language regarding the Council's ability to discipline a licensee that continues to provide supervision after the licensee no longer possesses supervisor status, and the outdated subparagraph that initially required the 40 hours supervision training back in 2014.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or via the Council's Contact Us webpage (https://www.bhec.texas.gov/contact-us/index.html). To submit a comment via the Contact Us webpage simply click on the "Email Us" link on that page and select "Submission of Public Comment for Proposed Rule(s) or Open Meeting" from the drop-down menu. Please use the subject line "Public Comment for (enter rule number here)" to ensure your comments are associated with the correct rule and directed accordingly. The deadline for receipt of comments is 5:00 p.m., Central Time, on November 21, 2022, which is at least 30 days from the date of publication in the *Texas Register.*

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non- clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor; or

(5) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a 40-hour supervisor's training program acceptable to the Council.

(A) At a minimum, the 40-hour supervisor's training program must meet each of the following requirements:

(i) the course must be taught by a licensed social worker holding both the appropriate license classification, and supervisor status issued by the Council;

(ii) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(iii) the 40-hour supervision training must include at least:

(I) three (3) hours for defining and conceptualizing supervision and models of supervision;

(II) three (3) hours for supervisory relationship and social worker development;

(III) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(IV) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(V) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(B) Subparagraph (A) of this paragraph is effective May 1, 2023.

(4) The Council-approved supervisor must submit required documentation and fees to the Council.

(5) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(6) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(7) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(8) A Council-approved supervisor who wishes to provide any form of supervision or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(D) Before entering into a supervisory plan, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor shall not be a family member of the person being supervised.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) Providing supervision without Council-approved supervisor status is grounds for disciplinary action. [~~The Council may deny, revoke, or suspend Council approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.~~]

(O) [~~If a supervisor's Council-approved status is expired, suspended, or revoked, the~~] A supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

~~[(Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status. The Council recognizes that many licensees have had little, if any, formal education about supervision theories, strategies, problem-solving, and accountability, particularly LBSWs who may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the Council values high-quality, contemporary, multi-modality supervision training to ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.]~~

(9) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked for the 3,000 hours of supervised experience. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Supervised professional experience required for licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition) of this title and all other applicable laws and rules.

(10) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the super-

visee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2022.

TRD-202204005
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 305-7706

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.22

The General Land Office (GLO) proposes an amendment to 31 Texas Administrative Code (TAC) §15.22 relating to Certification Status of the Brazoria County Dune Protection and Beach Access Plan (Plan). Brazoria County has proposed amendments to its Plan, which include traffic regulations for the operation and parking of vehicles adjacent to the water's edge, updates to the requirements for camping on the beach, and revisions to the definition of litter. The County also proposes an update to the beach access roads included in the County's Plan, revisions to the paving requirements for eroding areas to reflect the current standards in 31 Texas Administrative Code Chapter 15, and various administrative edits. The GLO proposes to add new subsection 15.22(d) to certify the amended Plan as consistent with state law.

Copies of the County's proposed Plan amendments can be obtained by contacting the Brazoria County Criminal District Attorney's Office at 111 E. Locust, Rm 408A, Angleton, Texas 77515, (979) 864-1230, or the GLO's Archives and Records Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, (512) 463-5277.

BACKGROUND OF THE PROPOSED AMENDMENTS

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Texas Administrative Code (31 TAC §15.3 and §15.7), a local government with jurisdiction over Gulf coast beaches must submit its Plan, its traffic control plan, and any proposed amendments to the Plan to the GLO for certification. If appropriate, the GLO will certify that the Plan is consistent with state law by amendment of a rule, as authorized in Texas Natural Resources Code (TNRC) §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the state's certification of the Plan; however, the text of the Plan is not adopted by the GLO, as provided in 31 TAC §15.3(o)(4).

On August 11, 2022, the Brazoria County Commissioners' Court adopted Order No. 6.C.1 to adopt the proposed amendments to the Plan, including traffic regulations regarding the operation and parking of vehicles adjacent to the water's edge, updates to the requirements for camping on the beach, and revisions to the definition of litter. The County also proposes an update to the beach access roads included in the County's Beach Access Plan, to revise the paving requirements for eroding areas to reflect the current standards in 31 Texas Administrative Code Chapter 15, and various administrative edits. The order becomes effective upon the GLO's certification of the amendments to the Plan. The Plan was submitted to the GLO with a request for certification of the amendments to the Plan as consistent with state law. The Plan amendments were submitted in accordance with 31 TAC §15.3 and TNRC Chapters 61 and 63.

Brazoria County is a coastal county consisting of more than 20 miles of gulf-facing beaches, extending from the southernmost boundaries of Galveston County at the San Luis Pass south to the northernmost boundary of Matagorda County at Cedar Lake Creek.

ANALYSIS OF PLAN AMENDMENTS AND GLO'S PROPOSED AMENDMENTS TO 31 TAC §15.32.

Brazoria County's proposed amendments include changes that will make its Plan consistent with the paving standards for eroding areas in 31 TAC Ch. 15. The eroding area amendments clarify that, for areas with dunes, fibercrete in four-foot by four-foot squares may be used beneath the footprint of a habitable structure in the area landward of 25 feet from the landward toe of the foredunes. If no dunes exist, fibercrete may only be used beneath the footprint of the habitable structure in the area at least 100 feet landward of the line of vegetation (LOV). In the area at least 50 feet landward of the LOV, gravel or crushed limestone may be used to stabilize driveways. In areas that are more than 200 feet landward of the LOV, all fibercrete or reinforced concrete must be beneath the footprint of the habitable structure, and driveways may be stabilized with gravel, crushed limestone, or pavers. The allowance of fibercrete is cost saving since, in the event of a storm, fibercrete is less expensive and easier to clean up than other types of impervious cover. Also, less sand is removed from the beach during cleanup of fibercrete compared to pavers.

The proposed amendments to the Plan also include changes to traffic regulations for the operation and parking of vehicles adjacent to the water's edge and specify that parking on sand dunes

is prohibited. In addition, the amendments prohibit the operation of vehicles within 40 feet of the water's edge and parking within 25 feet of the water's edge on the beach, with exceptions for a limited number of activities and locations. The amendments also state that during times of high traffic volume, all traffic will travel in one direction from the southwest to the northeast, parallel to the water, and park in a single line with at least ten feet between each vehicle. The Sheriff's Department may regulate the direction of traffic, parking locations, and other safety measures when conditions require greater measures of protection for public safety. These regulations are intended to protect dunes while ensuring beach access.

In addition, the Plan amends the regulations for camping on the beach, requiring a permit, and clarifying the existing 14 consecutive days camping limit. Under the amendments, once a person has reached the maximum 14 consecutive days of camping, the person must leave the beach and remove all belongings for a period of no less than 30 days before returning to any County beach. Also, the total number of days spent camping on any County beach may not exceed 60 calendar days per year, in any combination of cumulative visits or consecutive nights. The amendments clarify that campsites are temporary shelters, not to be used for more than the time limit. The amendments also include provisions for the disposal of human and animal waste during camping. These amendments clarify an existing regulation and make it easier to enforce to facilitate beach access for all members of the public.

The proposed amendments to the Plan contain revisions to the definition of litter to clarify that it includes trash or debris left anywhere other than a proper trash receptacle, including biodegradable products, food, and animal, human, or plant waste. Also included in the definition of litter are non-decayable solid waste such as combustible and noncombustible waste material, discarded manufactured materials and machinery, tents or canopies, recreational equipment, household furnishings, and scrap metal. These amendments encourage the public to remove items they are no longer using from the beach, prevent dumping, and decrease the resources the County spends on removing unwanted items from the beach.

The County also proposes a revision to the beach access roads listed in the County's Beach Access Plan. The County proposes to remove Beach Access No. 1 on Follett's Island Beach from the County's Beach Access Plan and rename the remaining beach access points. Former Beach Access No. 1 was annexed by the Village of Surfside Beach and remains open to the public. The annexation transferred jurisdiction over the access point to the Village of Surfside Beach.

Due to the natural topography of the pedestrian only County beaches, the County proposes modifications to the Plan's provisions regarding temporary pathways such as removable mats to accommodate access for persons with disabilities from the end of walkovers to the compacted sand portions of the beach. Instead of providing removable mats for access at San Luis Pass County Park and Quintana Beach County Parks, the County proposes to have golf carts available for transportation of persons with disabilities to compacted sand portions of the pedestrian beaches. This option is superior to the use of mats since the area's soft sand and the difficult terrain would require hundreds of feet of mats to make the beach accessible to persons with disabilities in these areas. The County states that removable mats are impractical and cost prohibitive in this environment and are not a long term or economically viable solution as they deteriorate quickly after exposure to the sand and saltwater. The availability of golf carts will enhance the access of persons with disabilities at the pedestrian only beaches and will cost less and work better than the removeable mats. Beach wheelchairs are also available at these two County parks.

The amendments also add a new requirement for lifeguards, which is required under TNRC §61.066. There are various administrative changes and non-substantive grammatical and procedural edits and clarifications as well.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Melissa Porter, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government as a result of enforcing or administering the amended rule. GLO has determined that the proposed rulemaking will have no adverse affect on local employment and that no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that the public will benefit from the proposed amendments because they provide equal or better protection of dunes, dune vegetation, and public access to and use of the beach. For example, the use of fibercrete is cost saving in that debris removal and beach cleanup are facilitated by the use of unreinforced fibercrete in large four-foot by four-foot sections rather than small pavers, with less sand removed from the beach during cleanup and because fibercrete is easier to remove than concrete should it become located on the beach. Also, prohibiting the use of fibercrete in the area between the line of vegetation and 25 feet from the north toe of the dune ensures that dune hydrology is not adversely affected. The amendments to the traffic regulations benefit the public by preserving access while protecting the dunes and dune vegetation. Other amendments are aimed at increasing public beach access for everyone and enhancing the ability of the public to use the beach.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action considering the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under Texas Natural Resources Code §§61.011, 61.015(b), and 61.022 (b) & (c), and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and have access to public beaches and certification of local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution.

The GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed rule simply certifies the amendments to Brazoria County's Dune Protection and Beach Access Plan (Plan), it will not affect the operations of the General Land Office. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The proposed rule amendment does not create, limit, or repeal existing agency regulations, but rather certifies the amendments to the Plan as consistent with state law. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rule would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety and to reduce public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and §505.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determinate that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §501.12(5). These goals seek to balance the benefits of economic development and multiple human uses, the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §501.12(5) as they provide the County with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone. The proposed rules are also consistent with CMP policies in 31 TAC §501.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §§61.011, 61.015(b), and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, and 63.121 are affected by the proposed amendments.

§15.22. Certification Status of Brazoria County Dune Protection and Beach Access Plan.

(a) Brazoria County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The County's plan was adopted on August 9, 1993, and amended on September 27, 1993, April 8, 2008, and July 3, 2012.

(b) The General Land Office certifies as consistent with state law Brazoria County's Dune Protection and Beach Access Plan as amended by the Erosion Response Plan. The Erosion Response Plan was adopted by the County Court on July 3, 2012 in Order No. VIII.B.3.f.

(c) The General Land Office certifies as consistent with state law Brazoria County's Dune Protection and Beach Access Plan as amended to provide for vehicular restrictions for pedestrian-only traffic along sections of the San Luis Pass County Park Beach and on-beach parking. The amendment was adopted by Brazoria County on April 23, 2013 in Order No. VII.B.2.f.

(d) The General Land Office certifies as consistent with state law Brazoria County's Dune Protection and Beach Access Plan as amended to include traffic regulations for the operation and parking of vehicles adjacent to the water's edge, updates to the requirements for camping on the beach, revisions to the definition of litter, an update to the beach access roads included in the County's Plan, revisions to the paving requirements for eroding areas to reflect the current standards in 31 Texas Administrative Code Chapter 15, and various administrative changes. The amendments were adopted by Brazoria County on August 11, 2022, in Order No. 6.C.1.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2022.

TRD-202204019

Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 475-1859

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER J. STATE PARTICIPATION PROGRAM

31 TAC §§363.1001 - 363.1004, 363.1006 - 363.1008, 363.1012, 363.1013

The Texas Water Development Board ("TWDB") proposes amendments to 31 Texas Administrative Code (TAC) §§363.1001 - 363.1004, 363.1006 - 363.1008, 363.1012, and 363.1013 related to the State Participation Program.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB proposes amending 31 TAC §§363.1001 - 363.1004, 363.1006 - 363.1008, 363.1012, and 363.1013 concerning the State Participation Program. The 86th Texas Legislature passed House Bill 1052 that revised Water Code Chapter 16 regarding the provisions of the State Participation Program.

The bill adds interregional water supply projects as eligible projects for funding from the state participation account. It includes a condition that at least half of the funds used in a fiscal year from the account be used for interregional water projects that benefit multiple water planning regions. The bill requires the board to establish selection criteria to prioritize interregional water supply project applications received. The bill also requires the board and the Texas Commission on Environmental Quality to enter into a memorandum of understanding for the expedited approval of permits for interregional water supply projects.

The bill also creates a State Participation Account II to provide financial assistance for the development of desalination or aquifer storage and recovery facilities through the acquisition of a facility or ownership interest in a facility. Facilities receiving funding must be included in the state water plan. The bill requires the board to establish a point system to prioritize desalination or aquifer storage and recovery facility financial assistance applications received. The issuance of bonds for these projects will be limited to $200 million. If the board has not provided financial assistance for a desalination or aquifer storage and recovery facility before September 1, 2024, the board will be unable to do so after that date.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

31 TAC §363.1001 Scope of Subchapter

Section 363.1001 is amended to clarify that the rule requirements related to applicants and participating entities do not apply when the TWDB is acting singly in implementing a project.

31 TAC §363.1002 Definition of Terms

Section 363.1002(2) is amended to add "interregional" to the definition of facility.

Section 363.1002(6) is added to define the term "State Participation Account II."

Section 363.1002(7) is renumbered to accommodate the addition of Section 363.1002(6).

31 TAC §363.1003 Board Participation

Section 363.1003(a) is added to clarify that the section does not apply to use of the State Participation Account II. Section 363.1003(c) is added to state that the Board may waive the excess capacity limitations of subsection (b) upon showing of good cause. The Board may do this at its sole discretion. The excess capacity limitations set in this rule are not required by statute.

Section 363.1003(b) is renumbered to accommodate the addition of Section 363.1003(a) and amended to delete "Texas Water Development Fund I," which has been replaced by the Texas Water Development Fund II.

31 TAC §363.1004 Application for Assistance

Section 363.1004(10)(F) is amended to reflect legislative changes made by HB 3339, 86th Legislative Session.

31 TAC §363.1006 Prioritization System

Section 363.1006(a) is amended to allow prioritization and consideration for commitment at any point during the year. This will create greater flexibility for the TWDB and potential applicants. Sections 363.1006(a) and (c) are also amended to clarify that interregional water supply projects will be prioritized separately from other projects.

31 TAC §363.1007 Prioritization Criteria

Section 363.1007(b) is amended to mention the exception of newly added subsection (c).

Section 363.1007(c) is added to provide prioritization criteria for interregional water supply projects.

31 TAC §363.1008 Determination

Section 363.1008(a) is amended to mention the exception of the newly added subsection for the State Participation Account II.

Section 363.1008(a)(5) is amended to add "interregional" regarding the facility.

Section 363.1008(b) is added to list required Board findings for State Participation II projects, as required by HB 1052.

31 TAC §363.1012 Requirements of Application

Section 363.1012 is amended to correct punctuation.

31 TAC §363.1013 Notice of Participating Political Subdivision and Others

Section 363.1013 is amended to correct punctuation.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments because the proposed additions and amendments implement statutory requirements. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. These rules do not impose any additional requirements that are not imposed by statute.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it implements legislation to encourage interregional collaboration for water supply projects that benefit multiple water planning regions and to clarify allowable uses of TWDB programs. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary and these requirements are imposed by statute.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §§16.131, 16.145, 16.146, 16.182, and 17.957. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated the proposed rule amendments and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislative changes. The proposed rule would substantially advance this stated purpose by adding language related to the legislative changes.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that provides financial assistance for the construction of water projects.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding financing water supply projects. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy. The proposed rulemaking implements legislative changes to the State Participation Program.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.* Include "State Participation" in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§16.131, 16.145, 16.146, 16.182, and 17.957.

Cross-reference to statute: Texas Water Code Chapter 16, Subchapters E and F are affected by this rulemaking.

§363.1001. Scope of Subchapter.

The sections of this subchapter shall pertain to applications for financing state participation projects authorized by the Texas Water Code, Chapter 16, Subchapters E and F. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) shall apply to state participation projects. The requirements of this subchapter do not apply if the board is acting singly.

§363.1002. Definitions of Terms.

The following word and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Excess capacity--The difference between the foreseeable needs of the area to be served by the useful life of the facility and the existing needs for the area to be served by the facility.

(2) Facility--A regional or interregional facility for which an application has been submitted requesting financial assistance from the state participation account and that includes sufficient capacity to serve the existing needs of the applicant and excess capacity.

(3) Alternate facility--A construction project that would be necessary to serve the excess capacity of the area to be served by the facility in the event that the facility was not initially constructed to meet the excess capacity.

(4) Existing needs--Maximum capacity necessary for service to the area receiving service from the facility for current population and including the service necessary to serve the estimated population in the area ten years from the date of the application.

(5) New water supply project--A project which will create new, usable water supply through the construction of a reservoir, dam, stormwater retention basin, or the development of conservation or innovative technologies including, but not limited to, desalinization, demineralization, other advanced water treatment practices, floodwater harvesting, or aquifer storage and recovery.

(6) State Participation II Account--An account within the State Participation Account for the development of desalination or aquifer storage and recovery facilities under Texas Water Code 16.146.

(7) [~~(6)~~] Water plan project--A project which is identified as a recommended strategy in the water plan.

§363.1003. Board Participation.

(a) This section does not apply to use of the State Participation Account II.

(b) Unless otherwise directed by legislation, or in accordance with subsection (c), the board will only use the State Participation Account of the [~~Texas Water Development Fund I or the~~] Texas Water Development Fund II to provide financial assistance for all or a part of the cost to construct the excess capacity of:

(1) an eligible new water supply or water plan project where:

(A) at least 20% of the total facility capacity of the proposed project will serve existing need, or

(B) the applicant will finance at least 20% of the total project cost from sources other than the State Participation Account; and

(2) all other projects eligible for state participation where:

(A) at least 50% of the total facility capacity of the proposed project will serve existing need, or

(B) the applicant will finance at least 50% of the total project cost from sources other than the State Participation Account.

(c) The board, in its sole discretion, may waive the requirements of subsection (b) upon a showing of good cause.

§363.1004. Application for Assistance.

In addition to any other information that may be required by the executive administrator or the board, the applicant shall provide:

(1) a resolution from its governing body which shall:

(A) request financial assistance and identify the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to execute the application, appear before the board on behalf of the applicant, and submit such other documentation as may be required by the executive administrator or the board;

(2) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Texas Government Code, §551.001, et seq,) and after providing all such notice as required by such Act;

(B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;

(C) the applicant has no outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue of any kind or nature by EPA, Texas Commission on Environmental Quality (commission), Texas Comptroller, Texas Secretary of State, or any other federal, state or local government or identifying such judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue as may be outstanding for the applicant;

(D) the applicant warrants compliance with the representations made in the application in the event that the board provides the financial assistance; and

(E) the applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board;

(3) a proposed schedule for purchase of the board's interest in the project;

(4) copies of any proposed or existing contracts for consultant financial advisory, engineering, and bond counsel services to be used by the applicant in applying for financial assistance or constructing the proposed project. Contracts for engineering services should include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator;

(5) a citation to the specific legal authority in the Texas Constitution and statutes pursuant to which the applicant is authorized to provide the service for which the applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the applicant as may be deemed necessary by the executive administrator;

(6) if the applicant provides or will provide water supply or treatment service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing;

(7) documentation of the ownership interest, with supporting legal documentation, of property on which proposed project shall be located, or if the property is to be acquired, certification that the applicant has the necessary legal power and authority to acquire the property;

(8) if payment under the master agreement is based either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts under which applicant's gross income is expected to accrue. Prior to release of funds, an applicant shall submit executed copies of such contracts to the executive administrator;

(9) if an election is required by law to authorize participation in the project, the executive administrator may require applicant to provide the election date and election results as to each proposition necessary for the participation of the applicant as part of the application.

(10) Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State of Texas. The report, based on guidelines provided by the executive administrator, shall provide:

(A) description and purpose of the project;

(B) entities to be served and current and future population;

(C) the cost of the project;

(D) a description of the alternatives considered and reasons for selection of the project proposed;

(E) sufficient information to evaluate the engineering feasibility; and

~~[(F) copy of the board or commission approved water conservation plan, if any, or a copy of a proposed water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan); and]~~

(F) [~~(G)~~] maps and drawings as necessary to locate and describe the project service area. The executive administrator may request additional information or data as necessary to evaluate the project.

(11) a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan).

§363.1006. Prioritization System.

(a) The executive administrator will prioritize all applications in accordance with §363.1007 of this title and may prioritize projects under §363.1007(b) and (c) separately [~~not previously considered by the board twice annually. An application must be submitted by February 1 to be prioritized in March. An application must be submitted by August 1 to be prioritized in September~~]. The executive administrator will provide the prioritization to the board for approval [~~in March and September of each year or as soon thereafter as practicable~~]. The executive administrator may set additional application deadlines, prioritize applications, and present the prioritization and those applications to the board for a commitment if the executive administrator deems it necessary in order to utilize available funds in any fiscal year. To be considered for prioritization, an applicant must provide adequate information to establish that the applicant qualifies for state participation funding, to describe the project comprehensively, and to establish the cost of the project, as well as any other information requested by the executive administrator. The executive administrator will develop and provide to applicants detailed information on the abridged application necessary for prioritization. If an applicant submits an abridged application for prioritization purposes, the applicant must submit a complete application to the board within 30 days after the board meeting at which the applicant's project received priority for funding, or the project will lose its priority ranking and the board may commit to other projects consistent with the prioritization.

(b) Prior to each board meeting at which applications may be considered, the executive administrator shall:

(1) for each application that the executive administrator has determined has adequate information for prioritization purposes, prioritize the applications using the criteria identified in §363.1007 of this title (relating to Prioritization Criteria).

(2) provide to the board a prioritized list of all applications as recommended by the executive administrator, the amount of funds requested and the priority of each application received; and

(3) identify to the board, the total amount of funds available in the State Participation Account for new applications.

(c) When making commitments for financial assistance from the State Participation Account, the board will consider projects in descending numerical order based on the priority assigned to the application according to §363.1007 of this title. The board will consider the next application on each [~~the~~] list only if there are funds available in the account and allocated to the type of projects under consideration sufficient to fund all or, if acceptable to the applicant, a part of the application.

(d) The board shall determine the amount of funds available for water plan projects and shall prioritize and consider those separately from projects that are not water plan projects.

§363.1007. Prioritization Criteria.

(a) The board will give priority to projects that the legislature has determined shall receive priority for financial assistance from the State Participation Account.

(b) Except as provided by subsection (c), after [~~After~~] first prioritizing projects that the legislature has determined shall receive priority, the factors to be used by the executive administrator to prioritize the remaining projects seeking financial assistance from the State Participation Account shall be as follows:

(1) water development projects will receive priority over wastewater projects;

(2) priority will be given to projects which have received previous board funding for facility planning, design, or permitting for the project;

(3) priority will be given to entities that:

(A) have already demonstrated significant water conservation savings, as determined by comparing the highest rolling five-year average gallons per capita per day since 1980 to the average gallons per capita per day for the most recent four-year period; or

(B) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought, as determined by comparing the conservation to be achieved by the project with the average gallons per capita per day for most recent four-year period.

(4) priority will be given to projects which have the earliest identifiable need, as outlined in the water plan.

(c) Notwithstanding subsection (b), any interregional water supply projects seeking financial assistance from the State Participation Account for interregional water supply projects under Texas Water Code §16.145 shall be prioritized in accordance with an applicable request for proposals, which shall prioritize projects that:

(1) maximize the use of private financial resources;

(2) combine the financial resources of multiple water planning regions; and

(3) have a substantial economic benefit to the regions served by:

(A) affecting a large population;

(B) creating jobs in the regions served; and

(C) meeting a high percentage of the water supply needs of the water users served by the project.

§363.1008. Determination.

(a) Except as provided by subsection (b), the [~~The~~] board may provide funding from the State Participation Account when the information available to the board is sufficient for the board to determine that:

(1) it is reasonable to expect that the state will recover its investment in the facility based upon a determination that the revenue to be generated by the projected number of customers served by the facility will be sufficient to purchase the excess capacity owned by the state;

(2) the estimated cost of the facility as set forth in the application exceeds the current financing capabilities of the area to be served by the facility based on a determination that the existing rates of the applicant available for payment of the facility collected from the number of connections at the end of construction and other revenues available for payment of the facility;

(3) the optimum regional development cannot be reasonably financed by local interests based on a determination that the estimated cost to construct the alternate facility and the revenue to be generated by the projected number of customers of the facility;

(4) the public interest will be served by acquisition of the facility based on a determination that the cost of the facility to the public are reduced by the state's participation in the facility; and

(5) the facility to be constructed or reconstructed contemplates the optimum regional or interregional development which is reasonably required under all existing circumstances of the site based on a determination that design capacity of the components of the facility are sufficient to meet the foreseeable needs of the area over the useful life of the facility.

(b) The board may provide funding from the State Participation Account II when the information available to the board is sufficient for the board to determine that:

(1) it is reasonable to expect that the state will recover its investment in the facility;

(2) the public interest will be served by the acquisition of the facility based on a determination that the cost of the facility to the public are reduced by the state's participation in the facility; and

(3) the project is a recommended water strategy in the most recent state water plan.

§363.1012. Requirements of Application.

A prospective purchaser of the board's ownership interest in a facility or of the use of such board interest other than under terms specified in the master agreement, shall submit an application in the form and number prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application[~~,~~] and may return any incomplete applications.

§363.1013. Notice to Participating Political Subdivision and Others.

Upon receipt of an application by a prospective purchaser of the board's ownership interest in a facility or use of the facility, the board will send notice of its receipt by regular United States mail to all co-owners of the facility[~~,~~] and any users of the facility or water from the facility.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 5, 2022.

TRD-202203994
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.589

The Comptroller of Public Accounts proposes an amendment to §3.589, concerning margin: compensation. The amendment corrects an error in the 2020-2021 compensation threshold amount.

The comptroller amends subsection (c)(1)(G) to correct an error in the compensation threshold amount, adjusted biennially based on the Consumer Price Index, pursuant to Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction). The correct compensation threshold amount is $390,000 for reports originally due on or after January 1, 2020, but before January 1, 2022.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by correcting an error in the 2020-2021 compensation threshold amount. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendments would have no significant fiscal impact on the state government, units of local government or individuals. There would be no significant anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction).

§3.589. Margin: Compensation.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Client--

(A) any person who enters into a professional employer services agreement with a license holder; or

(B) any person who enters into an agreement with a temporary employment service, as defined under Labor Code, §93.001(2) (Definitions), for the purpose of having individuals supplement their workforce.

(2) Covered employee--An individual having a co-employment relationship with a professional employer organization and a client.

(3) Management company--A corporation, limited liability company or other limited liability entity that conducts all or part of the active trade or business of another entity (the managed entity) in exchange for a management fee and reimbursement of specified costs incurred in the conduct of the active trade or business of the managed entity, including wages and cash compensation as determined under Tax Code, §171.1013(a) and (b) (Determination of Compensation). To qualify as a management company:

(A) the entity must perform active and substantial management and operational functions, control and direct the daily operations, and provide services such as accounting, general administration, legal, financial or similar services; or

(B) if the entity does not conduct all of the active trade or business of an entity, the entity must conduct all operations, as provided in subparagraph (A) of this paragraph, for a distinct revenue-producing component of the entity.

(4) Natural person--A human being or the estate of a human being. The term does not include a purely legal entity given recognition as the possessor of rights, privileges, or responsibilities, such as a corporation, limited liability company, partnership, or trust.

(5) Net distributive income--The net amount of income, gain, deduction, or loss relating to a pass-through entity or disregarded entity reportable to the owners for the tax year of the entity.

(6) Professional employer organization--A business entity that offers professional employer services or a temporary employment service.

(7) Small employer--A person who employed an average of at least two employees but not more than 50 employees on business days during the preceding calendar year, as defined under Insurance Code, §1501.002 (Definitions). For purposes of this definition, a partnership is the employer of a partner.

(8) Undocumented worker--A person who is not lawfully entitled to be present and employed in the United States.

(9) Wages and cash compensation--

(A) the amount entered in the Medicare wages and tips box of Internal Revenue Service Form W-2 or any subsequent form with a different number or designation that substantially provides the same information for the period on which the tax is based;

(B) any wages and cash compensation paid to employees in a foreign country and reported on forms issued by the foreign company that are substantially equivalent to the Internal Revenue Service Form W-2;

(C) the amount of net distributive income (not to include net distributive income that has been subtracted from total revenue), regardless of whether cash or property pertaining to such income is actually distributed and regardless of whether it is a positive or negative amount, from one of the following entities to partners or owners during the accounting period but only if the person receiving the amount is a natural person:

(i) taxable entities treated as partnerships for federal income tax purposes;

(ii) limited liability companies and corporations treated as S corporations for federal income tax purposes; and

(iii) limited liability companies treated as sole proprietorships for federal income tax purposes;

(D) stock awards and stock options deducted for federal income tax purposes, to the extent not included in subparagraph (A) of this paragraph.

(c) Compensation. Subject to Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business), a taxable entity that elects to subtract compensation (see subsection (i) of this section) for the purpose of computing its taxable margin under Tax Code, §171.101 (Determination of Taxable Margin), may subtract an amount equal to:

(1) subject to subsection (d) of this section, all wages and cash compensation paid by a taxable entity to its officers, directors, owners, partners, and employees up to the following thresholds for any one person per 12-month period on which the tax is based:

(A) for reports originally due on or after January 1, 2008, but before January 1, 2010, the taxable entity cannot subtract more than $300,000;

(B) for reports originally due on or after January 1, 2010, but before January 1, 2012, the taxable entity cannot subtract more than $320,000;

(C) for reports originally due on or after January 1, 2012, but before January 1, 2014, the taxable entity cannot subtract more than $330,000;

(D) for reports originally due on or after January 1, 2014, but before January 1, 2016, the taxable entity cannot subtract more than $350,000;

(E) for reports originally due on or after January 1, 2016, but before January 1, 2018, the taxable entity cannot subtract more than $360,000;

(F) for reports originally due on or after January 1, 2018, but before January 1, 2020, the taxable entity cannot subtract more than $370,000;

(G) for reports originally due on or after January 1, 2020, but before January 1, 2022, the taxable entity cannot subtract more than $390,000 [~~$380,000~~];

(H) for reports originally due on or after January 1, 2022, but before January 1, 2024, the taxable entity cannot subtract more than $400,000; and

(2) subject to subsection (e) of this section, the cost of all benefits the taxable entity provides to its officers, directors, owners, partners, and employees.

(d) Compensation - excluded items. Compensation does not include:

(1) payments made that are reportable on Internal Revenue Form 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement);

(2) any expense excluded from total revenue and any net distributive income subtracted from total revenue. See §3.587 of this title (relating to Margin: Total Revenue);

(3) an employer's share of payroll taxes;

(4) wages or cash compensation paid to an employee whose primary employment is directly associated with the operation of a facility that is located on property owned or leased by the federal government and managed or operated primarily to house members of the armed forces of the United States. See §3.587 of this title; and

(5) wages or cash compensation paid to undocumented workers.

(e) Benefits. A taxable entity is allowed to subtract the cost of all benefits to the extent deductible for federal income tax purposes that it provides to its officers, directors, owners, partners, and employees.

(1) The term "benefits" includes employer contributions made to:

(A) employees' health savings accounts;

(B) health care (for example, this would include contributions to the cost of health insurance);

(C) retirement; and

(D) workers' compensation.

(2) The term "benefits" does not include the following:

(A) amounts included in the definition of wages and cash compensation; and

(B) payroll taxes. (For example, "payroll taxes" would include payments to state and federal unemployment compensation funds and payments under the Federal Insurance Contributions Act, Chapter 21 of Subtitle C of the Internal Revenue Code, §§3101 - 3128, the Railroad Retirement Tax Act, Chapter 22 of Subtitle C of the Internal Revenue Code, §§3201 - 3233).

(3) The cost of benefits does not include the amount paid by an employee.

(f) Professional employer organizations. See §3.587 of this title.

(1) A professional employer organization cannot include as compensation the following payments for covered employees:

(A) wages and cash compensation;

(B) payroll taxes;

(C) employee benefits including workers' compensation; and

(D) payments made to independent contractors and reportable on Internal Revenue Service Form 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement).

(2) A client can include as compensation the following amounts for covered employees:

(A) wages and cash compensation; and

(B) benefits.

(3) A client cannot include as compensation the following:

(A) an administrative fee;

(B) payments made to a professional employer organization as reimbursement for payments made to independent contractors assigned to the client and reportable on Internal Revenue Service Form 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement); and

(C) other costs.

(4) A professional employer organization shall determine compensation only for the taxable entity's own employees who are not covered employees.

(g) Management company. See §3.587 of this title.

(1) A taxable entity that is a management company may not include as wages and cash compensation any amounts reimbursed by a managed entity.

(2) A taxable entity that is a managed entity may subtract wages and cash compensation that are reimbursed to the management company.

(3) A management company shall determine compensation for only those wages and compensation payments that are not reimbursed by a managed entity.

(h) Small employers. This subsection applies to a taxable entity that is a small employer and that has not provided health care benefits to any of its employees in the calendar year preceding the beginning date of its reporting period. Subject to Tax Code, §171.1014, a taxable entity to which this subsection applies that elects to subtract compensation for the purpose of computing its taxable margin under Tax Code, §171.101, may subtract the following health care benefits:

(1) amounts as provided under subsection (c) of this section;

(2) for the first 12-month period on which margin is based and in which the taxable entity provides health care benefits to all of its employees, an additional amount equal to 50% of the cost of health care benefits provided to its employees for that period; and

(3) for the second 12-month period on which margin is based and in which the taxable entity provides health care benefits to all of its employees, an additional amount equal to 25% of the cost of health care benefits provided to its employees for that period.

(4) The term "provide" does not include amounts paid by the employee, officer, director, etc.

(i) Election to subtract compensation. The election to subtract compensation is made by filing the franchise tax report using the compensation method or by amending any report filed within the statute of limitations. A taxable entity may file an amended report for the purpose of correcting a mathematical or other error in a report, or to change its method of computing margin.

(j) Expenses paid with qualifying loan or grant proceeds. A taxable entity may include in compensation any expense paid using the qualifying loan or grant proceeds, as defined under Tax Code, §171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief), to the extent the expense is otherwise includable as compensation under this section, even if the taxable entity has excluded the qualifying loan or grant proceeds from its total revenue under §3.587 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2022.

TRD-202204037
Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Earliest possible date of adoption: November 20, 2022
For further information, please call: (512) 475-2220

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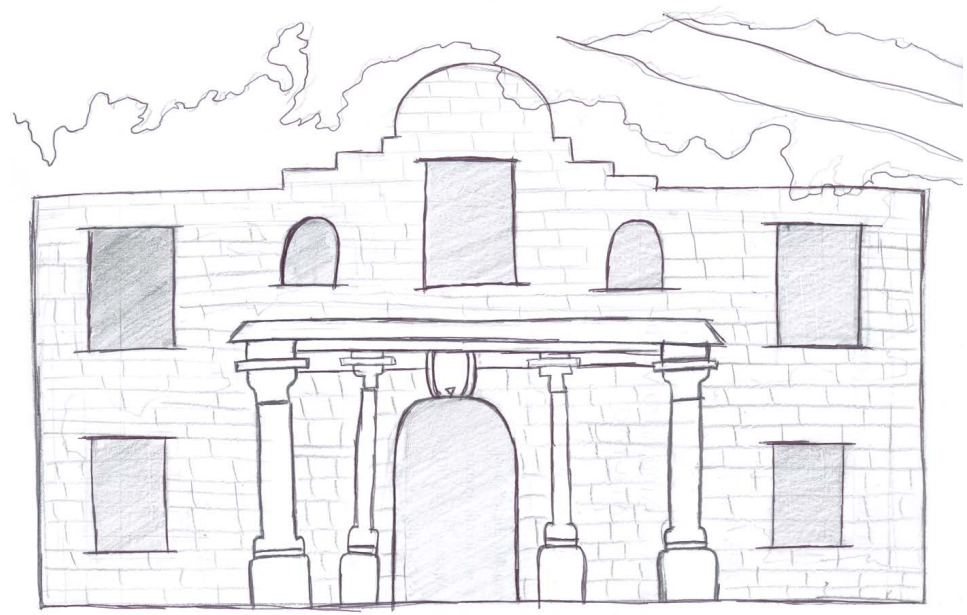

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §85.720, §85.721

The Texas Department of Licensing and Regulation withdraws the proposed amendments to §85.720 and §85.721 which appeared in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3866).

Filed with the Office of the Secretary of State on October 6, 2022.

TRD-202204010
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: October 6, 2022
For further information, please call: (512) 463-7750

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER JJ. COMMISSIONER'S RULES CONCERNING INNOVATION DISTRICT

19 TAC §102.1313

The Texas Education Agency withdraws proposed amended §102.1313, which appeared in the July 15, 2022, issue of the *Texas Register* (47 TexReg 4050).

Filed with the Office of the Secretary of State on October 5, 2022.

TRD-202203990
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 5, 2022
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS
SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.11

The Texas Behavioral Health Executive Council withdraws the proposed amendment rule §463.11, Supervised Experience Required for Licensure as a Psychologists which appears in the September 30, 2022 issue of the *Texas Register* (47 TexReg 6393).

Filed with the Office of the Secretary of State on October 7, 2022.

TRD-202204021
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: October 7, 2022
For further information, please call: (512) 305-7706

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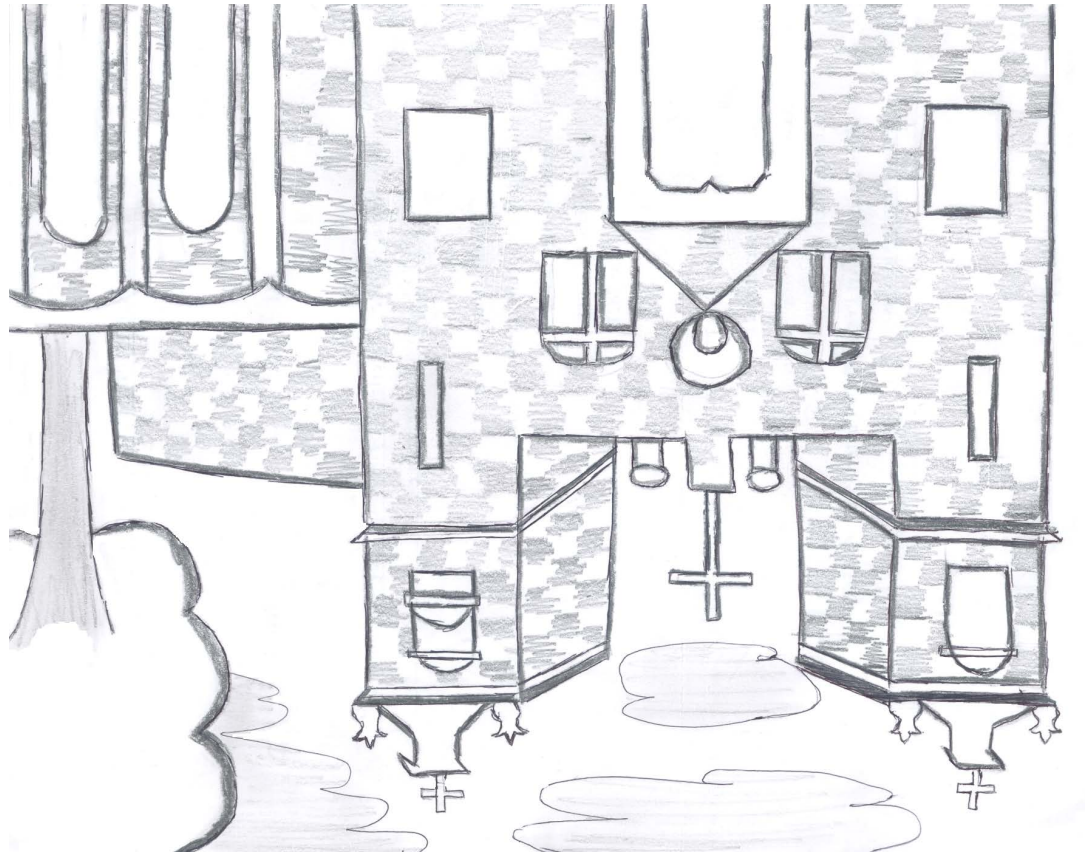

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER K. EMPLOYEE TRAINING AND EDUCATION

4 TAC §§1.700 - 1.704

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter K, §§1.700 - 1.702 and new §1.703 and §1.704, concerning employee training and education. The Department identified the need for the amendments and new rules during its rule review conducted pursuant to Texas Government Code §2001.039. The amendments to §§1.700 - 1.702 and new §1.703 are adopted without changes to the proposed text as published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5181) and will not be republished. New §1.704 is adopted with changes to the proposed text as published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5181) and will be republished. The Department has made non-substantive changes to §1.704 from the proposed text to correct a typographical error. The revision results in no change to the nature or scope of the proposed text of the rule, affects no new individuals, and imposes no additional requirements for compliance.

The amendment to Subchapter K title made an editorial change for clarity.

The amendments to §1.700 removed unnecessary language, made editorial changes, and updated the citation.

The amendments to §1.701 focused the rule on employee eligibility, clarified training versus tuition reimbursement eligibility, and removed unnecessary language.

The amendments to §1.702 changed the rule to focus on employee participation and included applicable portions of language removed from §1.700.

New §1.703 addresses employee obligations as required by Texas Government Code, Section 656.048.

New §1.704 addresses at-will employment status of employees, including applicable portions of language removed from §1.702, with editorial changes for clarity.

The Department received no comments regarding the proposed amendments and new sections.

The amendments and new rules are adopted pursuant to the Texas Government Code, §656.048, which requires the Department to adopt rules regarding employee eligibility, obligations, and required authorization for training and education supported by the Department.

§1.704. At-Will Employment Status.

Approval to participate in the department's training and education programs, including tuition reimbursement, shall not in any way affect an employee's at-will status. Participation in these programs does not constitute a guarantee or indication of continued or future employment in a current or prospective position.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2022.

TRD-202204008
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: October 26, 2022
Proposal publication date: September 2, 2022
For further information, please call: (512) 936-9360

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SUBCHAPTER F. TEXAS WINE MARKETING ASSISTANCE PROGRAM

4 TAC §§17.200 - 17.202

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code §17.200, concerning Definitions; §17.201, concerning Wine Marketing Assistance Program; and §17.202, concerning Package Store Participation. The repeals are adopted without changes to the proposed text as published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5183) and will not be republished.

The Department identified the need for the repeals during its rule review of Chapter 17, Subchapter F, conducted pursuant to Texas Government Code §2001.039.

The repeal of §17.200 is adopted because the repeal of other sections in this subchapter make definitions unnecessary.

The repeal of §17.201 is adopted because it unnecessarily duplicates text found within Texas Alcoholic Beverage Code §110.051 and no business reason for the rule currently exists.

The repeal of §17.202 is adopted because Texas Alcoholic Beverage Code §110.052, which was the basis for the rule at the time of its adoption, was amended by Section 4 of Senate Bill

877, 79th Texas Legislature, Regular Session (2005), and as a result the basis for the rule no longer exists.

The Department received no comments regarding the repeals.

The repeals are adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code and Section 110.002 of the Texas Alcoholic Beverage Code, which authorizes the Department to adopt rules as necessary to implement the Texas Wine Marketing Assistance Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2022.

TRD-202204006
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: October 26, 2022
Proposal publication date: September 2, 2022
For further information, please call: (512) 936-9360

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SUBCHAPTER H. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM

4 TAC §17.400, §17.401

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code §17.400, concerning Definitions and §17.401, concerning Shrimp Marketing Assistance Program. The repeals are adopted without changes to the proposed text as published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5184) and will not be republished.

The Department identified the need for the repeals during its rule review of Chapter 17, Subchapter H, conducted pursuant to Texas Government Code §2001.039.

The repeals of §17.400 and §17.401 are adopted because the rules unnecessarily duplicate text found within Texas Agriculture Code, Chapter 47 and no business reason for the rules exists.

The Department received no comments regarding the repeals.

The repeals are adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2022.

TRD-202204007
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: October 26, 2022
Proposal publication date: September 2, 2022
For further information, please call: (512) 936-9360

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PART 5. STATE SEED AND PLANT BOARD

CHAPTER 81. CERTIFICATION PROCEDURES

4 TAC §81.2

The Texas Department of Agriculture (Department), on behalf of the State Seed and Plant Board (Board), adopts the repeal of Title 4, Part 5, Chapter 81, concerning Certification Procedures, §81.2. The repeal is adopted without changes to the proposed text as published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5185) and will not be republished.

The Board identified the need for the repeal during its rule review conducted pursuant to Texas Government Code, §2001.039. The repeal is necessary because the provisions of its single rule, §81.2, involving instructions for submitting seed certification applications and ordering certification labels, are outdated and no longer applicable. Current instructions are located on the Seed Quality Program's webpage of the Department's website.

No comments concerning the proposed repeal of this chapter were received.

The repeal is adopted under Texas Agriculture Code, §62.004, which allows the Board to establish standards of genetic purity and identity, consistent with federal law, for classes of certified seeds and plants, as the Board deems appropriate; and §62.005, which confers discretionary authority on the Board to adopt related rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2022.

TRD-202204000
Skyler Shafer
Assistant General Counsel
State Seed and Plant Board
Effective date: October 25, 2022
Proposal publication date: September 2, 2022
For further information, please call: (512) 936-9360

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CHAPTER 82. ADMINISTRATIVE PROCEDURES

SUBCHAPTER A. PROCEDURES FOR MEETING BY TELEPHONE CONFERENCE CALL

4 TAC §§82.1 - 82.5

The Texas Department of Agriculture (Department), on behalf of the State Seed and Plant Board (Board), adopts the repeal of Title 4, Part 5, Chapter 82, concerning Administrative Procedures §§82.1 - 82.5. The repeal is adopted without changes to the proposed text as published in the September 2, 2022, issue of the *Texas Register* (47 TexReg 5185) and will not be republished.

The Board identified the need for the repeal during its rule review conducted pursuant to Texas Government Code, §2001.039. The repeal of Chapter 82 is adopted because it unnecessarily duplicates provisions contained in Texas Agriculture Code, §62.0021 (Meetings by Telephone Conference Call).

No comments concerning the proposed repeal of this chapter were received.

The repeal is adopted under Section 62.0021 of the Texas Agriculture Code, which allows the State Seed and Plant Board to conduct meetings by telephone conference call and Section 2001.004 of the Texas Government Code, which requires state agencies to adopt rules of practice and procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2022.

TRD-202203999
Skyler Shafer
Assistant General Counsel
State Seed and Plant Board
Effective date: October 25, 2022
Proposal publication date: September 2, 2022
For further information, please call: (512) 936-9360

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.9

The Texas State Securities Board adopts new rule §101.9, concerning Vendor Protest Procedures, without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3613). The new rule will not be republished.

The new rule establishes the Agency's protest review and appeal process and identifies the rules and requirements of both Agency staff and the protesting party as required by §2155.076 of the Government Code.

The rule provides consistent standards for filing and resolving a vendor protest.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of the Texas Government Code, §§4002.151 and 2155.076. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2155.076 requires state agencies to adopt by rule vendor protest procedures.

The adopted new rule affects: none applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2022.

TRD-202204043
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: October 30, 2022
Proposal publication date: June 24, 2022
For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §§133.5 - 133.7, 133.12, 133.13, 133.16, 133.18, 133.26, 133.27, 133.29, 133.30, 133.34, 133.36

The Texas State Securities Board adopts the repeal of thirteen rules, concerning forms adopted by reference. Specifically, the Board adopts the repeal of §133.5, a form concerning Secondary Trading Exemption Notice; §133.6, a form concerning Secondary Trading Exemption Renewal Notice; §133.7, a form concerning Application for Registration of Securities; §133.12, a form concerning Renewal Application for Mutual Funds and Other Continuous Offerings; §133.13, a form concerning Application for Renewal Permit; §133.16, a form concerning Texas Crowdfunding Portal Withdrawal of Registration; §133.18, a form concerning Certification of Balance Sheet by Principal Financial Officer; §133.26, a form concerning Request for Determination of Money Market Fund Status for Federal Covered Securities; §133.27, a form concerning Year-End Report of Sales of Federal Covered Securities by a Money Market Fund (Pursuant to §123.3); §133.29, a form concerning Intrastate Exemption Notice; §133.30, a form concerning Information Concerning Projected Market Prices and Related Market Information; §133.34, a form concerning Undertaking Regarding Non-Issuer Sales; and §133.36, a form concerning Request for Reduced Fees for Certain Persons Registered in Multiple Capacities, without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3614). The repealed rules will not be republished.

The repealed forms contain references to the former version of the Texas Securities Act (formerly located in Vernon's Civil Statutes). New replacement forms that contain references to both the former version of the Act and to the codified version are being currently adopted.

Thirteen existing forms containing outdated references to the former version of the Act have been eliminated so they can be replaced.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The repeal of rule §133.36 is also adopted under the authority of the Texas Government Code, §4006.102(b). Section 4006.102(b) provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The repeals affect Chapters 4003 and 4004 of the Texas Government Code, and Subchapter A of Chapter 4005 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2022.

TRD-202204046
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: October 30, 2022
Proposal publication date: June 24, 2022
For further information, please call: (512) 305-8303

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7 TAC §§133.5 - 133.7, 133.12, 133.13, 133.16, 133.18, 133.26, 133.27, 133.29, 133.30, 133.34, 133.36

The Texas State Securities Board adopts thirteen rules, concerning forms adopted by reference. Specifically, the State Securities Board adopts new §133.5, a form concerning Secondary Trading Exemption Notice; §133.6, a form concerning Secondary Trading Exemption Renewal Notice; §133.7, a form concerning Securities Application; §133.12, a form concerning Renewal Application for Mutual Funds and Other Continuous Offerings; §133.13, a form concerning Application for Renewal Permit; §133.16, a form concerning Texas Crowdfunding Portal Withdrawal of Registration; §133.18, a form concerning Certification of Balance Sheet by Principal Financial Officer; §133.26, a form concerning Request for Determination of Money Market Fund Status for Federal Covered Securities; §133.27, a form concerning Year-End Report of Sales of Federal Covered Securities by a Money Market Fund; §133.29, a form concerning Intrastate Exemption Notice; §133.30, a form concerning Information Concerning Projected Market Prices and Related Market Information; §133.34, a form concerning Undertaking Regarding Non-Issuer Sales; and §133.36, a form concerning Request for Reduced Fees for Certain Persons Registered in Multiple Capacities, without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3615). The new rules will not be republished.

The new sections adopt by reference forms that are updated to add references to the forms to the codified version of the Texas Securities Act in the Government Code, which became effective on January 1, 2022, so that the new forms contain references to both the former version of the Act (formerly located in Vernon's Civil Statutes) and to the codified version. Other non-substantive changes are made to the sections and the forms, and the name of Form 133.7 is changed to be more descriptive of its use. In addition, the name of Form 133.27 is also changed to remove an unnecessary parenthetical. Existing forms §§133.5, 133.6, 133.7, 133.12, 133.13, 133.16, 133.18, 133.26, 133.27, 133.29, 133.30, 133.34, and 133.36 are being concurrently adopted for repeal.

The thirteen new forms assist the public in navigating the transition from the former version of the Act to the current Government Code version of the Act.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. New rule §133.36 is also adopted under the authority of the Texas Government Code, §4006.102(b). Section 4006.102(b) provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The new rules affect Chapters 4003 and 4004 of the Texas Government Code, and Subchapter A of Chapter 4005 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2022.

TRD-202204044
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: October 30, 2022
Proposal publication date: June 24, 2022
For further information, please call: (512) 305-8303

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER JJ. COMMISSIONER'S RULES CONCERNING INNOVATION DISTRICT

19 TAC §102.1307, §102.1309

The Texas Education Agency (TEA) adopts amendments to §102.1307 and §102.1309, concerning innovation districts. The amendments are adopted without changes to the proposed text as published in the July 15, 2022, issue of the *Texas Register* (47 TexReg 4050) and will not be republished. The adopted amendments clarify reporting requirements for designated districts of innovation and update the list of prohibited exemptions.

REASONED JUSTIFICATION: Chapter 102, Subchapter JJ, establishes provisions relating to the applicable processes and procedures for innovation districts.

The adopted amendment to Figure: 19 TAC §102.1307(d) clarifies the instructions and adds specific fields for the district's county district number and month, day, and year for the term of the district's plan, which may not exceed five years. The adopted amendment to the figure also adds a specific checkbox for Texas Education Code (TEC), §21.102, Probationary Contract, which was not originally included in the figure but for which a specific exemption is claimed. Additionally, the adopted amendment to the figure removes TEC, Chapter 21, Educators, Subchapter D,

Continuing Contracts, and Subchapter E, Term Contracts. Districts may still claim exemptions for specific provisions in those subchapters. The adopted amendment to the figure also removes TEC, §44.903, Energy Efficient Light Bulbs in Instructional Facilities, which was repealed by Senate Bill (SB) 668 and SB 1376, 86th Texas Legislature, 2019, and is no longer available for exemption.

The adopted amendment to §102.1307(g) requires the district to provide to TEA a link to the local innovation plan as posted on the district's website not later than the 15th day after the date on which the board of trustees finalizes a local innovation plan either through adoption, amendment, or renewal. Previously, the rule required districts to submit a copy of the plan rather than a link. This change facilitates the confirmation that, pursuant to TEC, §12A.0071, and 19 TAC §102.1305(e), the plan is clearly posted on the district's website for the term of the designation as an innovation district and enables TEA to fulfill its requirement under TEC, §12A.0071, to post the current local innovation plan on TEA's Internet website.

The adopted amendment to §102.1309(a)(1)(H) clarifies that TEC, §37.005, Suspension, is prohibited from exemption. If a district elects to suspend a student pursuant to TEC, §37.005, it must comply with the requirements in that section. New subsection (a)(1)(J) is added to include TEC, Chapter 39A, as a prohibited exemption to reflect the prohibition in TEC, §12A.004(a)(4). Additionally, the adopted amendment adds new subsection (a)(3) and (4) to clarify that TEC, Chapter 12, Subchapter C, and TEC, Chapter 12A, respectively, are prohibited from exemption. References to TEC, Chapter 41 and Chapter 42, are removed from subsection (a) to reflect the repeal of those chapters from the TEC.

The adopted amendment to §102.1309 also adds new subsection (b)(3) to clarify that exemption from a requirement that would otherwise qualify the district for participation in a grant or program in the TEC is prohibited.

A proposed amendment to §102.1313 was also published in the July 15, 2022 issue of the *Texas Register* (47 TexReg 4050). The agency has determined that it is necessary to withdraw the proposed amendment to §102.1313. The proposed amendment to §102.1313(a)(3) clarified that the district is no longer required to notify the commissioner of the board's intention to vote on the adoption of the renewal of a local innovation plan. Additionally, the proposed amendment added new subsection (a)(3)(A) and (B). Proposed new subparagraph (A) required the district to meet eligibility requirements under 19 TAC §102.1303 in order to be eligible to renew a local innovation plan. Proposed new subparagraph (B) clarified that a board of trustees that chooses to renew its local innovation plan must vote on the adoption of the renewal of the plan no later than the date on which the term of the current plan ends. The withdrawal of the proposed amendment to §102.1313 may be found in the Withdrawn Rules section of this issue of the *Texas Register.*

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 15, 2022, and ended August 15, 2022. Following is a summary of the public comments received and agency responses.

Comment: The Texas Classroom Teachers Association (TCTA) recommended that the list of statutory groupings identified by the agency as those from which districts of innovation could be exempt be eliminated. TCTA further recommended that districts should only be required to list on the form the provisions specifically identified in their district's local innovation plan that inhibit a goal of the plan and how it inhibits the goal.

Response: The agency disagrees and provides the following clarification. Since the agency has a duty to report the exemptions per statute, the reporting list is intended to aid districts in identifying exempted provisions and provide commonality across the state. Additionally, each innovation plan is already required to state the provisions of the TEC that inhibit the goals of the plan. The checklist in the figure is a reporting function for the agency as required in TEC, §12A.004(b)(2), and not intended to be a substitute for the district innovation plan.

Comment: TCTA recommended that the requirement that districts must submit on district letterhead a letter to the commissioner of education stating the date that the board of trustees adopted a resolution to develop a local innovation plan for the designation of the district as an innovation district be reinstated.

Response: The agency disagrees and provides the following clarification. As there is not a statutory requirement for a district to submit a letter on district letterhead stating the date that the board of trustees adopted a resolution to develop a local innovation plan, the amendment to Figure: §102.1307(d) removes this language. The statutory requirement in TEC, §12A.005(a)(2), requires the district to notify the commissioner of the intent to vote on adoption of a proposed plan but does not specify that the district must notify the commissioner of the date on which the board of trustees adopted a resolution to pursue the designation. It also does not specify the manner in which the notification must be drafted and sent.

Comment: TCTA commented in support of the amendment to §102.1307(g), which would require confirmation that a district is meeting its obligations under TEC, §12A.0071(a), to ensure that a current local innovation plan is available to the public by posting and maintaining the plan in a prominent location on the district's website.

Response: The agency agrees. Previously, the rule required districts to submit a copy of the plan rather than a link. This amendment to §102.1307(g) facilitates the confirmation that, pursuant to TEC, §12A.0071, and 19 TAC §102.1305(e), the plan is clearly posted on the district's website for the term of the designation as an innovation district.

Comment: TCTA commented in support of the amendment to §102.1309(a), which adds TEC, Chapter 12A, and TEC, Chapter 12, Subchapter C, to the statutory provisions from which districts of innovation are prohibited from exemption.

Response: The agency agrees with TCTA's analysis that clarifying these chapters as prohibited provides useful clarity to innovation districts.

Comment: TCTA noted that TEC, §37.006, Removal for Certain Conduct, is identified as a provision from which an innovation district cannot be exempt and that the agency chose not to include TEC, §37.002, Removal by Teacher, among the provisions from which innovation districts cannot be exempt. TCTA commented that TEC, §37.002, is closely tied to TEC, §37.006, which the agency does include in its list of prohibited exemptions and recommended that TEC, §37.002, be included in the list of prohibited exemptions.

Response: The agency disagrees and provides the following clarification. Section 102.1309(a)(1)(H) specifies that only TEC, §37.006(l), and not the entirety of the section, is prohibited from exemption. As a similar provision is not included in TEC,

§37.002, it, along with the remaining subsections of TEC, §37.006, remains an allowable exemption.

Comment: TCTA noted that the proposed addition of §102.1309(b)(3) is too broadly written and fails to provide sufficient notice to school districts regarding prohibited statutory exemptions. TCTA recommended that, unless the language can be tightened to better convey the meaning of the proposal, it be eliminated.

Response: The agency disagrees and provides the following clarification. The rule primarily provides necessary guidance to districts regarding how the agency will recognize interaction of a district of innovation with the agency's other regulatory responsibilities. While some additional guidance has been provided, §102.1309(b)(3) does not address every single nuance in specificity.

Comment: TCTA noted that the proposed amendment to §102.1313(a)(3) is counter to the requirement in TEC, §12A.007, that a local innovation plan may be renewed if the action is approved by vote of the board of trustees in the same manner as required for the initial adoption of a local innovation plan under TEC, §12A.005. TCTA recommended that the proposed language be removed.

Response: The agency disagrees and provides the following clarification. The agency interprets the language in TEC, §12A.007, "by a vote of the district-level committee ... and the board of trustees," as a reference only to the respective votes of the bodies identified in TEC, §12A.005, and TEC, §12A.005(a)(3). It is the vote and approval of the respective bodies, in the same manner as required for initial adoption, that must be repeated for amendment and renewal. The agency does not interpret the language in TEC, §12A.007, "if the action is approved ... in the same manner as required for initial adoption," as a reference to TEC, §12A.005(a)(2), which requires the district to notify the commissioner of the board's intention to vote on adoption of the proposed plan. However, the agency has determined that it is necessary to withdraw the proposed amendment to §102.1313 at this time.

Comment: TCTA commented in support of the addition of new §102.1313(a)(3)(A) and (B), which would require the district to meet eligibility requirements under 19 TAC §102.1303 in order to be eligible to renew a local innovation plan and clarify that a board of trustees that chooses to renew its local innovation plan must vote on the adoption of the renewal of the plan no later than the date on which the term of the current plan ends.

Response: The agency agrees. This amendment clarifies that the eligibility standard to renew a local innovation plan is the same as that required to initially pursue designation and clarifies the practice of the agency as it relates to the renewal process. However, the agency has determined that it is necessary to withdraw the proposed amendment to §102.1313 at this time.

Comment: Frisco Independent School District commented in opposition to the proposed amendment to §102.1309(a)(1)(H) and recommended that exemption from TEC, §37.005, not be prohibited.

Response: The agency disagrees. TEC, §37.005(a), includes optional powers of administrators that are not required and, therefore, cannot be exempted. TEC, §37.005(c) and (d), include provisions that are required through TEC, §12A.004(a)(1). TEC, §37.005(e), describes state curriculum requirements of TEC, Chapter 28, which is not an allowable exemption according to TEC, §12A.004(a)(3).

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code, §12A.009, which authorizes the commissioner to adopt rules to implement districts of innovation.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §12A.009.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2022.

TRD-202203989
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 25, 2022
Proposal publication date: July 15, 2022
For further information, please call: (512) 475-1497

SUBCHAPTER KK. COMMISSIONER'S RULES CONCERNING COMPLIANCE INVESTIGATIONS IN CONNECTION WITH STATE-FUNDED EDUCATION PROGRAM GRANTS

19 TAC §102.1401

The Texas Education Agency (TEA) adopts an amendment to §102.1401, concerning compliance investigations in connection with state-funded education program grants. The amendment is adopted without changes to the proposed text as published in the August 19, 2022 issue of the *Texas Register* (47 TexReg 4914) and will not be republished. The adopted amendment updates statutory references to align with changes made by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, and updates the title of 19 TAC Chapter 157, Subchapter EE.

REASONED JUSTIFICATION: The framework for compliance investigations, corrective actions, and sanctions TEA may initiate for recipients of state education program grant funds to ensure taxpayer dollars are being spent appropriately and prevent fraud, waste, and abuse is outlined by §102.1401. The rule requires cooperation by state grant recipients, including the submission of required documentation and information, with ongoing compliance investigations. It also indirectly requires, via compliance investigations, that school districts and charter schools maintain documentation of compliance with existing state grant requirements as prescribed by TEA through requests for application for state grants.

The adopted amendment to §102.1401 updates statutory references to align with changes made by SB 1365, 87th Texas Legislature, Regular Session, 2021. In addition, the adopted amendment updates the title of 19 TAC Chapter 157, Subchapter EE.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 19, 2022, and ended September 19, 2022. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.028(a)(2), which authorizes the Texas Education Agency to monitor compliance with state grant requirements; and TEC, §39.056(a), which authorizes the commissioner of education to direct the agency to conduct monitoring reviews and random on-site visits of a school district or charter school as authorized by TEC, §7.028.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §7.028(a)(2) and §39.056(a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 112. CONTROL OF AIR POLLUTION FROM SULFUR COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§112.100 - 112.108, 112.110 - 112.118, 112.200 - 112.203, 112.206 - 112.208, 112.210 - 112.213, 112.216 - 112.218, 112.220 - 112.228, 112.230 - 112.238, 112.240 - 112.248, and 112.300 - 112.308.

Sections 112.100 - 112.108, 112.110 - 112.118, 112.200 - 112.203, 112.206 - 112.208, 112.210 - 112.213, 112.216 - 112.218, 112.220 - 112.228, 112.230 - 112.238, 112.240 - 112.248, and 112.300 - 112.308 are adopted *with changes* to the proposed text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2413) and, therefore, will be republished.

The new sections of Chapter 112 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The federal Clean Air Act (FCAA) (42 United States Code (USC), §§7401 *et seq.*) requires the EPA to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. After a NAAQS is revised, each state is required to submit a SIP revision to the EPA that provides for attainment and maintenance of the NAAQS for areas that are not meeting the revised standard. On June 22, 2010, the EPA published a revised sulfur dioxide (SO_2) NAAQS, adopting a 75 parts per billion (ppb) one-hour primary standard, effective August 23, 2010 (75 *Federal Register* (FR) 35520). SO_2 pollution results from the direct emissions from sources (not as a result of chemical interactions of various compounds in the air) and concentrations of SO_2 are generally expected to be highest closer to emission sources and lowest further away, due to dispersion of emissions in the air. Therefore, this adopted rule establishes site and source specific SO_2 emission limits and associated requirements to ensure attainment of the 2010 SO_2 NAAQS as discussed further in this rule preamble.

On March 26, 2021, the EPA published designations for portions of Howard, Hutchinson, and Navarro Counties as nonattainment for the 2010 SO_2 NAAQS, effective April 30, 2021 (86 FR 16055). The attainment date for all three nonattainment areas is April 30, 2026. An air quality modeling analysis showing that enforceable emission limits will provide for attainment of the NAAQS is part of the required attainment demonstration SIP revisions being adopted concurrently with this adoption for the nonattainment areas. The air quality modeling analyses indicate that reductions from current actual and allowable emission rates are needed in each of the three nonattainment areas. To provide time for implementation and compliance as well as to provide at least one full calendar year of data, the reductions are required to occur by January 1, 2025, except for the sources that companies indicated could comply earlier. The agency adopts these rules to make the emissions reductions necessary to demonstrate attainment. The adopted rules will be submitted to the EPA as a revision to the SIP and, upon EPA approval, will be both state and federally enforceable.

The concurrently adopted attainment demonstration SIP revisions include a technical analysis to determine the level of emission reductions necessary to attain the 2010 SO_2 NAAQS in each of these nonattainment areas. In addition to other requirements, the attainment demonstration includes an assessment of all sources that emit SO_2 in the nonattainment area, modeling that demonstrates attainment of the NAAQS, and the corresponding emission limits and other requirements for SO_2 sources in the nonattainment area. The attainment demonstration modeling is the basis for the commission's determination regarding the necessity for the emission reductions required by these adopted rules. Information concerning the concurrent attainment demonstration SIP revision adoptions for each nonattainment area are available on the commission's website or by contacting commission staff associated with this rulemaking.

As part of the concurrently adopted SIP revisions, the TCEQ modeled the information provided by each site in each nonattainment area. Current allowable emission rates or lower emission rates required to demonstrate attainment were included in the modeling. The EPA has historically used pollutant-specific concentration levels, known as significant impact levels (SIL), to identify the degree of air quality impact that causes or contributes to a violation of a NAAQS or Prevention of Significant Deterioration increment. As a result, the TCEQ used the SIL for SO_2 of 3 ppb or 7.85 micrograms per cubic meter ($\mu g/m^3$) to determine which sources were the most significant contributors to nonattainment. The TCEQ identified the emission rates that modeled attainment by using an iterative process that included both modeling of all SO_2 emissions in a nonattainment area and consultation with companies to ensure that source characteristics and operational practices were correctly represented. The adopted rules for each nonattainment area covered in this adopted rulemaking specify the emission rates needed to

model attainment, as indicated in the concurrently adopted SIP revisions for Howard, Hutchinson, and Navarro Counties.

The FCAA, §172(c)(1), requires that nonattainment area SIP revisions also incorporate all reasonably available control measures (RACM), including reasonably available control technology (RACT), for sources of relevant pollutants. The EPA explains in its April 23, 2014, memorandum *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions (2014 SO_2SIP guidance)* that states should consider all RACM, including RACT, that can be implemented in light of the attainment needs for the affected SO_2 nonattainment area; and those control measures must be permanent and enforceable. EPA considers that which is necessary for attainment of the 2010 SO_2 NAAQS to be RACM including RACT. Air quality dispersion modeling demonstrates that emission limits established in the adopted rule will result in attainment of the 2010 SO_2 NAAQS. The emission rates provided in these adopted rules for the specific sources were identified by the modeling in the concurrently adopted SIP revisions as necessary to attain the 2010 SO_2 NAAQS in the associated nonattainment areas. Because the adopted emission rates from the specified sources were identified as sufficient to demonstrate attainment, the commission determined that those requirements provide for the necessary emissions reductions of SO_2 to satisfy RACM, including RACT, for the sources of SO_2 identified in the affected areas as contributing to nonattainment.

The adopted rules for each nonattainment area are specific to the sites and sources that emit SO_2 within those areas, and the adopted rules will continue to apply to the sites and sources regardless of ownership, operational control, or other documentation-related changes. To ensure that applicability is clear for both the public and current regulated entities, the adopted rules specify the emission point numbers (EPN) for each source (production unit or control device), at each site, with street addresses or location coordinates added at adoption in the Applicability sections of the rule divisions and Subchapter G because the rule provisions prohibiting changes to regulated entity numbers (RN) are removed at adoption. The adopted rules are based on specific information provided by the affected companies or where information on anticipated changes was not provided, alternative sources of information for control options to achieve the emission reductions required for attainment. In some cases, requirements are also based on provisions for the control of SO_2 in consent decrees between the companies and the EPA for specific sites, and in no case do the adopted rules conflict with consent decree requirements.

The rules are adopted in Chapter 112, Control of Air Pollution from Sulfur Compounds as new Subchapter E, Requirements in the Howard County Nonattainment Area; Subchapter F, Requirements in the Hutchinson County Nonattainment Area; and Subchapter G, Requirements in the Navarro County Nonattainment Area with a separate division for each site, as applicable. The provisions in each division are covered in the same order for consistency. The emission limits in the adopted rules do not provide authorization for emissions by the sources. As required by commission rules, emission authorization is required as specified in 30 Texas Administrative Code (TAC) Chapters 106, 116, and 122. If adopted by the commission and approved by the EPA, the emission limits and associated requirements specified for the sources in new Subchapters E, F, and G will satisfy RACT and RACM requirements necessary to attain and maintain the 2010 SO_2 NAAQS. The emission limits and associated requirements apply only to the specific sources identified in the adopted rules. To ensure the continued applicability of the specified emission limits and associated requirements, the adopted rules contain prohibitions on changing an EPN designation for the sources subject to these rules.

The Howard County SO_2 nonattainment area designated by the EPA consists of a portion of Howard County. The Alon USA LP's (Alon) Alon USA Big Spring Refinery site (Alon USA Big Spring Refinery), the Tokai Carbon CB LTD's (Tokai) Tokai Big Spring Carbon Black Plant site (Tokai Big Spring Carbon Black Plant), and BHER Power Resources Inc's (BHER) C R Wing Cogeneration site (BHER C R Wing Cogeneration Plant) are the sites with SO_2 emissions within the Howard County nonattainment area. The Alon USA Big Spring Refinery manufactures transportation fuels, solvents, finished asphalt, and liquified petroleum gas. The Tokai Big Spring Carbon Black Plant manufactures carbon black for use in various industrial applications, such as tires. The BHER C R Wing Cogeneration Plant generates electricity. Both the Alon USA Big Spring Refinery and Tokai Big Spring Carbon Black Plant are the sites covered in Subchapter E. The BHER C R Wing Cogeneration Plant is not included in the rules because attainment demonstration modeling showed its contribution to the modeled design value in the nonattainment area does not exceed the SIL.

The Hutchinson County SO_2 nonattainment area designated by the EPA consists of a portion of Hutchinson County. There are eight sites with SO_2 emissions in the nonattainment area, owned and/or operated by the following regulated entities: 1) Chevron Phillips Chemical Company LP's (CP Chem) Borger Plant (CP Chem Borger Plant); 2) IACX Rock Creek LLC's (IACX) Rock Creek Gas Plant (IACX Rock Creek Gas Plant); 3) Orion Engineered Carbons LLC's (Orion) Borger Carbon Black Plant (Orion Borger Carbon Black Plant); 4) Phillips 66 Company's (Phillips 66) Phillips 66 Borger Refinery (P66 Borger Refinery); 5) Tokai's Borger Carbon Black Plant (Tokai Borger Carbon Black Plant); 6) Agrium US Inc's Agrium Borger Nitrogen Operations site (Agrium Borger Nitrogen Plant); 7) Borger Energy Associates LP's (Borger Energy) Blackhawk Power Plant; and 8) Solvay Specialty Polymers USA LLC's (Solvay) Solvay Specialty Polymers USA site (Solvay Specialty Polymers Plant). The CP Chem Borger Plant manufactures specialty chemicals and plastics with other various industrial applications. The IACX Rock Creek Gas Plant is a natural gas gathering plant. The Orion Borger Carbon Black Plant manufacturers carbon black for use in various industrial applications, such as tires. The P66 Borger Refinery processes primarily medium sour crude oil and natural gas oil. The Tokai Borger Carbon Black Plant manufacturers carbon black for use in various industrial applications, such as tires. The Agrium Borger Nitrogen Plant is a fertilizer plant. The Blackhawk Power Plant generates electricity using natural gas and steam using refinery gas from the P66 Borger Refinery. The Solvay Specialty Polymers Plant is a plastics and resins plant on the Chevron Phillips Chemical property that operates independently from Chevron Phillips Chemical. The first five sites with SO_2 emissions are covered in Subchapter F. The other three sites are not included in the rules because attainment demonstration modeling showed their contribution to the modeled design value in the nonattainment area does not exceed the SIL.

The Navarro County SO_2 nonattainment area designated by the EPA consists of a portion of Navarro County. The Arcosa Lightweight Streetman plant (Streetman) owned and operated by Arcosa LWS, LLC (Arcosa), is the only site with SO_2 emissions in the nonattainment area. The Streetman Plant manufactures lightweight aggregate for use in various industrial applications,

such as concrete and asphalt, and is the site covered in Subchapter G.

Throughout the rules at adoption, changes are made to correct typographical errors, punctuation, and the use of acronyms within each section, consistent with *Texas Register* requirements. Additionally, the designation of sources is made consistent by citing the name of the source first followed by its EPN in parentheses, except for caps from flexible permits that do not name the cap or individual EPNs and a fugitive emissions EPN that includes two distinct areas that were modeled separately and have different emission rates required, for which the source names and EPNs from the modeling are used. Where used, the term "facility" is replaced by the term "source" for consistency. None of these changes are intended to change the meaning of the proposed rule language except where they are made as part of, and in conjunction with, other changes to rule language that are discussed in this preamble.

Section-by-Section Discussion

SUBCHAPTER E: REQUIREMENTS IN THE HOWARD COUNTY NONATTAINMENT AREA

DIVISION 1: REQUIREMENTS FOR THE ALON USA BIG SPRING REFINERY

§*112.100, Applicability*

The commission adopts new §112.100 to specify that the new rules apply to sources of SO_2 at the Alon USA Big Spring Refinery site at which the agency has determined emissions contribute to potential exceedances of the 2010 SO_2 NAAQS based on modeling conducted for the concurrently adopted SIP revisions discussed elsewhere in this preamble. The specific sources at the site with a modeled contribution above the SIL at any receptor are specified as being subject to the adopted rules.

The adopted rule provisions in the new Division 1 are site-specific and unit-specific and are specified by the address of the site and EPN as documented in a specified version of the New Source Review (NSR) permit. The address of the site is added at adoption in place of the RN because the provision proposed as §112.102(a), which would have required approval for changing the RN, is removed at adoption. This will eliminate the need for a SIP revision if the RN changes. The source name and EPN used in attainment demonstration modeling is used in the rules for sources to be authorized, constructed, or modified after this adopted rulemaking. The requirements will continue to apply, regardless of any changes of ownership, control, or documentation of the affected sources.

Based on comments, the last sentence of §112.100(a) is removed. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA, which was the intent of the proposed language. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. After the EPA's approval, the rules are enforceable by both the EPA and the TCEQ. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until it approves a revision to the SIP for their removal.

The TCEQ conducted attainment demonstration modeling for sources in the Howard County nonattainment area using either the current allowable emission limits (including during both normal operations and, when applicable, authorized MSS activities) from the NSR permit(s) for each site, or lower emission rates if needed to demonstrate attainment. The lower emission rates were used in the attainment demonstration modeling, which also used corresponding stack parameters supplied by the companies for each emissions point where SO_2 is emitted. Modeling was conducted to determine which specific sources have emissions that contribute at a level greater than the SIL of 3 ppb (i.e., 7.85 µg/m^3) to the modeled design value concentrations at any receptor in the Howard County SO_2 nonattainment area. If the source had a contribution to the modeled design value that was less than the SIL at all receptors, it was not included in the rules. If the source had a contribution to the modeled design value that was greater than the SIL, its emission rates, and, as appropriate, other associated control, monitoring recordkeeping, and reporting requirements were specified in the rules. When modeled collectively with all emissions sources in the nonattainment area and evaluated using a Monte Carlo simulation statistical approach, the emission rates specified in the rule resulted in modeled design values that demonstrated attainment of the NAAQS. Monte Carlo methods are statistical simulation techniques used to estimate possible outcomes from uncertain events by repeatedly calculating an outcome, in this case the modeled design value, by randomly selecting from a set of possible scenarios, in this case emission rates for sources in the nonattainment area, for each calculation.

In §112.100(b), the phrase "source name" is moved at adoption to before "emission point number" because source name is made to occur first consistently throughout the rules in this division for the sources subject to the rules. To achieve this consistency, the occurrence of the source name and EPN is switched at adoption for each facility in the subsequent paragraphs.

§112.101, Definitions

The commission adopts new §112.101 to define four terms used in Division 1. The commission adopts new §112.101(1) to define block one-hour average, which is used in the requirements. At adoption, a definition for continuous monitoring is added as new §112.101(2) based on an EPA comment. The subsequent definitions are renumbered. Adopted new §112.101(3), which was proposed as §112.101(2), defines the Howard County SO_2 nonattainment area; at adoption, the citation of the *Federal Register* publication is removed because it is not needed. Adopted new §112.101(4), which was proposed as §112.101(3), defines pipeline quality natural gas.

§112.102, Control Requirements

The commission adopts new §112.102 to specify the control requirements for applicable sources (designated through the relevant EPN) that were identified in §112.100. The emission rates and other control requirements established in the section are the controls by which modeling demonstrates attainment in the concurrently adopted SIP revision for Howard County.

Proposed §112.102(a), which would have prohibited the owner or operator from contravening the control requirements specified in these rules by changing the site's RN or the EPN designation of any source without prior approval by the agency and the EPA, is removed at adoption based on public comment. The EPA stated that the only manner of approval for such a change would be a full SIP revision, which is overly burdensome. The subsequent subsections are re-lettered.

Adopted new §112.102(a), which was proposed as §112.102(b), provides the emission limits for the fluidized catalytic cracking unit (FCCU), currently designated as FCCU ESP Stack EPN 06ESPPCV in NSR Permit 49154, with the order of the source

name and EPN switched at adoption for consistency. Permit 49154 currently has an emission limit of 669.90 pounds per hour (lb/hr) SO_2 for the FCCU (EPN 06ESPPCV). Alon committed to reduce the FCCU maximum SO_2 emission limit to 250.00 lb/hr on a seven-day rolling average. This number was determined by applying a discount factor to 280.90 lb/hr, which was the number used in the attainment demonstration modeling. Alon submitted 2017 through 2020 FCCU continuous emissions monitoring system (CEMS) emissions data to support their conclusion that a 250.00 lb/hr limit on a seven-day rolling average is equivalent to 280.90 lb/hr SO_2 on a one-hour average basis. The 2014 SO_2 SIP guidance indicated that there may be cases in which an averaging time longer than one-hour may be appropriate, provided that any emissions limits based on averaging periods longer than one hour are designed to have comparable stringency to a one-hour average limit at the modeled critical emission value (CEV). The EPA indicated that if periods of hourly emissions above the CEV are a rare occurrence at a source, particularly if the magnitude of the emissions is not substantially higher than the CEV, these periods would be unlikely to have a significant impact on air quality. The EPA further indicated that they do not expect that the use of longer-term averages will be necessary in cases where sources' emissions do not exhibit a high degree of variability. Therefore, the EPA recommends limiting the use of this approach to only those instances where a source's normal emissions variability would result in one-hour limits being extremely difficult to achieve in practice.

The 2014 SO_2 SIP guidance included a recommended approach to determine an appropriate longer-term averaging limit than a block one-hour emission rate. This approach involves calculating an appropriate longer-term averaging limit as a percentage of the one-hour CEV limit that would otherwise be applied to the source of SO_2 emissions. The first step of these calculations is to conduct air dispersion modeling to determine the CEV defined as the one-hour SO_2 emissions limit that shows attainment of the 2010 SO_2 NAAQS through modeling.

The discount factor is a percentage applied to the CEV that results in an emissions limit on a longer averaging time that can be expected to be comparably stringent as an emissions limit on a one-hour basis. This approach reconciles the inherent variability in hourly SO_2 emissions in the operations of some sources that may subsequently prove difficult to demonstrate compliance with an emissions limit on a one-hour basis. The EPA generally expects sources with longer averaging time limits to experience some occasions of hourly emissions to exceed the CEV while the majority of hourly emissions will remain below the CEV. This approach to establishing an emissions limit on a longer averaging time is expected to result in an emissions limit that remains protective of the 2010 SO_2 NAAQS because it is unlikely that the limited occurrences of hourly SO_2 emissions above the CEV would coincide with times when the meteorology is conducive for high ambient concentrations of SO_2.

The recommended approach involves calculating an appropriate longer-term averaging limit as a percentage of the one-hour CEV limit. The TCEQ used the 280.90 lb/hr SO_2 one-hour average emission limit value in the concurrently adopted attainment demonstration modeling to prove that the longer-term emission limit value is not expected to result in exceedances of the 2010 SO_2 NAAQS. For the FCCU, the adopted rule has a 250.00 lb/hr SO_2 emission limit on a seven-day rolling average. Alon provided technical data concerning hourly mass SO_2 emissions from the FCCU at the Alon USA Big Spring Refinery. The historical emissions data submitted for each operating hour of the FCCU were used for the emissions variability analysis to arrive at a final SO_2 emissions limit on a seven-day rolling average. Specifically, the 99th percentile of the one-hour pounds per hour data was obtained as well as the 99th percentile of the seven-day rolling average pounds per hour data. The ratio of the 99th percentile of the seven-day rolling average data to the 99th percentile of the one-hour data was then calculated to develop a discount factor to be applied to the one-hour CEV limit to arrive at the final limit that provides for a longer averaging time basis. The final discount factor for the pounds per hour emissions limit representing the modeled one-hour CEV was determined to be 0.89. The discount factor is expected to provide a degree of comparable stringency to the corresponding limit on a one-hour basis. The emission rate calculated using the discount factor is expected to constrain emissions from the FCCU so that any emissions above the CEV will be limited in frequency and magnitude.

Adopted new §112.102(b), which was proposed as §112.102(c), limits the fuel and waste gas sulfur content limits for the flares. At adoption, the source name of each flare is added before its EPN for consistency, and the acronym "ppmv" is removed because it is not used again in this section. Based on a comment received from Alon, a change is made at adoption to add the phrase "except as provided for in 40 CFR§60.103a(h)." The change is intended to make the concentration-based emission limit applicable to waste gases that were generated during normal operations and not from a relief valve leak because 40 CFR Part 60, Subpart Ja and other federal requirements do not require compliance with emissions standards for relief valves and gases generated during MSS activities when controls may not be on-line. MSS emissions are limited by the pound per hour emission rates rather than the concentration limit that may not be achievable during MSS.

Adopted new §112.102(c) - (f), which were proposed as §112.102(d) - (g), include emission limits for the four flares during both normal operations and authorized MSS activities. The SO_2 emission limits for normal operations are as follows: 25.00 lb/hr for Northeast Flare (EPN 14NEASTFLR), 51.80 lb/hr for the Crude Flare (EPN 02CRUDEFLR), 103.70 lb/hr for the Reformer Flare (EPN 05REFMFLR), and 118.70 lb/hr for the South Flare (EPN 16SOUTHFLR). The MSS emission limits are based on the maximum number of days per year emissions can fall into specified ranges for each flare during authorized MSS activities. Limits on the number of days per year flaring events could generate specified amounts of emissions were needed to demonstrate attainment and were tested in the Monte Carlo demonstration in the associated concurrently adopted attainment demonstration. The rule specifies emissions limits for each flare during authorized MSS activities, for the specified number of days and corresponding emission range. The emission limit ranges with the associated number of days allowed for each flare are 1) the Northeast Flare (EPN 14NEASTFLR) can emit SO_2 in the following ranges: 25.01 lb/hr or more but less than 250.01 lb/hr for no more than four calendar days each year; 250.01 lb/hr or more but less than 500.01 lb/hr for no more than six calendar days each year; and 500.01 lb/hr or more but less than 1,500.01 lb/hr for no more than two calendar days each year; 2) the Crude Flare (EPN 02CRUDEFLR) can emit SO_2 in the following ranges: 51.81 lb/hr or more but less than 250.01 lb/hr for no more than 14 calendar days each year, and can operate in the range of 250.01 lb/hr or more but less than 750.01 lb/hr for no more than three calendar days each year; 3) the Reformer Flare (EPN 05REFMFLR) can emit SO_2 in the following ranges: 103.71 lb/hr or more but less than 250.01

lb/hr for no more than four calendar days each year, and can operate in the range of 250.01 lb/hr or more but less than 750.01 lb/hr for no more than five calendar days each year; and 4) the South Flare (EPN 16SOUTHFLR) can emit SO_2 in the following ranges: 118.71 lb/hr or more but less than 250.01 lb/hr for no more than four calendar days each year, can operate in the range of 250.01 lb/hr or more but less than 500.01 lb/hr for no more than 12 calendar days each year, and can operate in the range of 500.01 lb/hr or more but less than 1,696.01 lb/hr for no more than two calendar days each year. For each source, there is also a prohibition on emissions above the highest emission rate in the final range because attainment demonstration modeling shows that emissions above these levels may contribute to an exceedance of the 2010 SO_2 NAAQS. In the case that emissions fall within more than one range in different hours of a day, the allowable number of days per year is based on the highest emission rate of the day.

These MSS emission rate range limits and allowable number of days were tested in the Monte Carlo simulations by identifying the possible combinations of emission occurrences and conducting 2.5 million Monte Carlo simulations to demonstrate that these potential MSS scenarios do not create an exceedance of the 2010 one-hour SO_2 NAAQS. The above alternative emissions and associated duration limits for MSS scenarios begin just above the routine emission limit and increase sequentially through the maximum limit. Each alternative emission limit allows for emissions within the specified range for the specified number of calendar days, with a provision for each flare that if emissions within different ranges occur during a calendar day, only the highest emission rate is used to determine the emission rate range that applies for that day. The range applicable to a specific day is based on the maximum hourly rate during that day, with the highest emission rate applying.

The commission adopts in new §112.102(g) and (h), which were proposed as §112.102(h) and (i), to limit SRU Incinerator 1 (EPN 69TGINC) to 17.03 lb/hr SO_2 and limit SRU Incinerator 2 (EPN 71TGINC) to 12.78 lb/hr SO_2.

Adopted new §112.102(i), which was proposed as §112.102(j) to allow the owner or operator to request an alternative SO_2 emission limit, is changed at adoption to allow the owner or operator to submit an application for an alternate means of control (AMOC) if certain requirements are met. The commission solicited comments on whether an additional mechanism to submit an application for alternative SO_2 emission limits, similar to the AMOC provisions in 30 TAC Chapter 115, Subchapter J, Division 1, is appropriate to include in Subchapter F. Based on a comment received from the EPA that the only approvable request for changing an emission limit is a full SIP revision, proposed §112.102(j) is not adopted as proposed but is instead changed to a provision allowing sources to submit an application for an AMOC. Because of the re-lettering, the provisions for AMOCs are adopted as new §112.102(i). They are adopted with the rules for the Alon USA Big Spring Refinery to have the rules consistent with those for the P66 Borger Refinery. Alon, Phillips 66, and other companies commented in favor of the flexibility that would be provided by the proposed rule provisions. In comments, Phillips 66 provided draft language for AMOC that is based on the provisions of 30 TAC Chapter 115 Subchapter J Division 1, which has previously been approved by the EPA as part of the SIP for ozone nonattainment areas. The commission is providing provisions for AMOC that are based on draft language submitted in Phillips 66's written public comment but with some changes to be a rule subsection rather than a separate division, to avoid constraining the options of the executive director, and to conform to *Texas Register* and Texas Legislative Drafting Council requirements.

Adopted new §112.102(i)(1) specifies that use of the AMOC provisions does not change the owner or operator's responsibility to comply with permit requirements for new construction or modifications of sources.

Adopted new §112.102(i)(2) describes the criteria for applying for an AMOC plan. Subparagraph (A) provides that the owner or operator of a site subject to these adopted rules can apply, that the executive director must review submitted plans and may approve plans that meet the criteria and procedures of this section, and that if a plan does not meet the necessary criteria, the owner or operator can submit a request for a site-specific SIP revision instead. Subparagraph (B) clarifies that applying for an AMOC does not relieve the owner or operator from complying with the rule requirements prior to a decision, and subparagraph (C) specifies that the provisions of an approved AMOC plan are enforceable.

Adopted new §112.102(i)(3) provides the criteria for approval of AMOC plans. All of the criteria must be met for a plan to be approved. Subparagraph (A) specifies that all sources covered by a plan must be and remain at the same site, except that paragraph (8) allows for plans covering contiguous sites in some circumstances. Subparagraph (B) specifies that if the AMOC plan includes an increase in the emission limit for a source subject to the control requirements in this subchapter, the AMOC plan must also include an equivalent decrease in the emission limit for one or more sources subject to the control requirements of the subchapter. This provision limits applicability of the AMOC to sources subject to the rules. Subparagraph (C) describes the demonstration that must be included in an AMOC plan application: in accordance with clause (i), defines the maximum allowed net increase in the off-property ground-level concentration of SO_2 on a highest, first-high basis at any receptor based on the lower of the critical ground-level value or the SIL; clause (ii) specifies that the demonstration must be based on modeling, databases, or the requirements of 40 CFR Part 51, Appendix W and the modeling conducted for the current SIP revisions. Subparagraph (D) specifies that the AMOC must be implemented and the reductions made after the effective date of the rule, such that the attainment demonstration modeling done for the SIP revision that is concurrent with this rulemaking is complete. Subparagraph (E) requires that the AMOC establish control requirements and monitoring, testing, recordkeeping, and reporting requirements consistent with, and no less stringent than, the applicable requirements of the subchapter that render the control requirements enforceable.

Adopted new §112.102(i)(4) provides the procedures for submitting an AMOC plan. Subparagraph (A) requires that the owner or operator submit an AMOC plan application and demonstration to the executive director with copies to the local TCEQ regional office, any air pollution control program with jurisdiction, and the EPA regional office. Subparagraph (B) specifies the information that must be included in a proposed AMOC plan: clause (i) specifies the applicant and site identification and contact person information; clause (ii) specifies the information to identify and describe the sources covered, the applicable rule provisions, and the normal operating conditions of the sources; clause (iii) specifies the control requirements for each source that would be made enforceable by the AMOC plan; clause (iv) specifies a demonstration that the AMOC plan meets all require-

ments of paragraph (3); clause (v) specifies the information to be provided concerning the air pollution control program(s) with jurisdiction; and clause (vi) specifies that any other relevant information requested by the executive director must be provided. Subparagraph (C) provides that the representations made for an AMOC plan become enforceable requirements upon approval of the plan by the executive director and the EPA, including emission limits, control requirements, monitoring, testing, reporting, and recordkeeping requirements. Subparagraph (D) specifies that applications for amending or revising AMOC plans must be submitted in accordance with the requirements of the subsection.

Adopted new §112.102(i)(5) provides the procedure for approving AMOC plans. Subparagraph (A) requires that notice sent by the executive director for a preliminary determination of approval must include a copy of the AMOC plan that was preliminarily approved. Subparagraph (B) requires that notice sent by the executive director for a determination to deny must include the reasons for the denial and specifies the determination is the final action of the executive director that is appealable to the Commission. Subparagraph (C) requires that upon receipt of the executive director's notice of preliminary approval, the applicant pay to publish notice, consistent with paragraph (6), of the applicant's intent to obtain an AMOC and the opportunity to provide written comment. Subparagraph (D) requires that the executive director consider all significant and timely comments received and to prepare a written response. Subparagraph (E) provides that the executive director may, in response to comments, modify provisions of an AMOC plan, deny a plan, or approve a plan without change. Subparagraph (F) requires that the executive director send by a means documenting receipt a written notice of the final determination on an AMOC plan to the applicant, the EPA regional office, any air pollution control program with jurisdiction, and each commenter and that the notice include the final AMOC plan provisions, the response to comments, and announcement of the opportunity to appeal the decision to the Commission. Subparagraph (G) provides that a recipient of the notice in subparagraph (F) may file an appeal of the decision within 15 days of receipt, that the appeal may be considered at the Commission's next regularly scheduled meeting that allows for adequate notice, and that the Commission may remand the determination to the executive director, deny the AMOC plan, or issue the AMOC plan unchanged. Subparagraph (H) specifies that within 45 days of final approval by the executive director (or the Commission for an appeal), the EPA may notify in writing the agency of their disapproval of the decision, including their reasons for disapproval and a specific listing of the changes to the AMOC plan needed for their approval, that the EPA can inform the agency prior to the 45-day deadline that they do not intend to disapprove, and that upon receipt of a timely EPA disapproval, the executive director must void or revise the AMOC plan and reissue notice under subparagraph (F). Subparagraph (I) specifies that if an appeal is not filed for an AMOC plan, it becomes effective upon the EPA's acceptance as provided in subparagraph (K). Subparagraph (J) specifies that if an appeal is not filed for an AMOC plan, it becomes effective upon the latter of the Commission's or the EPA's acceptance. Subparagraph (K) defines EPA acceptance as the explicit approval of an AMOC plan, notification by the EPA that they do not intend to disapprove, or failure of the EPA to meet the 45-day deadline for filing a disapproval.

Adopted new §112.102(i)(6) provides the format of public notice for an AMOC plan. Subparagraph (A) requires that notice be published in two successive issues of a general circulation newspaper closest to the site requesting the AMOC plan. Subparagraph (B) requires that the notice include the application number assigned by the executive director for the AMOC plan, the applicant's name, the type of source(s) and site covered in the AMOC, the location of the site, a brief description of the AMOC plan, the executive director's preliminary determination of approval, the location where copies of the proposed AMOC and related documentation and the executive director's preliminary analysis are available (including the TCEQ regional office, any local air pollution control program, and the EPA regional office), announcement of the opportunity to submit written comments and the procedure for doing so, the length of the public comment period (at least 30 days after the final notice publication), and the contact information for further information at the TCEQ regional office. Subparagraph (C) prohibits the executive director from taking final action until the applicant provides proof of adequate notice to the agency, the EPA, and any air pollution control program with jurisdiction.

Adopted new §112.102(i)(7) covers reviews of approved AMOC plans and termination of plans. Subparagraph (A) specifies that the term "compliance date" means when a source must comply with new or modified sections of Chapter 112. Subparagraph (B) specifies that an AMOC plan becomes void on the compliance date for a new or modified section affecting the source subject to the plan unless the plan is revised to reflect the new requirements. Subparagraph (C) specifies that the holder of an AMOC plan must comply with the rule requirements if the plan becomes void. Subparagraph (D) requires that upon final approval, the owner or operator keep a copy of the AMOC plan on site and available to representatives of the TCEQ, the EPA, or an air pollution control program with jurisdiction. Subparagraph (E) requires that an AMOC plan holder submit a demonstration that the plan continues to meet all applicable rule requirements upon request from the executive director. Subparagraph (F) specifies that when a rule change is made that affects an AMOC plan, the holder is responsible for obtaining a new AMOC plan prior to the compliance date of the rule revision.

Adopted new §112.102(i)(8) provides that an AMOC plan may cover multiple sources on contiguous properties if separate applications for approval are submitted by each owner or operator.

§112.103, Monitoring Requirements

The commission adopts new §112.103 to specify the monitoring required for each affected source identified as subject to these rules in §112.100. The adopted monitoring requirements are necessary to demonstrate that the control requirements in §112.102 for that source are met. Adopted new §112.103 provides the monitoring requirements for sources at the Alon USA Big Spring Refinery.

Adopted new §112.103(1) requires a CEMS unit must be used, calibrated, and maintained for the FCCU in compliance with federal regulations to record emissions at least every 15 minutes so that a block one-hour average can be calculated from the data. Because 40 Code of Federal Regulations (CFR) §60.105a(g)(1), (2), and (5), which are cited to establish the monitoring requirements for EPN 06ESPPCV to document compliance with an emission limit in units of pounds per hour, requires monitoring of a concentration-based emission limit and therefore does not require an exhaust gas flow meter, a requirement to have a totalizing gas flow measurement system is added at adoption so that the required monitoring is clear. Because a temperature monitor is needed to convert the exhaust monitoring to standard conditions for the pound per hour

emission limit, a requirement to have a temperature monitor is added at adoption. Because the monitors must have sufficient accuracy to demonstrate compliance with the new emission limit, an accuracy requirement is added at adoption for each component of the monitoring system. Because EPN 06ESPPCV is not subject to 40 CFR Part 60, Subpart Ja, which is where the cited provision is codified, language is added at adoption to clarify that the monitoring provisions in §60.105a(g)(1), (2), and (5) apply, regardless of the applicability of Subpart Ja to the FCCU.

Adopted new §112.103(2) requires, as proposed, determining each flare's inlet stream flow rate and total sulfur concentration according to 40 CFR §60.107a(e) monitoring procedures and specifications, but at adoption provisions are added to require determining the inlet temperature of the gas stream because this is needed for the calculation method options that are added at adoption based on comments received. Added at adoption based on a comment from the EPA, new §112.103(2)(A) provides the requirement that a separate dedicated totalizing gas flow meter be used to monitor flow rates of flared gases routed to each flare. Added at adoption based on a comment from the EPA, §112.103(2)(B) provides the requirement that a separate temperature monitor be used to monitor the temperature of flared gases at the inlet of each flare. Both §112.103(2)(A) and (B) also provide the accuracy requirement for the respective monitor and require that the monitor be installed, calibrated, maintained, and operated according to manufacturer's recommendations and specifications. Added at adoption, new §112.103(2)(C) provides two options for monitoring the sulfur content of the flared gases. The provision adopted as §112.103(2)(C)(i) requires the use of a total sulfur analyzer that measures SO_2, hydrogen sulfide (H_2S), and total organic sulfur (i.e., total sulfur) in accordance with 40 CFR §60.107a(e)(1), specifies the accuracy requirement, and includes an equation for determining the SO_2 emissions. The provision adopted as §112.103(2)(C)(ii) provides the option for use of an analyzer that measures H_2S alone, which is used with a total sulfur correlation sampling ratio, as allowed for the determination method in 40 CFR §60.107a(e)(2), specifies the accuracy requirement, and includes an equation for determining the SO_2 emissions. Added at adoption based on an EPA comment that calculation methods are needed, Figure 30 TAC §112.103(2)(C)(i) and Figure 30 TAC §112.103(2)(C)(ii) provide the equations for calculating emissions from the total sulfur monitoring data or from the monitoring of H_2S as a surrogate for total sulfur, respectively.

Adopted new §112.103(3) requires the use, calibration, and maintenance of CEMS units, including flow measurement systems and temperature monitors specified at adoption along with accuracy requirements for each component, for the SRU incinerators to record emissions at least every 15 minutes so that a block one-hour average can be calculated from the data. At adoption, it is clarified that a separate monitoring system is required for each SRU stack and that the requirement that the monitoring systems comply with 40 CFR §60,106a(a) applies despite the fact that the SRU units are not subject to that regulation. Because a new §112.103(5) is added at adoption, the word "and" is deleted at the end of §112.103(3).

Adopted new §112.103(4) requires the use of an appropriate quality assurance and quality control (QA/QC) process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; and use of an appropriate data substitution process, which is the most accurate method available. Because a new §112.103(5) is added at adoption, the word "and" is added at the end of §112.103(4).

A new provision is added at adoption as §112.103(5) based on comments to allow the executive director of the agency to approve minor modifications of monitoring methods. As in the similar provision in 30 TAC §115.725(m), executive director approval and validation of the modified method using 40 CFR Part 63, Appendix A, Test Method 301, as applicable, is required for a modified monitoring method to be used. The language specifies that minor modifications include increases of the frequency of monitoring and replacements of parametric monitoring with a CEMS, provided the quality control, quality assurance, and data validation requirements and accuracy specifications are specified and are at least as stringent as required in the rules.

§112.104, Testing Requirements

Adopted new §112.104 provides the testing requirements for sources at the Alon USA Big Spring Refinery, including performance tests on sources subject to Division 1. Adopted new §112.104(1) requires performing relative accuracy tests in accordance with federal requirements for CEMS at the refinery. Adopted new §112.104(2) requires flow rate and sulfur monitoring instrumentation for flares to undergo the initial operational and calibration tests in accordance with the manufacturer's specifications so measurement data can be relied upon to produce an accurate compliance demonstration by the deadline required in §112.108. At adoption, language is added to §112.104(2) to clarify that retesting of previously tested flare monitoring devices is only required if appropriate documentation of the previous testing is not available. Adopted new §112.104(3) requires that additional performance testing be conducted according to federal requirements if requested by the executive director.

§112.105, Approved Test Methods

The commission adopts new §112.105 to specify the test methods required to comply with the testing requirements in adopted new §112.104. The test methods relate to the testing requirements in adopted new §112.104. Adopted new §112.105(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used except as provided in 40 CFR §60.8(b).

Adopted new §112.105(b) specifies the test methods to be used for testing the sulfur content of fuels. At adoption, the provision is expanded to include both fuel and waste gas, and the required test methods are changed based on comments on which tests are appropriate. Based on the EPA's comment that current versions of methods should be required, the date of each method added at adoption is not included and is removed for ASTM Method D1945 at adoption so that current versions can be used into the future. Because ASTM Method D5504 only detects all sulfur-containing compounds if the proper chromatograph analysis is tailored for all such compounds, language is added at adoption that this method can be used if conducted in an appropriate manner. Proposed ASTM Method D3588-93 is not included at adoption because Alon indicated that it is not appropriate for determining sulfur content.

Adopted new §112.105(c) provides the test method for testing the sulfur content in exhaust gases at the Alon USA Big Spring Refinery. The wording "United States Environmental Protection Agency" is used and the acronym is defined in the revised methods in §112.105(b), so the duplicate wording is deleted at adoption in §112.105(c) with only the acronym retained.

At adoption, a new §112.105(d) is added that specifies that flares must use the test methods and procedures in 40 CFR §60.104a, and the subsequent subsection is re-lettered accordingly. Adopted new §112.105(e), which was proposed as §112.105(d), allows the use of alternate methods after approval by the executive director and the EPA. This provision is intended to allow the approval of minor changes to the cited methods.

§112.106, Recordkeeping Requirements

The commission adopts new §112.106 to specify the records required to be maintained. Based on an EPA comment that the format must be specified, wording is added at adoption that the records must be in written or electronic format. Records are required to be kept for a minimum of five years. The records include all monitoring (including CEMS) data and sampling data (including sulfur content), the methods and calculations used to demonstrate compliance, documentation of any SO_2 exceedances, including root cause analyses, and the report submitted for these, and copies of required emission test data and records.

§112.107, Reporting Requirements

The commission adopts new §112.107(a) to specify the reporting required for each source covered by the rules. The required reports cover any exceedances of SO_2 emission limits and deviations from required stack parameters and must be submitted to the agency no later than March 31 of the year following the exceedance. The reports must include each occurrence date, an explanation of the exceedance and noncompliance with any required stack parameter, a statement of whether the exceedance or stack parameter noncompliance occurred during an authorized MSS activity for, or malfunction of, the emitting source or its control system, the actions taken in response to the exceedance or stack parameter noncompliance and the cause(s), and a certification of the accuracy and completeness of the report. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown and is also subject to the requirements of 30 TAC §101.211. If a reportable quantity (i.e., 500 pounds or more) of SO_2 is released, the provisions of §101.211 also apply, as do the reporting requirements for emissions events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Adopted new §112.107(b) requires the owner or operator to submit results of emissions testing for determining compliance with the emission standards of SO_2 specified in adopted new §112.102(c)(1) to the appropriate TCEQ regional office and any local air pollution control agency having jurisdiction within 60 days after testing is complete and not later than the compliance schedule specified in §112.108.

The commission adopts new §112.107(c) as contingency measures if the EPA determines that the Howard County SO_2 nonattainment area does not achieve attainment on or after the attainment date. Based on a comment from the EPA, language is added at adoption to include triggering the contingency measure if the EPA determines that the nonattainment area failed to meet reasonable further progress (RFP). If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors, if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company notified must conduct a full system audit of all their sources covered in Division 1 and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO_2 source, the wind speed and direction at the monitor with the NAAQS exceedance, and any emissions events that may have occurred. Based on comments that the basis for an EPA finding of failure to attain would affect the information that is useful in determining what contributed to the finding, wording is added at adoption to §112.107(c)(2) to clarify that review and consideration of meteorological data are only needed if the EPA's finding is based on ambient air monitor data or modeling data. To clarify what must be covered in an FSA in all cases from what must be covered only if the EPA's determination is based on ambient air monitor data or modeling data, the provisions are separated into §112.107(c)(2)(A) and (B), respectively. Additionally, based on comments, the term "exceptional event" is changed at adoption to "emissions event" for clarity. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

§112.108, Compliance Schedules

The commission adopts new §112.108 to specify the dates by which each source in §112.100 is required to comply with the requirements of Division 1. Based on input from Alon, the compliance date for the FCCU (EPN 06ESPPCV) and the SRU incinerators (EPN 69TGINC and EPN 71TGINC) is changed to November 1, 2023. The compliance date for the flares (EPN 14NEASTFLR. EPN 02CRUDEFLR, EPN 05REFMFLR, and 16SOUTHFLR) remains January 1, 2025, as proposed. At adoption, the phrase "as soon as practicable, but" is removed from before "no later than January 1, 2025" based on an EPA comment that the wording is not enforceable and other comment that the wording makes the actual compliance date uncertain.

Division 2: Requirements for the Tokai Big Spring Carbon Black Plant

§112.110, Applicability

For sources at the Tokai Big Spring Carbon Black Plant that had contributions greater than the SIL, the emission rates are specified as an overall emissions cap, a cap for the two dryer stacks and individual limits for the incinerator, flare, and one of the dryer stacks at full load as well as emission limits for the same sources at reduced loads. To ensure that the tiered emissions caps at the Tokai Big Spring Carbon Black Plant will continue to model attainment, the TCEQ modeled a total of 192 operating scenarios accounting for different loads and operating conditions. In addition, for the situation where one or more of the Alon USA Big Spring Refinery's flares are intermittently in authorized MSS activities, multiple iterations of each of the 192 operating scenarios for the Tokai Big Spring Carbon Black Plant were conducted using a Monte Carlo simulation statistical approach. The emission rates included in the adopted rule modeled attainment under all 192 scenarios across a large number of Monte Carlo simulations. Additional information regarding the modeling analysis and determination of the adopted emission rates that demonstrate attainment is available in the concurrently adopted SIP revision for Howard County.

Instead of specifying the site by its RN as was proposed, the address of the site is added at adoption because the provision

proposed as §112.112(a), which would have required approval for changing the RN, is removed at adoption. This will eliminate the need for a SIP revision if the RN changes.

Based on comments, the last sentence of §112.110(a) is removed. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA, which was the intent of the proposed language. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. After the EPA's approval, the rules are enforceable by both the EPA and the TCEQ. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

Adopted §112.110(b) identifies the sources affected by the rules by their name and EPN from the NSR permit for the site, with the order of the source name and EPN changed at adoption for consistency.

§112.111, Definitions

The commission adopts new §112.111 to define seven terms used in Division 2. The commission adopts new §112.111(1) to define block one-hour average which is used in the Tokai Big Spring Carbon Black Plant requirements. At adoption, a definition for continuous monitoring is added as new §112.111(2) based on an EPA comment. The subsequent definitions are renumbered. Adopted new §112.111(3), which was proposed as §112.111(2), defines the Howard County SO_2 nonattainment area; at adoption, the citation of the *Federal Register* publication is removed because it is not needed. Adopted new §112.111(4), which was proposed as §112.111(3), defines off-line for carbon black oil furnaces. Adopted new §112.111(5), which was proposed as §112.111(4), defines on-line for carbon black oil furnaces as not off-line. The commission proposed to define pipeline quality natural gas in proposed §112.111(5), but this definition is not needed and is removed at adoption based on an EPA comment. The commission adopts new §112.111(6) to define production unit as a combination of equipment used in the manufacture of carbon black at the Tokai Big Spring Carbon Black Plant because the term is used in the adopted rules only for that site, with distinction made between the production units associated with each EPN defined in this rule. At adoption, a sentence is added to the definition to clarify that tail gas not used for the dryers is burned in the Incinerator + HRSG (EPN 13A) or by Flare 4 (EPN Flare 4). Adopted new §112.111(7) defines tail gas for the carbon black plant.

§112.112, Control Requirements

The commission adopts new §112.112 to specify the control requirements for sources (designated through the relevant EPN) that were specified in §112.110. The emission rates established in the section are the rates that modeling shows demonstrate attainment in the concurrently adopted SIP revision for Howard County.

Proposed §112.112(a), which would have prohibited an owner or operator or any person acting for them from contravening the control requirements specified in these rules by changing the RN or EPN designation of any source without prior approval by the agency and the EPA, is removed at adoption based on public comment. The EPA stated that the only manner of approval for such a change would be a full SIP revision, which is overly burdensome. The subsequent subsections are re-lettered.

Adopted new §112.112(a), which was proposed as §112.112(b), provides the emission limits for sources at the Tokai Big Spring Carbon Black Plant, which has three carbon black production units: Production Unit 1 consists of five furnaces and three dryers; Production Unit 2 consists of four furnaces and two dryers; and Production Unit 3 consists of four furnaces and two dryers. Emissions of SO_2 associated with tail gas produced by Production Units 1 and 2 vent through EPN 7A, EPN 13A, or EPN FLARE 4. Emissions of SO_2 associated with tail gas produced by Production Unit 3 furnaces vent through EPNs12A, EPN 13A, or EPN FLARE 4. Emissions of SO_2 from all dryers associated with Production Units 1 and 2 vent through EPN 7A. Emissions of SO_2 from all dryers associated with Production Unit 3 vent through EPN 12A. Tail gas from the furnaces is also combusted in the Incinerator + HRSG (EPN 13A) and Flare 4 (EPN Flare 4). Based on a comment from Tokai that none of the production units can operate with only one furnace in operation, a prohibition is added at adoption to this subsection for the operation of a production unit with only one furnace operating, and the rows in the table in Figure 30 TAC §112.112(a) corresponding to a production unit operating with only one furnace are removed at adoption.

The table in adopted new Figure 30 TAC §112.112(a), which was proposed as Figure 30 TAC §112.112(b), provides emission limits for sources at maximum load and at reduced loads and includes overall emissions caps for all sources that can combust tail gas at the Tokai Big Spring Carbon Black Plant (carbon black dryers, Incinerator + HRSG, and flares) as well as emission limits for the two dryer stacks combined (EPN 7A and EPN 12A), emission limits for one individual dryer stack (EPN 12A), and emission limits for the incinerator or flare (EPN 13A). At the carbon black plant, operation at reduced loads is achieved by taking one or more furnaces off-line, which results in reduced dispersion of emissions and requires lower emission rates and associated stack parameters which could also result in less dispersion. To ensure attainment can be demonstrated under all operating conditions, the reduced load operating scenarios were also modeled. The table is used by selecting the row with the correct numbers in the first two columns for the numbers of furnaces operating in Production Units 1 and 2 and in Production Unit 3, respectively, and using the emission limit for each EPN in its corresponding column. For example, if there are two furnaces on-line in Production Unit 3, three furnaces on-line in Production Unit 1 and no furnaces on-line in Production Unit 2, the emission limits would be 519.42 lb/hr for the overall cap, 436.23 lb/hr for EPN 13A or Flare 4, 156.02 lb/hr for EPNs 7A and 12A combined, and 73.00 lb/hr for EPN 12A.

Adopted new §112.112(b), which was proposed as §112.112(c), is changed at adoption based on a comment from Tokai. Instead of requiring that the emission rate be based on only the fewest number of furnaces operating during an hour, a provision is added to allow calculating the emission rate based on the minute-by-minute changes in the number of furnaces operating. The change is made because Tokai indicated that using the fewest number of furnaces would result in no allowable emissions if all furnaces were shut down during an hour, but there would already have been emissions in that hour prior to the shutdown. Therefore, the adopted rule provides two options for determining the emission limits if the number of furnaces on-line during any one-hour period changes: under §112.112(b)(1), the fewest number of operating furnaces can be used to calculate the applicable reduction coefficient for use in determining the applicable emission limit; and under §112.112(b)(2), a time-weighted average of all limits applying

during any part of an hour can be calculated using the equation in Figure 30 TAC §112.112(b)(2). This equation is based on the minute-by-minute changes in the number of furnaces operating during the hour.

The commission adopts new §112.112(c), which was proposed as §112.112(d), to specify that the determination of the maximum emission rate for each EPN is based on a block one-hour average. New §112.112(d) is added at adoption for clarity that the emission cap identified in Figure 30 TAC §112.112(a) is the maximum emission limit that applies to the sum of the emissions from EPN 13A, Flare 4, EPN 7A, and EPN 12A, as grouped in the columns of the table. The term "operational scenario" removed at adoption because it is not defined and is not necessary to identify all emission limits.

The commission adopts new §112.112(d) to provide more clarity on the use of the table in §112.112(a). Section 112.112(e), was proposed to prohibit the combustion of tail gas in any source or control device at the carbon black plant for which an allowable SO_2 emission rate is not specified because tail gas is high in sulfur compounds and was not represented in the modeling for other sources. At adoption, the phrasing is clarified to state that tail gas may only be combusted in a source whose emissions are routed to the EPNs represented in the attainment demonstration and the names of the sources rather than just the EPNs are identified. Adopted §112.112(f), prohibits the use of both the Incinerator + HRSG and Flare 4 during any block one-hour period, and adopted §112.112(g) prohibits routing of sulfur or sulfur containing compounds to Flare 1, Flare 2, or Flare 3 after the compliance date.

The commission adopts §112.112(h) to specify that the new flare, if authorized, must be constructed at a specific location, and must have a stack height of 60.35 meters, consistent with modeled parameters. At adoption, the wording "no less than" is removed from before the stack height based on EPA comment that changes to stack height require remodeling, and a typographical error is corrected by replacing the semicolon with a period at the end of the subsection.

Adopted §112.112(i) specifies that the Incinerator + HRSG must have a stack height of 65.00 meters, which is higher than the stack currently in place; based on an EPA comment that exceeding 65 meters requires their approval, the words "no less than" are removed from before the stack height at adoption. The attainment demonstration modeling showed that dispersion based on these stack heights was needed to avoid exceeding the NAAQS.

Adopted §112.112(j), which was proposed to allow the owner or operator to request an alternative SO_2 emission limit, is changed at adoption to reference new AMOC provisions that were submitted during the public comment period on this rule. The commission solicited comments on whether an additional mechanism to request alternative SO_2 emission limits, similar to AMOC provisions 30 TAC Chapter 115, Subchapter J, Division 1, are appropriate to include in Subchapter F. Based on a comment received from the EPA that the only approvable request for changing an emission limit is a full SIP revision, proposed §112.112(j) is not adopted as proposed but is instead changed to a provision allowing the submittal of an application for an AMOC. The provisions for AMOCs for Subchapter E are adopted as 112.102(i).

§112.113, Monitoring Requirements

Changes are made at adoption to §112.113(a) - (i) to require the owner or operator to conduct the monitoring specified. Adopted new §112.113(a) is changed at adoption to clarify that the calculations are to be done by each production unit by changing "from" to "by" and to require calculation of emissions from an individual production unit using the equation in Figure 30 TAC §112.113(a).

Adopted new §112.113(b) requires calculating actual emissions rates from each EPN subject to an emission limit under §112.112 using the equation in Figure 30 TAC §112.113(b), which is rewritten in a to account for the spilt of tail gas from each production unit instead of an average split across all units. Based on comments from the EPA, a typographical error in §112.113(b) is corrected by changing the second use of "EPN 13A" to "EPN 12A." At adoption, the proposed equation in proposed Figure is replaced with equations specific to each affected EPN in new paragraphs (1) - (4) added at adoption. New §112.113(b)(1) and Figure 30 TAC §112.113(b)(1) added at adoption provide for summing the total sulfur emissions from production units that are emitted as SO_2 by EPN 13A. New §112.113(b)(2) and Figure 30 TAC §112.113(b)(2) added at adoption provide for summing the total sulfur emissions from production units that are emitted as SO_2 by EPN 7A. New §112.113(b)(3) and Figure 30 TAC §112.113(b)(3) added at adoption provide for summing the total sulfur emissions from production units that are emitted as SO_2 by EPN Flare 4. New §112.113(b)(4) and Figure 30 TAC §112.113(b)(4) added at adoption provide for calculating the total sulfur emissions from Production Unit 3 that are emitted as SO_2 by EPN 13A.

Adopted new §112.113(c) requires the installation, use, calibration, and maintenance of totalizing fuel flow meters for carbon black oil entering each production unit. At adoption, wording is added to specify that the installation, use, calibration, and maintenance must be consistent with the manufacturer's specifications for the meter. Adopted new §112.113(d) requires the installation, use, calibration, and maintenance of totalizing fuel flow meters for tail gas for all combustion sources or control devices using this fuel. At adoption, wording is added for clarity to specify that the installation, use, calibration, and maintenance must be consistent with the manufacturer's specifications for the meter and that the combustion units that burn tail gas include the dryers, the Incinerator + HRSG (EPN 13A), and Flare 4 (EPN Flare 4).

Adopted new §112.113(e) requires the use of a continuous monitoring and data acquisition system to continuously measure, calculate, and record the quantities specified in §112.113(e)(1) - (3), with wording changes made at adoption throughout the subsection for clarity. Adopted §112.113(e)(1) specifies the volumetric flow rate of tail gas to Incinerator + HRSG and Flare 4 (EPNs 13A and Flare 4), with wording added at adoption to require tracking the data from each production unit separately. Adopted §112.113(e)(2) specifies the volumetric flow rate of tail gas to the carbon black dryers in each production unit; at adoption, the requirement is changed from tracking the data for each dryer separately. Adopted §112.113(e)(3) specifies the volumetric flow rate of tail gas from each production unit; the provision is changed at adoption from tracking the flow to all dryers. Proposed §112.113(e)(4), which specified tracking the aggregate tail gas flow rate to all combustion devices, is removed at adoption because the data is not needed for the calculation, and the subsequent paragraphs are renumbered. Adopted §112.113(e)(4), which was proposed as §112.113(e)(5), specifies the ratio of the quantities in paragraphs (1) and (3) as variable "π_{incin}", with changes made at adoption to specify that the data points are for each production unit and to remove the citation to paragraph (4) that is removed at adoption. Adopted §112.113(e)(5), which was

proposed as §112.113(e)(6), specifies the ratio of the quantities in paragraphs (2) and (3) as variable "π_{dryer}", with changes made at adoption to specify that the data points are for each production unit and to remove the citation to paragraph (4) that is removed at adoption. The variables defined as these ratios are used to establish the split coefficients applied to emissions from the production units to estimate the emissions from each stack.

The commission adopts §112.113(f) to require that the continuous data acquisition system be installed, calibrated, maintained, and operated in accordance with manufacturer's recommended procedures. A change is made at adoption to correct the citation for the data acquisition system to §112.113(e).

The commission adopts new §112.113(g) to require measurement of the sulfur content of carbon black oil feedstock fed to each of the carbon black production units. At adoption, the frequency of the measurements is changed from daily to twice daily (at least four hours apart) based on an EPA comment that daily monitoring is insufficient.

Adopted new §112.113(h) requires daily measurement of the sulfur content by weight of each grade of carbon black produced from each carbon black production unit, with a change made at adoption to improve phrasing. Adopted new §112.113(i) requires the determination of the amount of each grade of carbon black produced in each production unit, with a change made at adoption to clarify that the determination must be made during each hour. The term "determine" was used instead of "measure" because this number may be calculated from other parameters as opposed to being directly measured as it may be difficult to measure hourly production rates.

Adopted new §112.113(j) allows for the use of a CEMS to directly monitor emission in lieu of a mass balance approach for determining emissions. Adopted new §112.113(k), proposed as §112.113(j), requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

A new provision is added at adoption as §112.113(l) based on comments to allow the executive director of the agency to approve minor modifications of monitoring methods. As in the similar provision in 30 TAC §115.725(m), executive director approval and validation of the modified method using 40 CFR Part 63, Appendix A, Test Method 301, as applicable, is required for a modified monitoring method to be used. The language specifies that minor modifications include increases of the frequency of monitoring provided the quality control, quality assurance, and data validation requirements and accuracy specifications are specified and are at least as stringent as required in the rules.

§112.114, Testing Requirements

Changes are made at adoption to §112.114(a), (b), and (d) to require the owner or operator to do the testing specified. The commission adopts new §112.114(a) to require initial demonstration of compliance testing for sources combusting tail gas, except for flares, and a change is made at adoption to require that the owner or operator perform additional demonstrations of compliance at least every five years. Adopted new §112.114(b) requires that this testing be done using the test methods in adopted new §112.115. Adopted new §112.114(c) specifies that for performance tests the source must be operated as close to its maximum rated capacity as practicable. Adopted new §112.114(d) requires that additional performance testing be done if requested by the executive director using specified federal methods and criteria in the test methods in adopted new §112.115. Adopted new §112.114(e) specifies that performance testing every five years is not required if a CEMS is used to monitor emissions.

§112.115, Approved Test Methods

The commission adopts new §112.115 to specify the test methods required to comply with the testing requirements in adopted new §112.114. The test methods relate to the testing requirements in adopted new §112.114. Adopted new §112.115(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used except as provided in 40 CFR §60.8(b).

Adopted new §112.115(b) specifies the test methods to be used for testing the sulfur content of fuels and carbon black oil. Based on an EPA comment that the most current versions of test methods should be referenced, the date references in the cited test method designations are removed at adoption so that the most current version can be used into the future. Based on input from Tokai, ASTM Method D4294 is added at adoption and Method D3588-93 is removed. Adopted new §112.115(c) provides the test method for testing the sulfur content of carbon black product. Adopted new §112.115(d) provides the test method for determining the sulfur content in exhaust gases at the Tokai Big Spring Carbon Black Plant. At adoption, a new §112.115(e) is added for consistency with the rules in the other divisions, and the subsequent subchapter is re-lettered. The added §112.115(e) requires that the owner or operator use the flare test methods and procedures in 40 CFR §60.104a even though those provisions do not apply to the flares at the Tokai Big Spring Carbon Black Plant. Adopted new §112.115(f), which was proposed as §112.115(e), allows the use of alternate methods after approval by the executive director and the EPA. This provision is intended to also allow the approval of minor changes to the cited methods.

§112.116, Recordkeeping Requirements

The commission adopts new §112.116 to specify the records required to be maintained for at least five years at the Tokai Big Spring Carbon Black Plant. Based on an EPA comment that the format must be specified, wording is added at adoption to require the records in written or electronic format. Adopted new §112.116(1) requires records by production unit of the production rates (as lb/hr) of the different grades of carbon black by each production unit.

Adopted new §112.116(2) requires records of the sulfur content by weight of the carbon black oil feedstock; based on input from Tokai, the frequency of the records is increased at adoption from daily to twice daily. Adopted new §112.116(3) requires daily records of the sulfur content by weight of each grade of carbon black produced by each production unit. Adopted new §112.116(4) requires continuous records of flow rates of the carbon black oil feedstock to each production unit. Adopted new §112.116(5) requires continuous records of volumetric flow rates to each tail gas combustion device.

Adopted new §112.116(6) requires for each one-hour block of operation of each production unit, records be maintained of each furnace that operated, the applicable emission limits, and the mass balance calculations for each EPN, including the relevant factors used in the calculations. At adoption, changes are made in subparagraphs §112.116(6)(A) - (C). In §112.116(6)(A), the frequency requirement for recording the identity of each furnace on-line is changed from "during the block one-hour period"

to "each minute of each block one-hour period" because of the changes made at adoption in §112.112(b) for determining emission limits based on the minute-by-minute changes in the number of furnaces operating. In §112.116(6)(B), a clause is added at adoption to require records of the calculations in adopted §112.112(b). For completeness in §112.116(6)(C), the monitoring records are expanded to include all information identified in §112.113 rather than only the factors used in calculating actual emissions.

Adopted new §112.116(7) requires maintaining records of all exceedances of emission limits and standards in the rules and copies of the exceedance reports filed under §112.117. New §112.116(8) is changed at adoption for clarity to require maintaining copies of reports of all tests conducted under §112.114 rather than records of all required emissions test data and records. These records are sufficient to determine compliance with then rule requirements but are less burdensome for Tokai.

§112.117, Reporting Requirements

The commission adopts new §112.117(a) to specify the reporting required for each source covered by the rules. The required reports cover any exceedances of SO_2 emission limits and deviations from required stack parameters; must be submitted to the agency no later than March 31 of the year following the exceedance; and must include each occurrence date, an explanation of the exceedance and noncompliance with any required stack parameter, a statement of whether the exceedance or stack parameter noncompliance occurred during an authorized MSS activity for, or malfunction of, the emitting source or its control system, the actions taken in response to the exceedance or stack parameter noncompliance and the cause(s), and a certification of the accuracy and completeness of the report.

A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown and is also subject to the requirements of 30 TAC §101.211. If a reportable quantity (i.e., 500 pounds or more) of SO_2 is released, the provisions of §101.211 also apply, as do the reporting requirements for emissions events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Adopted new §112.117(b) requires the owner or operator to submit results of emissions testing for determining compliance with the emission standards of SO_2 specified in adopted new §112.112(b) to the appropriate TCEQ regional office and any local air pollution control agency having jurisdiction within 60 days after testing is complete and not later than the compliance schedule specified in §112.118.

The commission adopts new §112.117(c) as contingency measures if the EPA determines that the Howard County SO_2 nonattainment area does not achieve attainment on or after the attainment date; based on a comment from the EPA, language is added at adoption throughout the subsection to include triggering the contingency measure if the EPA determines that the nonattainment area failed to meet RFP. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors, if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this division and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO_2 source, the wind speed and direction at the monitor with the NAAQS exceedance, and any emissions events that may have occurred. Based on comments that the basis for an EPA finding of failure to attain would affect the information that is useful in determining what contributed to the finding, wording is added at adoption to §112.117(c)(2) to clarify that review and consideration of meteorological data are only needed if the EPA's finding is based on ambient air monitor data or modeling data. To clarify what must be covered in an FSA in all cases from what must be covered only if the EPA's determination is based on ambient air monitor data or modeling data, the provisions are separated into §112.117(c)(2)(A) and (B), respectively. Additionally, based on comments, the term "exceptional event" is changed at adoption to "emissions event" for clarity. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

§112.118, Compliance Schedules

The commission adopts new §112.118 to specify the date by which each source in §112.110 are required to comply with the requirements of Division 2. At adoption, the phrase "as soon as practicable, but" is removed from before "no later than January 1, 2025" based on an EPA comment that the wording is not enforceable and another comment that the wording makes the actual compliance date uncertain.

Subchapter F, Requirements in the Hutchinson County Nonattainment Area

Division 1, Requirements for the Chevron Phillips Chemical Borger Plant

§112.200, Applicability

The commission adopts new §112.200 to specify that the new rules apply to sources at the CP Chem Borger Plant at which the agency has determined emissions contribute to potential exceedances of the 2010 SO_2 NAAQS based on modeling conducted for the concurrently adopted SIP revisions discussed elsewhere in this preamble. The adopted rule provisions in new Division 1 are site-specific as identified by the current name and the latitude/longitude coordinates. The latitude/longitude coordinates of the site are added in §112.200(a) at adoption to replace the provision proposed as §112.202(a), which would have required approval for changing the RN. This will eliminate the need for a SIP revision if the RN changes.

The adopted rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for the fugitive sources. The adopted requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

Based on comments, the last sentence of §112.200(a) is removed. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA, which was the intent of the proposed language. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. After the EPA's approval, the rules are enforceable by both the EPA and

the TCEQ. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activity) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment as well as emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO_2 nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 $\mu g/m^3$) to the modeled design value concentrations at any receptor in the Hutchinson County SO_2 nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emission point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

§112.201, Definitions

The commission adopts new §112.201 to define three terms used in Division 1. The commission adopts new §112.201(1) to define block one-hour average. At adoption, a definition for continuous monitoring is added as new §112.201(2) based on an EPA comment. The subsequent definition is renumbered. Adopted new §112.201(3), which was proposed as §112.201(2), defines the Hutchinson County SO_2 nonattainment area; at adoption, the citation of the *Federal Register* publication is removed because it is not needed. The commission proposed the prior §112.201(3) to define pipeline quality natural gas, but this definition is not needed and is removed at adoption based on an EPA comment.

§112.202, Control Requirements

Proposed §112.202(a), which would have prohibited the owner or operator of the CP Chem Borger Plant from contravening the control requirements by changing the EPN designation of any emissions point without prior approval by the agency and the EPA, is removed at adoption based on public comment. The EPA stated that the only manner of approval for such a change would be a full SIP revision, which is overly burdensome. The subsequent subsections are re-lettered.

Adopted new §112.202(a), which was proposed as §112.202(b), provides the emission limits for the two sulfolene handling areas. Although the fugitive emissions for sulfolene areas are authorized under the single EPN (F-M2A) in NSR permit 21918, the two areas where the emissions originate were modeled separately and have separate emission rates when modeling attainment. Adopted new §112.202(a)(1) limits the sulfolene building and the trailers in its vicinity (EPN F-M2A_1 in the modeling) to 0.98 lb/hr SO_2. Adopted new §112.202(a)(2) limits the trailers in parking area (EPN F-M2A_2 in the modeling) to 1.00 lb/hr SO_2. The limits for the two areas are switched at adoption from the values proposed because the attainment demonstration modeling used 1.0 lb/hr for the sulfolene handling building and trailers at that location and 0.98 lb/hr for the trailer storage area and because CP Chem indicated that the adopted limits are consistent with their calculations of the maximum emissions for each area.

Adopted new §112.202(b), which was proposed as §112.202(c), limits the North Flare (EPN FL-1) and South Flare (EPN FL-2) to a combined total of 430.00 lb/hr. Although the EPA commented that individual limits for the flares should be provided in the rule, attainment demonstration modeling shows that each flare emitting at the cap rate achieves attainment, so individual limits are not needed.

Adopted new §112.202(c) which was proposed as §112.202(d) to allow the owner or operator to request an alternative SO_2 emission limit, is changed at adoption to reference AMOC provisions that were submitted during the public comment period on this rule. The commission solicited comments on whether an additional mechanism to request alternative SO_2 emission limits, similar to the AMOC provisions 30 TAC Chapter 115, Subchapter J, Division 1, are appropriate to include in Subchapter F. CP Chem and several commenters supported adopting AMOC provisions in lieu of the alternative SO_2 emission limits text. Comments provided by Phillips 66 provided detailed AMOC language that is incorporated in new §112.232(k). Based on a comment received from the EPA that the only approvable request for changing an emission limit is a full SIP revision, proposed §112.202(d) is not adopted as proposed but is instead changed to a provision allowing the submittal of an application for an AMOC. The provisions for AMOCs are adopted as new §112.232(k) and are cross-referenced in the adopted version of new §112.202(c). The specific AMOC rule text is adopted in Division 4 because P66 provided the draft language in their comments.

§112.203, Monitoring Requirements

At adoption, the wording "the owner or operator shall" is added to §112.203(a) - (c) to clarify that the requirements apply to the owner or operator. Adopted new §112.203(a) requires the owner or operator of the CP Chem Borger Plant to monitor each hour the temperature inside of the sulfolene handling building and trailers on site that contain sulfolene, which decomposes when exposed to heat and is stored in trailers on site prior to transport. Because the equation provided by CP Chem requires the weight of sulfolene as well as a decomposition factor based on temperature and time, the weight of sulfolene stored in the sulfolene handling building and each trailer and the times the sulfolene was stored are added at adoption to the monitoring required in §112.203(a), as well as the temperature in the sulfolene handling building.

The adopted limits are based on new testing conducted at specific temperatures that provided the equations for calculating the weight of SO_2 emissions and the percentage of decomposition of sulfolene that were provided by CP Chem, which are provided in Figure 30 TAC §112.203(a)(1) and Figure 30 TAC §112.203(a)(2), respectively. The decomposition of sulfolene varies by both its temperature and the number of hours at that temperature. The equation for the percentage of decomposition was determined by CP Chem by plotting the results of a study conducted by CP Chem in 2021 and fitting the results to a three-dimensional surface, then determining the equation that gave the best "goodness of fit" to the data, which is the sigmoidal equation in Figure 30 TAC §112.203(a)(2). The percentage of decomposition calculated and the weight of sulfolene stored are entered into the equation in Figure 30 TAC §112.203(a)(1) to give the SO_2 emissions. The calculation is conservative

because of two factors: the total weight loss from the sulfolene in the study was used in determining the sigmoidal equation, but 45.8% of weight loss is from the butadiene component rather than the SO_2; and the monitored ambient temperature in the sulfolene handling building or trailer is assumed to have been transferred equally throughout the sulfolene in that area. A higher ambient temperature will take time to heat the sulfolene, but the heat from the sulfolene will keep the monitored temperature higher when the temperature outside the area falls. To demonstrate compliance, paragraphs (3) - (5) added at adoption for clarity specify that the emissions from the sulfolene handling building and each trailer are calculated first and are then summed for each area.

New adopted §112.203(b) requires the owner or operator to monitor separately the sulfur content of gases routed to the North and South Flares (EPN FL-1 and EPN FL-2). The monitors are specified to be analyzers sufficient to quantify the total sulfur content at a level of 1 part per million by volume (ppmv). At adoption, a provision is added that the meters must be installed, calibrated, maintained, and operated according to the manufacturer's specifications. The commission requested public comment on whether the level of accuracy and downtime is appropriate for a monitor for this function. CP Chem provided comment with an alternate level of accuracy requirement, which is added to the rule in place of the detection limit that was proposed. Additionally, CP Chem provided input that a *de minimis* amount of SO_2 was detected in one sample of gas sent to the South Flare but that the CP Chem Borger Plant's monitor does not detect SO_2. To compensate, CP Chem committed to adding 0.015 lb/hr SO_2 to each hourly calculated emission to the South Flare, which equates to ten times the highest amount tested at the maximum flow rate to the flare. This addition is included in the revised adopted calculation in §112.203(b).

New adopted §112.203(c) requires the owner or operator to monitor separately the volumetric flow rate of gases routed to the North and South Flares. The gas flow monitors are required to be totalizing gas flow meters with an accuracy of ±5% that are installed, maintained, calibrated, and operated according to the manufacturer's specifications. The commission requested public comment on whether the level of accuracy and downtime is appropriate for a monitor for this function, but no comments were received. This data from the monitoring in subsections (b) and (c) allow determination of the SO_2 emissions from the flares. At adoption the phrase "manufacturer's directions" is changed to "manufacturer's specifications" for clarity.

New §112.203(d) is added at adoption to provide an equation for calculating SO_2 emissions from each flare. In the calculations, the inlet sulfur compound concentration is multiplied by the waste gas flow rate and by factors to convert from ambient to standard conditions. The subsequent subsection is re-lettered.

Adopted new §112.203(e), proposed as §112.203(d), requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions. An appropriate data substitution process, which is the most accurate method available and at least equivalent to engineering judgment, must be used to obtain all missing or invalidated monitoring data for the emissions point.

A new provision is added at adoption as §112.203(f) based on comments to allow the executive director of the agency to approve minor modifications of monitoring methods. As in the similar provision in 30 TAC §115.725(m), executive director approval and validation of the modified method using 40 CFR Part 63, Appendix A, Test Method 301, as applicable, is required for a modified monitoring method to be used. The language specifies that minor modifications include increases of the frequency of monitoring and replacements of parametric monitoring with a CEMS provided the quality control, quality assurance, and data validation requirements and accuracy specifications are specified and are at least as stringent as required in the rules.

There are no specific testing requirements for the CP Chem Borger Plant, and therefore no specific test methods. To maintain consistency in the numbering in the divisions within the adopted new rules, the corresponding sections are skipped in Division 1. Although the EPA commented that these sections are needed, there is no ongoing testing needed for monitoring the sulfolene fugitive emissions or the flares. The testing was already done to establish the equation to calculate the fugitive emissions and further testing is not needed.

§112.206, Recordkeeping Requirements

The commission adopts new §112.206 to specify the records required to be maintained. Based on EPA comment that the format must be specified, wording is added at adoption that the records must be in written or electronic format. All records are required to be maintained for at least five years.

At adoption, changes are made to new §112.206(1) based on EPA comment that monitoring and recordkeeping should be on an hourly basis to add additional hourly recordkeeping provisions for the changes made to monitoring for the sulfolene areas. The records requirements are placed in new §112.206(1)(A) - (G) for readability and clarity. New §112.206(1)(A) requires that the owner or operator maintain hourly records of the temperature inside the sulfolene handling building and each trailer that contains sulfolene. New §112.206(1)(B) requires that the owner or operator record the amount of sulfolene in the sulfolene handling building and each trailer during each hour and the time and weight of sulfolene transferred to each trailer. New §112.206(1)(C) requires that the owner or operator record whether each trailer is located near the sulfolene building (modeled as F-M2A_1) or in the trailer parking area (modeled as F-M2A_2). Because the filled trailers are moved from the vicinity of the sulfolene handling building to the trailer storage area and are afterwards shipped offsite from the trailer storage area, hourly records of the location of each trailer are needed for accurate calculations of emissions. New §112.206(1)(D) requires that the owner or operator record separately the SO_2 emissions from the sulfolene handling building and each trailer. New §112.206(1)(E) requires that the owner or operator record the summed SO_2 emissions from the sulfolene handling building and the adjacent trailers. New §112.206(1)(F) requires that the owner or operator record the summed SO_2 emissions from the trailer parking area.

For the attainment demonstration modeling, the company represented that two trailers are at the sulfolene building and six trailers are in the trailer parking area, but there is no limit placed on the number of trailers at either location because the fugitive emissions depend on the amount of sulfolene present and its temperature. The company performed testing to establish the emission rates based on temperature and the amount of weight loss over time for the sulfolene storage that was used in the attainment demonstration modeling to determine the emission rates included in the adopted rules. Using the ambient temperature inside the building and each trailer (which elevates the temperature of the sulfolene more slowly) and using the full weight loss (including the butadiene weight loss) from the sulfolene dur-

ing testing both make the calculations very conservative and therefore protective of the NAAQS.

Adopted new §112.206(2) requires that the company maintain records of the sulfur content and flow rates of gases sent to the flares and the emission rates calculated from this monitoring as well as the periods of time that each flare was in use. The records of the sulfur content and flow rates of gases sent to the flares, the calculated emissions, and the periods of time that each flare was in use are sufficient to document compliance with the emission limits for each control device.

At adoption, a new §112.206(3) is added to require maintaining documentation of any exceedances of emission limits or standards and copies of all exceedance reports submitted to the appropriate regional office. The provision is added to be consistent with the requirements for other sites.

§112.207, Reporting Requirements

The commission adopts new §112.207(a) to specify the reporting to TCEQ Region 1 required for the CP Chem Borger Plant if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance or failure to meet a required stack parameter occurs. The reports are required to include at a minimum: the date of, and an explanation of, each exceedance and noncompliance with any required stack parameter; whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for, or a malfunction of, the source or control device; the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s); and a certification that the information provided is accurate.

A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO_2 is released, the provisions of §101.211 also apply, as do the reporting requirements for emissions events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Because CP Chem did not provide a way to monitor the fugitive emissions from the sulfolene areas prior to proposal, §112.207(b) was proposed to require the owner or operator to file the exceedance report in subsection (a) annually and to include the hourly monitoring of temperatures inside the trailers containing sulfolene, highlighting any periods when the temperature exceeded 125 degrees Fahrenheit. However, because CP Chem provided documentation of its study used to establish the modeled emission limits for the fugitive emissions, which was used to establish the monitoring and recordkeeping provisions added at adoption, §112.207(b) is removed at adoption. The exceedance report in §112.207(a) will only need to be filed if there is an exceedance. The subsequent subsection is re-lettered.

The commission adopts new §112.207(b), which was proposed as §112.207(c), as contingency measures if the EPA determines that the Hutchinson County SO_2 nonattainment area does not achieve attainment on or after the attainment date; based on a comment from the EPA, language is added at adoption to include triggering the contingency measure if the EPA determines that the nonattainment area failed to meet RFP. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors, if appropriate) subject to Subchapter F of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources subject to Subchapter F and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO_2 source, the wind speed and direction at the monitor with the NAAQS exceedance, and any emissions events that may have occurred. Based on comments that the basis for an EPA finding of failure to attain would affect the information that is useful in determining what contributed to the finding, wording is added at adoption to §112.207(c)(2) to clarify that review and consideration of meteorological data are only needed if the EPA's finding is based on ambient air monitor data or modeling data. To clarify what must be covered in an FSA in all cases from what must be covered only if the EPA's determination is based on ambient air monitor data or modeling data, the provisions are separated into §112.207(c)(2)(A) and (B), respectively. Additionally, based on comments, the term "exceptional event" is changed at adoption to "emissions event" for clarity. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

§112.208, Compliance Schedule

The commission adopts new §112.208 to specify the date by which each source identified in §112.200 is required to comply with the requirements of Division 1. At adoption, the phrase "as soon as practicable, but" is removed from before "no later than January 1, 2025" based on an EPA comment that the wording is not enforceable and another comment that the wording makes the actual compliance date uncertain.

Division 2, Requirements for the IACX Rock Creek Gas Plant

§112.210, Applicability

The commission adopts new §112.210 to specify that the new rules apply to sources at the IACX Rock Creek Gas Plant at which the agency has determined emissions contribute to the potential exceedances of the 2010 SO_2 NAAQS based on modeling conducted for the concurrently adopted SIP revisions discussed elsewhere in this preamble. The adopted rule provisions in new Division 2 are site-specific and specified by the current name and address of the site. This will eliminate the need for a SIP revision if the RN changes. The adopted rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for sources to be authorized and constructed. The adopted requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

Based on comments, the last sentence of §112.210(a) is removed. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA, which was the intent of the proposed language. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. After the EPA's approval, the rules are enforceable by both the EPA and the TCEQ. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective

date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activities) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment as well as emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO_2 nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 $\mu g/m^3$) to the modeled design value concentrations at any receptor in the Hutchinson County SO_2 nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emissions point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

§112.211, Definitions

The commission adopts new §112.211 to define three terms used in Division 2. The commission adopts new §112.211(1) to define block one-hour average. At adoption, a definition for continuous monitoring is added as new §112.211(2) based on an EPA comment. The subsequent definition is renumbered. Adopted new §112.211(3), which was proposed as §112.211(2), defines the Hutchinson County SO_2 nonattainment area; at adoption, the citation of the *Federal Register* publication is removed because it is not needed. The commission proposed the prior §112.211(3) to define pipeline quality natural gas, but this definition is not needed and is removed at adoption based on an EPA comment.

§112.212, Control Requirements

Proposed §112.212(a), which would have prohibited the owner or operator of the IACX Rock Creek Gas Plant from contravening the control requirements by changing the EPN designation of any emissions point without prior approval by the agency and the EPA, is removed at adoption based on public comment. The EPA stated that the only manner of approval for such a change would be a full SIP revision, which is overly burdensome. The subsequent subsections are re-lettered.

Adopted new §112.212(a), which was proposed as §112.212(b), prohibits operating the acid gas flare and incinerator at the same time. Emission limits are adopted for the acid gas flare (EPN FLR1) in §112.212(b), which was proposed as §112.212(c), as 140.00 lb/hr and the acid gas incinerator (EPN INCIN1) in §112.212(c), which was proposed as §112.212(d), as 140.00 lb/hr. The term "sulfur dioxide" is added before the acronym "SO_2" in §112.212(b) at adoption for clarity.

Adopted new §112.212(d), which was proposed as §112.212(e) to allow the owner or operator to request an alternative SO_2 emission limit, is changed at adoption to reference AMOC provisions that were submitted in the comments from Phillips 66. The commission solicited comments on whether an additional mechanism to request alternative SO_2 emission limits, similar to the AMOC provisions 30 TAC Chapter 115, Subchapter J, Division 1, are appropriate to include in Subchapter F. Based on a comment received from the EPA that the only approvable request for the change is a full SIP revision, proposed §112.212(e) is not adopted as proposed but is instead changed to a provision allowing the submittal of an application for an AMOC. The provisions for AMOCs are adopted as new §112.232(k) and cross-referenced in §112.212(d). The specific AMOC rule text is adopted in Division 4 because Phillips 66 provided the draft language in Phillips 66's comments.

§112.213, Monitoring and Testing Requirements

Because new provisions are added at adoption as new subsections, the proposed monitoring requirements are recodified as subsection (a), testing requirements are added as subsection (b), and approved test methods are added as subsection (c). New §112.213(a)(1) and (2) were proposed to require the owner or operator of the IACX Rock Creek Gas Plant to continuously monitor and record the H_2S content and flow rate of gases routed to the acid gas incinerator or acid gas flare, which cannot be used at the same time. Based on the company's request to avoid the need for duplicate monitors, the monitoring was proposed to occur prior to the point where the piping splits to lead to each control device. Because the waste gases contain organic sulfur compounds as well as H_2S, the monitoring requirements are changed at adoption. The specification that the monitoring occurs before where the piping splits is moved to the introductory paragraph of new subsection (a), and two options for monitoring the sulfur content of the waste gases are provided, which are the same as the options provided for the Alon USA and Phillips 66 refineries. An option to use a monitor for total sulfur content is adopted as §112.213(a)(1)(A), including an equation in Figure 30 TAC §112.213(a)(1)(A) to calculate the SO_2 emissions. An option to monitor for H_2S as a surrogate for total sulfur content is adopted as §112.213(a)(1)(B), including an equation in Figure 30 TAC §112.213(a)(1)(B) to calculate the SO_2 emissions. Each monitor is specified to be an analyzer with an accuracy of ±5% on a continuous basis.

At adoption in §112.213(a)(2), "per" is changed to "according to" and "directions" is changed to "specifications" for clarity. The gas flow monitor is required to be a totalizing gas flow meter with an accuracy of ±5% that is installed, maintained, and calibrated according to the manufacturer's specifications. A new §112.213(a)(3) is added at adoption to require monitoring the temperature of the waste gases because those data are needed for the calculations of SO_2 emissions in §112.213(a)(1)(A) and (B). Adopted new §112.213(a)(4) allows for the use of a CEMS to directly monitor the emissions from the incinerator in lieu of monitoring flow rate and to total sulfur or H_2S concentration. Adopted new §112.213(a)(5), which was proposed as §112.213(3), requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

A new provision is added at adoption as §112.213(a)(6) based on comments to allow the executive director of the agency to approve minor modifications of monitoring methods. As in the similar provision in 30 TAC §115.725(m), executive director approval and validation of the modified method using 40 CFR Part 63, Appendix A, Test Method 301, as applicable, is required for a modified monitoring method to be used. The language specifies that

minor modifications include increases of the frequency of monitoring provided the quality control, quality assurance, and data validation requirements and accuracy specifications are specified and are at least as stringent as required in the rules.

Based on an EPA comment that testing requirements and approved test methods are needed and because testing is needed under the adopted monitoring provisions, new §112.213(b) and (c) are added at adoption to provide the testing requirements and test methods to be used, respectively. Adopted §112.213(b)(1) requires that initial testing to be done by the compliance date if documentation of initial testing is not available and that the testing be done according to manufacturer's specifications. Adopted new §112.213(b)(2) requires that the incinerator be performance tested by the compliance date, that the performance test must be conducted with the incinerator operated as close as practicable to its maximum rated capacity, and that additional performance tests must be conducted at least every five years as a check on the accuracy of the monitoring. Adopted new §112.213(b)(3) requires that additional testing be conducted at the request of the executive director that complies with 40 CFR §60.104a. Adopted new §112.213(b)(4) requires that all performance tests must be conducted using test methods in adopted new §112.213(c).

Adopted new §112.213(c)(1) specifies that the testing under §112.213(b) must be conducted using the test methods in *40 CFR Part 60*, Appendices A-1 through A-8 and Appendix B or other methods as specified, except as provided in *§60.8(b)*. Adopted new §112.213(c)(2) specifies that SO_2 in exhaust gases from the incinerator must be determined using EPA Test Method 6 or 6C in 40 CFR, Part 60, Appendix A. Adopted new §112.213(c)(3) specifies that alternate test methods approved by the executive director and the EPA may be used.

§112.216, Recordkeeping Requirements

The commission adopts new §112.216 to specify the records required to be maintained. All records are required to be maintained for at least five years; based on an EPA comment, the format is specified at adoption as being either written or electronic. Adopted new §112.216 requires that the owner or operator maintain records of the continuous monitoring of sulfur content and flow rates of gases sent to the acid gas incinerator and flare and of which control device was in use. These records are sufficient to document compliance with the emission limits for each control device. At adoption, new provisions are added to §112.216 to require maintaining records of all monitoring data, emissions calculations, and testing on monitors for five years and maintaining documentation for five years of any exceedances of emission limits or standards and copies of all exceedance reports submitted to the appropriate regional office. The provision is added to be consistent with the requirements for other sites.

§112.217, Reporting Requirements

The commission adopts new §112.217(a) to specify the reporting to TCEQ Region 1 required from the owner or operator of the IACX Rock Creek Gas Plant if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum: the date of, and an explanation of, each exceedance and noncompliance with any required stack parameter; whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for, or a malfunction of, the source or control device; the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s); and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO_2 is released, the provisions of §101.211 also apply, as do the reporting requirements for emissions events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Because a requirement for performance testing is added at adoption, a new §112.217(b) is added at adoption, and the subsequent subsection is re-lettered. The new §112.217(b) requires that copies of performance test reports be submitted to the appropriate TCEQ regional office and any local air pollutions control agency within 60 days after completing the test.

The commission adopts new §112.217(c), which was proposed as §112.217(b), as contingency measures if the EPA determines that the Hutchinson County SO_2 nonattainment area does not achieve attainment on or after the attainment date; based on a comment from the EPA, language is added at adoption throughout the subsection to include triggering the contingency measure if the EPA determines that the nonattainment area failed to meet RFP. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors, if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this division and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO_2 source, the wind speed and direction at the monitor with the NAAQS exceedance, and any emissions events that may have occurred. Based on comments that the basis for an EPA finding of failure to attain would affect the information that is useful in determining what contributed to the finding, wording is added at adoption to §112.217(b)(2) to clarify that review and consideration of meteorological data are only needed if the EPA's finding is based on ambient air monitor data or modeling data. To clarify what must be covered in an FSA in all cases from what must be covered only if the EPA's determination is based on ambient air monitor data or modeling data, the provisions are separated into §112.217(b)(2)(A) and (B), respectively. Additionally, based on comments, the term "exceptional event" is changed at adoption to "emissions event" for clarity. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

§112.218, Compliance Schedule

The commission adopts new §112.218 to specify the date by which each source identified in §112.210 is required to comply with the requirements of Division 2. Based on input from IACX, the date is changed at adoption to October 1, 2023, to allow time to ensure appropriate monitoring, recordkeeping and reporting procedures are in place. At adoption, the phrase "as soon as practicable, but" is removed from before the compliance date based on an EPA comment that the wording is not enforceable and other comment that the wording makes the actual compliance date uncertain.

Division 3, Requirements for the Orion Borger Carbon Black Plant

§112.220, Applicability

The commission adopts new §112.220 to specify that the new rules apply to sources at the Orion Borger Carbon Black Plant at which the agency has determined emissions contribute to the potential exceedances of the 2010 SO_2 NAAQS based on modeling conducted for the concurrently adopted SIP revisions discussed elsewhere in this preamble. The adopted rule provisions in new Division 3 are site-specific and specified by the current name and the latitude/longitude. The latitude/longitude coordinates of the site are added at adoption because the provision proposed as §112.222(a), which would have required approval for changing the RN, is removed at adoption. The adopted rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for sources to be authorized and constructed. The adopted requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

Instead of specifying the site by its RN, the location of the site in latitude/longitude coordinates is added at adoption because the provision proposed as §112.222(a), which would have required approval for changing the RN, is removed at adoption. This will eliminate the need for a SIP revision if the RN changes.

Based on comments, the last sentence of §112.220(a) is removed. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA, which was the intent of the proposed language. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activities) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment as well as emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO_2 nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 $\mu g/m^3$) to the modeled design value concentrations at any receptor in the Hutchinson County SO_2 nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emissions point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

§112.221, Definitions

The commission adopts new §112.221 to define five terms used in Division 3. The commission adopts new §112.221(1) to define block one-hour average. At adoption, a definition for continuous monitoring is added as new §112.221(2) based on an EPA comment. The subsequent definition is renumbered. Adopted new §112.221(3), which was proposed as §112.221(2), defines the Hutchinson County SO_2 nonattainment area; at adoption, the citation of the *Federal Register* publication is removed because it is not needed. The commission proposed the prior §112.221(3) to define pipeline quality natural gas, but this definition is not needed and is removed at adoption based on an EPA comment. Adopted new §112.221(4) defines production unit, which is used throughout the provisions for the two carbon black plants. Adopted new §112.111(5) defines tail gas, which is used throughout the provisions for the carbon black plant.

§112.222, Control Requirements

Proposed §112.222(a), which would have prohibited the owner or operator of the Orion Borger Carbon Black Plant from contravening the control requirements by changing the EPN designation of any emissions point without prior approval by the agency and the EPA, is removed at adoption based on public comment. The EPA stated that the only manner of approval for such a change would be a full SIP revision, which is overly burdensome. The subsequent subsections are re-lettered.

Adopted new §112.222(a), which was proposed as §112.222(b), provides SO_2 emission limits on a block one-hour average for the Waste Heat Boiler - CDS Stack (EPN E-6BN) at 144.11 lb/hr and the new Combined Flare (EPN CFL) at 750.05 lb/hr. Adopted new §112.222(b), which was proposed as §112.222(c), prohibits combusting tail gas in any source without an emission rate in subsection (a). The Orion Borger Carbon Black Plant's consent decree with the EPA limits flares to periods when the Waste Heat Boiler - CDS Stack is not in operation. Upon the compliance date of the adopted rules, the use of the Unit 1 Reactor/Flare (EPN E-10FL), Unit 2 Reactor/Flare (EPN-20FL), and Unit 4 Reactor/Flare (EPN E-40FL) are prohibited from operating by adopted new §112.222(c), which was proposed as §112.222(d). In addition, adopted new §112.222(d), which was proposed as §112.222(e), prohibits flaring after the compliance date in adopted new §112.228 if the new Combined Flare is not authorized and constructed. At adoption, proposed §112.222(f) is re-lettered as §112.222(e). Proposed §112.222(f)(1) would have required that the Combined Flare be used in place of the other three flares, but this provision is removed at adoption because it is redundant with the provisions in §112.222(b) and (c). The subsequent paragraphs are renumbered. Adopted new §112.222(e)(1), which was proposed as §112.222(f)(2), specifies that the Combined Flare is prohibited from operating when the Waste Heat Boiler - CDS Stack is operating. Adopted new §112.222(e)(2), which was proposed as §112.222(f)(3), specifies the stack height of 65.00 meters for the Combined Flare and the specific location where it must be located; based on an EPA comment that stack heights greater than 65 feet require approval, the wording "no less than" is removed at adoption from before the stack height.

Adopted new §112.222(f), which was proposed as §112.222(g) to allow the owner or operator to request an alternative SO_2 emission limit, is changed at adoption to reference AMOC provisions that were submitted in the comments from Phillips 66. The commission solicited comments on whether an additional mechanism to request alternative SO_2 emission limits, similar to the AMOC provisions 30 TAC Chapter 115, Subchapter J, Division 1,

are appropriate to include in Subchapter F. Based on a comment received from the EPA that each revision to a state implementation plan requires a full SIP revision, proposed §112.222(g) is not adopted as proposed but is instead changed to a provision allowing the submittal of an application for an AMOC. The provisions for AMOCs are adopted as new §112.232(k). The specific AMOC rule text is adopted in Division 4.

§112.223, Monitoring Requirements

At adoption, the wording "the owner or operator shall" is added to §112.223(a) - (d), (f) and (h) to clarify that the requirements apply to the owner or operator. Adopted new §112.223 provides the monitoring requirements for sources at the Orion Borger Carbon Black Plant. The commission adopts new §112.223(a) to require the use of a CEMS for the Waste Heat Boiler - CDS Stack, as required under the Orion Borger Carbon Black Plant's consent decree with the EPA, which must be operated in accordance with specified federal requirements in 40 CFR Part 60. The requirement to comply with 40 CFR 60, Appendix B, Performance Specification 6 is explicitly stated at adoption to ensure that emissions are accurately determined. At adoption, the federal citations are incorporated into the subsection language instead of being separate paragraphs, and the term "sulfur dioxide" is added before the acronym "SO_2" for clarity.

Adopted new §112.223(b) requires the collection of data to be used to perform calculations to determine the amount of carbon black emitted from the flare when the flare is in operation. The mass balance need only be performed on days the flare is in use because the only other stack the sulfur could be emitted from is the Waste Heat Boiler - CDS Stack, which has a CEMS to monitor emissions. Adopted new §112.223(b)(1) requires monitoring of the sulfur content by weight of carbon black oil feedstock. At adoption, the frequency of the measurements is increased from daily to twice per day at least four hours apart.

Adopted new §112.223(b)(2) requires daily measurements of the sulfur content of each grade of carbon black produced by each carbon black production unit. A clause is added at adoption to allow the owner or operator to assume the produced carbon black contains no sulfur in lieu of testing. Because the amount of sulfur retained by carbon black is subtracted from the amount of sulfur in the carbon black oil to determine the amount of sulfur in the tail gas produced, assuming no sulfur in the carbon black is a conservative way of calculating SO_2 emissions and avoids the costs for testing. Adopted new §112.223(b)(3) requires hourly measurements of the amount of each grade of carbon black produced by each carbon black production unit.

Adopted new §112.223(c) requires the installation, calibration, and maintenance of a totalizing fuel flow meter for each carbon black furnace to continuously measure the feed rate of carbon black oil within an accuracy of 5%. The language was changed from second person to third person for consistency with the other sections. Adopted new §112.223(d) requires the installation, calibration, and maintenance of a totalizing tail gas flow meter for each carbon black combustion device to continuously measure the flow of tail gas within an accuracy of 5%. Adopted new §112.223(e) requires the use of an appropriate quality assurance and quality control process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

Adopted new §112.223(f) requires demonstrating compliance for the new Combined Flare (EPN CFL) by calculating actual hourly emissions via the mass balance equation in §112.223(h). At adoption, the calculation method is clarified by addition of an equation, and wording is added to specify that flared gases from all production units must be included. The new equation is added at adoption as Figure 30 TAC §112.223(f) and is a summation of the flared gas emissions from all production units with gases sent to the flare during an hour.

Adopted new §112.223(g) requires calculating emissions from the affected EPNs for each operational scenario as a block one-hour average. At adoption, the word "actual" is removed from the term "actual emissions" because these are calculated emissions, and the phrase "for each operational scenario occurring" is removed because the Orion Borger Carbon Black Plant does not operate with different scenarios.

Adopted new §112.223(h) provides the equation for calculating SO_2 emissions from each production unit. A wording change is made at adoption to replace "emissions from each production unit" with "emissions generated by each production unit" for clarity that the calculation is for the actual emissions from each production unit rather than emissions arising from the tail gas generated by each production unit, a portion of which is burned in other combustion units. At adoption, the proposed equation in Figure 30 TAC §112.223(h) is replaced with an equation that includes factors for the density and temperature because those are needed for accurate calculations.

A new provision is added at adoption as §112.223(i) based on comments to allow the executive director of the agency to approve minor modifications of monitoring methods. As in the similar provision in 30 TAC §115.725(m), executive director approval and validation of the modified method using 40 CFR Part 63, Appendix A, Test Method 301, as applicable, is required for a modified monitoring method to be used. The language specifies that minor modifications include increases of the frequency of monitoring and replacements of parametric monitoring with a CEMS provided the quality control, quality assurance, and data validation requirements and accuracy specifications are specified and are at least as stringent as required in the rules.

§112.224, Testing Requirements

The commission adopts new §112.224 to specify the testing required for fuels, raw materials, produced carbon black and monitoring equipment used measure sulfur content of exhaust gas or the sulfur content at the inlet of the flares for sources at the Orion Borger Carbon Black Plant. Adopted new §112.224(a) requires that any performance testing be conducted with the source operating as near as practicable to its maximum rated capacity. Adopted new §112.224(b) requires that any performance test requested by the executive director be conducted using test methods in §112.225. Adopted new §112.224(c) specifies that when analysis of carbon black, carbon black oil, and fuels is required by this division, the test methods in adopted new §112.225 must be used.

§112.225, Approved Test Methods

The commission adopts new §112.225 to specify the test methods required to comply with the testing requirements in adopted new §112.224. Adopted new §112.225(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used for performance testing required for the Orion Borger Carbon Black Plant unless an alternate test method is approved by the EPA under 40 CFR §60.8(b). The *Federal*

Register citations in §112.225(a) and (c) are removed at adoption because they are not needed. Adopted new §112.225(b) specifies that testing of exhaust gases subject to Division 3 must be done using EPA Test Method 6 or 6C. Adopted new §112.225(c) specifies the test methods to be used for testing flare compliance.

Adopted new §112.225(d) specifies the test methods to be used for analyzing fuels and carbon black oil for sulfur content. At adoption, ASTM Method D1945-93, which is for natural gas, and ASTM Method D3588-93 are removed because they are not appropriate for determining the sulfur content of carbon black oil and replaced with ASTM Method D4294, which Orion uses. Adopted new §112.225(e) specifies the test method for carbon black. Adopted new §112.225(f) allows the use of alternate methods after approval by the executive director and the EPA.

§112.226, Recordkeeping Requirements

The commission adopts new §112.226 to specify the records required to be maintained by the Orion Borger Carbon Black Plant. All records are required to be maintained for at least five years. Because of an EPA comment that the format needs to be specified, a clause is added at adoption that the records must be in written or electronic format. Adopted new §112.226(1) requires records of the amounts (in units of lb/hr) of each grade of carbon black produced by each production unit. Adopted new §112.226(2) requires daily records of the sulfur content by weight of the carbon black oil feedstock. Adopted new §112.226(3) requires daily records of the sulfur content by weight of each grade of carbon black produced by each production unit. Adopted new §112.226(4) requires continuous records of carbon black oil flow rates to each production unit. Adopted new §112.226(5) requires continuous records of tail gas volumetric flow rates to each combustion device covered by adopted new §112.222. Adopted new §112.226(6) requires hourly records of the mass balance calculations for each source operating without a CEMS; at adoption, the term "sulfur dioxide" is moved to before the first use of the acronym SO_2 for clarity.

Adopted new §112.226(7) requires records of the continuous emissions monitoring data from the CEMS. At proposal, the provision was written to apply to each CEMS, but because there is only one, the word "each" is replaced with EPN E-6BN at adoption. Because of addition of a new §112.226(9), the word "and" is removed from the end of §112.226(7).

Adopted new §112.226(8) is changed at adoption to require documentation of any exceedances of emission limits or standards and copies of exceedance reports submitted to the appropriate regional office. New §112.226(9), which is added at adoption, requires copies of emissions test reports and associated records be maintained.

§112.227, Reporting Requirements

The commission adopts new §112.227(a) to specify the reporting to TCEQ Region 1 required from the Orion Borger Carbon Black Plant if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum: the date of, and an explanation of, each exceedance and noncompliance with any required stack parameter; whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for, or a malfunction of, the source or control device; the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s); and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO_2 is released, the provisions of §101.211 also apply, as do the reporting requirements for emissions events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Adopted new §112.227(b) requires the owner or operator of the Orion Borger Carbon Black Plant to submit within 60 days of testing the results of emissions testing for determining compliance with the emission standards of SO_2 to the TCEQ Office of Compliance and Enforcement, the appropriate TCEQ regional office, and any local air pollution control agency having jurisdiction.

The commission adopts new §112.227(c) as contingency measures if the EPA determines that the Hutchinson County SO_2 nonattainment area does not achieve attainment on or after the attainment date; based on a comment from the EPA, language is added at adoption throughout the subsection to include triggering the contingency measure if the EPA determines that the nonattainment area failed to meet RFP. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors, if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this subchapter and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO_2 source, the wind speed and direction at the monitor with the NAAQS exceedance, and any emissions events that may have occurred. Based on comments that the basis for an EPA finding of failure to attain would affect the information that is useful in determining what contributed to the finding, wording is added at adoption to §112.227(c)(2) to clarify that review and consideration of meteorological data are only needed if the EPA's finding is based on ambient air monitor data or modeling data. To clarify what must be covered in an FSA in all cases from what must be covered only if the EPA's determination is based on ambient air monitor data or modeling data, the provisions are separated into §112.227(c)(2)(A) and (B), respectively. Additionally, based on comments, the term "exceptional event" is changed at adoption to "emissions event" for clarity. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

§112.228, Compliance Schedule

The commission adopts new §112.228 to specify the date by which each source identified in §112.220 is required to comply with the requirements of Division 3. January 1, 2025, was proposed for all sources. Based on an EPA comment that earlier compliance dates should be provided where possible, Orion was asked if they could comply earlier. Because the company indicated that they could meet most requirements by June 30, 2023, a new §112.228(a) is added at adoption specifying the compliance date of June 30, 2023, except for the provisions with which the company would need until January 1, 2025, to comply. The provisions needing additional time are 112.222(a)(2), (b) - (e),

§112.223(b), (d), (f), (h), and §112.226(1) - (6). At adoption proposed §112.228 is lettered as §112.228(b) and requires the owner or operator to comply by January 1, 2025, with the provisions for which additional time after June 30, 2023, is needed. At adoption, the phrase "as soon as practicable, but" is removed from before "no later than January 1, 2025" based on an EPA comment that the wording is not enforceable and other comment that the wording makes the actual compliance date uncertain.

Division 4, Requirements for the Phillips 66 Refinery

§112.230, Applicability

The commission adopts new §112.230 to specify that the new rules apply to sources at the Phillips 66 Refinery at which the agency has determined emissions contribute to potential exceedances of the 2010 SO_2 NAAQS based on modeling conducted for the concurrently adopted SIP revisions discussed elsewhere in this preamble. The adopted rule provisions in new Division 4 are site-specific and specified by the current name and the latitude/longitude coordinates of the site. The latitude/longitude coordinates of the site are added at adoption to §112.230(a) because the provision proposed as §112.232(a), which would have required approval for changing the RN, is removed at adoption. The adopted rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for sources to be authorized and constructed. The adopted requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

Instead of specifying the site by its RN, the latitude and longitude coordinates for the site are added at adoption because the provision proposed as §112.232(a), which would have required approval for changing the RN, is removed at adoption. Additionally, the RNs are removed because it is consistent with the federal implementation plan that the EPA has proposed for Detroit, Michigan and because any change to an RN would require a full SIP revision, according to the EPA's comments.

Based on comments, the last sentence of §112.230(a) is removed. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA, which was the intent of the proposed language. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates into the rules into the SIP. After the EPA's approval, the rules are enforceable by both the EPA and the TCEQ. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activities) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment as well as emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO_2 nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points have emissions that contribute at a level greater than the SIL of 3 ppb (i.e., 7.85 µg/m^3) to the modeled design value concentrations at any receptor in the Hutchinson County SO_2 nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emissions point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

At adoption, EPN 66FL13 is removed from the list of sources included in EPN FLEX_R_CAP and EPN FLEX_MS_CAP in §112.230(b)(6) and (7), respectively, at the request of Phillips 66. NSR Permit 9868A for the site was revised to lower its emission limit such that its contribution to the modeled design value is less than the SIL, and §112.230(b)(6) and (7) are revised at adoption to reflect the date of the Maximum Allowable Emission Rate Table (MAERT) from this permit modification.

§112.231, Definitions

The commission adopts new §112.231 to define four terms used in Division 4. The commission adopts new §112.231(1) to define block one-hour average. At adoption, a definition for continuous monitoring is added as new §112.231(2) based on an EPA comment. The subsequent definitions are renumbered. Adopted new §112.231(3), which was proposed as §112.231(2), defines the Hutchinson County SO_2 nonattainment area; at adoption, the citation of the *Federal Register* publication is removed because it is not needed. Adopted new §112.231(4), which was proposed as §112.231(3), defines pipeline quality natural gas.

§112.232, Control Requirements

Proposed §112.232(a), which would have prohibited the owner or operator of the Phillips 66 Refinery from contravening the control requirements by changing the EPN designation of any emissions point without prior approval by the agency and the EPA, is removed at adoption based on public comment. The EPA stated that the only manner of approval for such a change would be a full SIP revision, which is overly burdensome. The subsequent subsections are re-lettered.

Adopted new §112.232(a), which was proposed as §112.232(b), limits EPN 34I1 (SRU Incinerator) emissions to 44.82 pounds lb/hr SO_2 during normal operations. Adopted new §112.232(b), which was proposed as §112.232(c), limits EPN 43I1 (SCOT Unit Incinerator) emissions to 37.00 lb/hr SO_2 during normal operations. Adopted new §112.232(c), which was proposed as §112.232(d), prohibits simultaneous operation of EPN 34I1 and EPN 43I1 during authorized MSS activities and limits the combined emissions from these units to 94.00 lb/hr during authorized MSS activities.

Adopted new §112.232(d), which was proposed as §112.232(e), was revised to clarify the flares' (EPN 66FL1, EPN 66FL2, EPN 66FL3, and EPN 66FL12) fuel and waste gas sulfur content limit of 162 ppmv does not apply to relief valves and gases generated during MSS activities in accordance with 40 CFR Part 60, Subpart Ja provisions. Instead, MSS emissions are limited by the pound per hour emission rates consistent with the attainment demonstration modeling. Although flare EPN 66FL13 was included in this provision at proposal, it is removed at adoption at the request of Phillips 66 because the P66 Borger Refinery is taking a federally enforceable limit that makes the flare an insignificant source.

Adopted new §112.232(e), which was proposed as §112.232(f), provides emissions caps for the four specified flares of 100.14 lb/hr during normal operations and 850.00 lb/hr during authorized MSS activities; these caps were represented in the attainment demonstration modeling as EPN FLARE_R_CAP and EPN FLARE_MS_CAP, respectively. Adopted new §112.232(f), which was proposed as §112.232(g), provides an emissions cap for the two SRU incinerators (EPN 34I1 and 43I1), and 44 EPNs for small sources (engines, heaters, and boilers) of 172.09 lb/hr during normal operations, which is lowered at adoption from 185.69 lb/hr in the proposal because of the removal of EPN 66FL13 from §112.230(6); this emissions cap was represented in the attainment demonstration modeling as EPN Flex_R_CAP.

Adopted new §112.232(g), which was proposed as §112.232(h), provides an emissions cap for the same 44 EPNs for small sources (but not the SRU incinerators) of 92.45 lb/hr during authorized MSS activities, which is lowered at adoption from 106.05 lb/hr in the proposal because of the removal of EPN 66FL13 from §112.230(7); this emissions cap was represented in the attainment demonstration modeling as EPN Flex_MS_CAP.

Proposed §112.232(i) is re-lettered at adoption as §112.232(h), and the emission limit for EPN 29P1 is changed to 97.37 lb/hr on a seven-day rolling average. All of the proposed emission limits and stack flow rates in proposed paragraphs (1) - (5) are removed at adoption because they are not needed with the adopted seven-day rolling average. The adopted emission limit was determined by multiplying the emission rate of 130.00 lb/hr used in the attainment demonstration modeling by a discount factor of 0.749. Phillips 66 provided CEMS data used to determine the discount factor for EPN 29P1. The attainment demonstration modeling shows that attainment is achieved with the modeled emission factor.

The 2014 SO_2 SIP guidance indicated that there may be cases in which an averaging time longer than one-hour may be appropriate provided that any emissions limits based on averaging periods longer than 1 hour are designed to have comparable stringency to a one-hour average limit at the CEV. The EPA indicated that if periods of hourly emissions above the CEV are a rare occurrence at a source, particularly if the magnitude of the emissions is not substantially higher than the CEV, these periods would be unlikely to have a significant impact on air quality. The EPA has further indicated that it does not expect that the use of longer-term averages will be necessary in cases where sources' emissions do not exhibit a high degree of variability. Therefore, the EPA recommends limiting the use of this approach to only those instances where a source's normal emissions variability would result in one-hour limits being extremely difficult to achieve in practice.

The 2014 SO_2 SIP guidance included a recommended approach to determine an appropriate longer-term averaging limit than a block one-hour emission rate. This approach involves calculating an appropriate longer-term averaging limit as a percentage of the one-hour CEV limit that would otherwise be applied to the source of SO_2 emissions. The first step of these calculations is to conduct air dispersion modeling to determine the CEV defined as the one-hour SO_2 emissions limit that shows attainment of the 2010 SO_2 NAAQS through modeling.

The discount factor is a percentage applied to the CEV that results in an emissions limit on a longer averaging time that can be expected to be comparably stringent as an emissions limit on a one-hour basis. This approach reconciles the inherent variability in hourly SO_2 emissions in the operations of some sources that may subsequently prove difficult to demonstrate compliance with an emissions limit on a one-hour basis. The EPA generally expects sources with longer averaging time limits to experience some occasions of hourly emissions to exceed the CEV while the majority of hourly emissions will remain below the CEV. This approach to establishing an emissions limit on a longer averaging time is expected to result in an emissions limit on the longer averaging time that remains protective of the 2010 SO_2 NAAQS because it is unlikely that the limited occurrences of hourly SO_2 emissions above the CEV would coincide with times when the meteorology is conducive for high ambient concentrations of SO_2.

Proposed §112.232(j) is re-lettered at adoption as §112.232(i), and the emission limit for EPN 40P1 is changed to 101.37 lb/hr on a seven-day rolling average. All of the proposed emission limits and stack flow rates in proposed paragraphs (1) - (5) are removed at adoption because they are not needed with the adopted seven-day rolling average. The adopted emission limit was determined by multiplying the emission rate of 130.00 lb/hr used in the attainment demonstration modeling by a discount factor of 0.780. Phillips 66 provided CEMS data used to determine the discount factor for EPN 40P1. The attainment demonstration modeling shows that attainment is achieved with the modeled emission factor.

Adopted new §112.232(j), which was proposed as §112.232(k), requires most emission limits in this section to be calculated on a block one-hour average basis. Because of the seven-day rolling average emission rates changed at adoption that were discussed previously, the clause "unless otherwise specified' is added at adoption to exclude the two seven-day rolling averages.

Adopted new §112.232(k), which was proposed as §112.232(l) to allow the owner or operator to request an alternative SO_2 emission limit, is changed at adoption. The commission solicited comments on whether an additional mechanism to request alternative SO_2 emission limits, similar to the AMOC provisions 30 TAC Chapter 115, Subchapter J, Division 1, are appropriate to include in Subchapter F. Based on a comment received from the EPA that the only approvable request for change is a full SIP revision, proposed §112.232(l) is not adopted as proposed but is instead changed to a provision allowing the submittal of an application for an AMOC. Some companies commented in favor of the flexibility that would be provided by the proposed rule provisions. In comments, Phillips 66 provided draft language for AMOC that is based on the provisions of 30 TAC Chapter 115 Subchapter J Division 1, which has previously been approved by the EPA as part of the SIP for ozone nonattainment areas.

As discussed in the last provision of the control requirements section in each of the other divisions in this subchapter, the commission has changed the alternative emission limit provision to one for an AMOC with a citation to §112.232(k). As re-lettered §112.232(k) is changed at adoption, the commission is providing provisions for an AMOC that are based on the Phillips 66 draft language but with some changes to be a rule subsection, to avoid constraining the options of the executive director, and to conform to *Texas Register* and Texas Legislative Drafting Council requirements.

Adopted new §112.232(k)(1) specifies that use of the AMOC provisions does not change the owner or operator's responsibility to comply with permit requirements for new construction or modification of sources.

Adopted new §112.232(k)(2) describes the criteria for applying for an AMOC plan. Subparagraph (A) provides that the owner or operator of a site subject to these adopted rules can apply, that the executive director must review submitted plans and may approve plans that meet the criteria and procedures of this section, and that if a plan does not meet the necessary criteria, the owner or operator can submit a request for a site-specific SIP revision instead Subparagraph (B) clarifies that applying for an AMOC does not relieve the owner or operator from complying with the rule requirements prior to a decision, and subparagraph (C) specifies that the provisions of an approved AMOC plan are enforceable.

Adopted new §112.232(k)(3) provides the criteria for approval of AMOC plans. All of the criteria must be met for a plan to be approved. Subparagraph (A) specifies that all sources covered by a plan must remain in the same account number, except that paragraph (8) allows for plans covering contiguous sites in some circumstances. Subparagraph (B) require that if the AMOC plan includes an increase in the pound per hour emission limit for a source subject to the control requirements in this subchapter, the AMOC plan must also include an equivalent decrease in the pound per hour emission limit for one or more sources. Subparagraph (C) describes the demonstration that must be included in an AMOC plan application: clause (i) defines the maximum allowed net increase in the off-property ground-level concentration of SO_2 on a highest, first-high basis at any receptor (i.e., the value for no receptor can increase) based on the lower of the critical ground-level value or the SIL; clause (ii) specifies that the demonstration must be based on modeling, databases, or the requirements of 40 CFR Part 51, Appendix W and the modeling conducted for the current SIP revisions. Subparagraph (D) specifies that the AMOC must be implemented and the reductions made after the attainment demonstration modeling done for the SIP revision that is concurrent with this rulemaking. Subparagraph (E) requires that the AMOC establish enforceable emission specifications and control requirements.

Adopted new §112.232(k)(4) provides the procedures for submitting an AMOC plan. Subparagraph (A) requires that the owner or operator submit an AMOC plan application and demonstration to the executive director with copies to the local TCEQ regional office, any air pollution control program with jurisdiction, and the EPA regional office. Subparagraph (B) specifies the information that must be included in a proposed AMOC plan: clause (i) specifies the applicant and site identification and contact person information; clause (ii) specifies the information to identify and describe the sources covered, the applicable rule provisions, and the normal operating conditions of the sources; clause (iii) specifies the emission specifications and limits and control requirements for each source that would be made enforceable by the AMOC plan; clause (iv) specifies a demonstration that the AMOC plan meets all requirements of paragraph (3); clause (v) specifies the information to be provided concerning the air pollution control program(s) with jurisdiction; clause (vi) specifies that any other relevant information requested by the executive director must be provided. Subparagraph (C) provides that the representations made for an AMOC plan become enforceable requirements upon approval of the plan by the executive director and the EPA, including emission limits, control requirements, monitoring, testing, reporting, and recordkeeping requirements. Subparagraph (D) specifies that applications for amending or revising AMOC plans must be submitted in accordance with the requirements of the chapter.

Adopted new §112.232(k)(5) provides the procedure for approving AMOC plans. Subparagraph (A) requires that notice sent by the executive director for a preliminary determination of approval must include a copy of the AMOC plan that was preliminarily approved. Subparagraph (B) requires that notice sent by the executive director for a determination to deny must include the reasons for the denial and specifies the determination is the final action of the executive director that is appealable to the Commission. Subparagraph (C) requires that upon receipt of the executive director's notice of preliminary approval, the applicant pay to publish notice, consistent with paragraph (5), of the applicant's intent to obtain an AMOC and the opportunity to provide written comment.

Subparagraph (D) requires that the executive director consider all significant and timely comments received and to prepare a written response. Subparagraph (E) provides that the executive director may in response to comments modify provisions of an AMOC plan, deny a plan, or approve a plan without change. Subparagraph (F) requires that the executive director send by a means documenting receipt a written notice of the final determination on an AMOC plan to the applicant, the EPA regional office, any air pollution control program with jurisdiction, and each commenter and that the notice include the final AMOC plan provisions, the response to comments, and announcement of the opportunity to appeal the decision to the Commission.

Subparagraph (G) provides that a recipient of the notice in subparagraph (F) may file an appeal of the decision within 15 days of receipt, that the appeal may be considered at the Commission's next regularly scheduled meeting that allows for adequate notice, and that the Commission may remand the determination to the executive director, deny the AMOC plan, or issue the AMOC plan unchanged. Subparagraph (H) specifies that within 45 days of final approval by the executive director (or the Commission for an appeal), the EPA may notify in writing the agency of their disapproval of the decision, including their reasons for disapproval and a specific listing of the changes to the AMOC plan needed for their approval, that the EPA can inform the agency prior to the 45-day deadline that they do not intend to disapprove, and that upon receipt of a timely EPA disapproval, the executive director must void or revise the AMOC plan and reissue notice under subparagraph (F). Subparagraph (I) specifies that if an appeal is not filed for an AMOC plan, it becomes effective upon the EPA's acceptance as provided in subparagraph (K). Subparagraph (J) specifies that if an appeal is not filed for an AMOC plan, it becomes effective upon the latter of the Commission's or the EPA's acceptance. Subparagraph (K) defines EPA acceptance as the explicit approval of a AMOC plan, notification by the EPA that they do not intend to disapprove, or failure of the EPA to meet the 45-day deadline for filing a disapproval.

Adopted new §112.232(k)(6) provides the format of public notice for an AMOC plan. Subparagraph (A) requires that notice be published in two successive issues of a general circulation newspaper closest to the site requesting the AMOC plan. Subparagraph (B) requires that the notice include the application number assigned by the executive director for the AMOC plan, the applicant's name, the type of source(s) and site covered in the AMOC, the location of the site, a brief description of the AMOC plan, the executive director's preliminary determination of approval, the location where copies of the proposed AMOC and related documentation and the executive director's preliminary analysis are available (including the TCEQ regional office, any local air pollution control program, and the EPA regional office), announcement of the opportunity to submit written comments and the pro-

cedure for doing so, the length of the public comment period (at least 30 days after the final notice publication), and the contact information for further information at the TCEQ regional office. Subparagraph (C) prohibits the executive director from taking final action until the applicant provides proof of adequate notice to the agency, the EPA, and any air pollution control program with jurisdiction.

Adopted new §112.232(k)(7) covers reviews of approved AMOC plans and termination of plans. Subparagraph (A) specifies that the term "compliance date" means when a source must comply with new or modified sections of Chapter 112. Subparagraph (B) specifies that an AMOC plan becomes void on the compliance date for a new or modified section affecting the source subject to the plan unless the plan is revised to reflect the new requirements. Subparagraph (C) specifies that the holder of an AMOC plan must comply with the rule requirements if the plan becomes void. Subparagraph (D) requires that upon final approval, the owner or operator keep a copy of the AMOC plan on site and available to representatives of the TCEQ, the EPA or an air pollution control program with jurisdiction. Subparagraph (E) requires that an AMOC plan holder submit a demonstration that the plan continues to meet all applicable rule requirements upon request from the executive director. Subparagraph (F) specifies that when a rule change is made that affects an AMOC plan, the holder is responsible for obtaining a new AMOC plan prior to the compliance date of the rule revision.

Adopted new §112.232(k)(8) provides that an AMOC plan may cover multiple sources on contiguous properties if separate applications for approval are submitted by each owner or operator.

§112.233, Monitoring Requirements

Adopted new §112.233 provides the monitoring requirements for sources at the P66 Borger Refinery, including but not limited to two FCCUs, two SRU Incinerators, and flares. At adoption, the wording "the owner or operator shall" is added to §112.233(a) - (d) to clarify that the requirements apply to the owner or operator. Adopted new §112.233(a) and (b) require separate CEMS units for the FCCUs and SRU incinerators, respectively, that meet the federal requirements in 40 CFR Part 60, Subpart Ja for CEMS units. At adoption, several changes are made to the subsections. In addition to requiring all four CEMS to record SO_2 emissions at least every 15 minutes, the FCCU CEMS units are required to record the exhaust gas flow rates at least every 15 minutes to properly determine compliance with the emission rate levels in §112.232(h) and (i). Consistent with the emission rates, the flow rates are to be recorded at least every 15 minutes. Additionally at adoption, accuracy requirements are provided for the CEMS units (±2.5%), the flow measurement systems (±5%), and the temperature monitors (±1%). Because the requirements of 40 CFR §60.105a(g) are appropriate for the ensuring that the CEMS units are installed, calibrated, operated, and maintained properly to provide accurate monitoring, language is added to specify that the CEMS units must meet the requirements of 40 CFR §60.105a(g) despite the fact that the FCCUs and incinerators are not subject to that regulation.

Adopted new §112.233(c) requires determining each of four flares' inlet stream flow rate and total sulfur concentration according to 40 CFR §60.107a(e) monitoring procedures and specifications. Because flare EPN 66FL13 is removed from §112.230(6) at adoption such that the adopted rules do not apply to it, it is also removed from §112.233(c) at adoption. Similar to provisions for the CEMS units in §112.233(a) and (b), provisions are added at adoption as §112.233(c)(1) - (3) to provide accuracy requirements (same as in §112.233(a) and (b)) for the sulfur content, flow rate, and temperature monitors and to require exhaust flow and temperature monitors in new §112.233(c)(1) and (2), respectively. Additionally at adoption, §112.233(c)(3) is added to clarify requirements for two sulfur content monitoring options in subparagraphs (A) and (B). In adopted new §112.233(c)(3)(A), a monitoring option for total sulfur consistent with the requirements of 40 CFR §60.107a(e)(1) is added at adoption, along with the equation in Figure 30 TAC §112.233(c)(3)(A) to be used in calculating the sulfur content of flared gases. The equation is needed to properly calculate the content at standard conditions, as defined in 30 TAC §101.1. In new §112.233(c)(3)(B), a monitoring option for using H_2S as a surrogate for total sulfur consistent with the requirements of 40 CFR §60.107a(e)(2) is added at adoption, along with the equation in Figure 30 TAC §112.233(c)(3)(B) to be used in calculating the sulfur content of flared gases. The equation is needed to properly calculate the content at standard conditions.

New §112.233(d) was proposed to require continuous monitoring of the flow rate and sulfur content of fuels, waste gases, and other materials routed to each of the combustion units included in either or both of the emission rate caps in adopted new §112.230(6) and (7) and designated as Flex_R_CAP and Flex_MS_CAP in the attainment demonstration modeling. The provisions are changed at adoption to include the temperature of the fuel, to provide an option to monitor H_2S as a surrogate for total sulfur, and to exclude the flares that are subject to §112.233(c). Adopted new §112.233(d)(1) is added to specify that the volumetric flow to each source must be monitored with a totalizing gas flow meter with an accuracy of ±5% that is installed, calibrated, maintained, and operated according to the manufacturer's recommendations and specifications. Adopted new §112.233(d)(2) is added to specify that the temperature of the fuel must be monitored with temperature monitors with an accuracy of ±1% that are installed, calibrated, maintained, and operated according to the manufacturer's recommendations and specifications, with a provision that if the temperatures among the monitors does not vary by more than ±1%, the temperature can be monitored at a common location representative of each temperature monitor. Adopted new §112.233(d)(3) is added to specify that the sulfur content of the fuel can be monitored either for total sulfur or by monitoring H_2S as a surrogate for total sulfur. Adopted new §112.233(d)(3)(A) provides for the use of a total sulfur analyzer and includes the equation in Figure 30 TAC §112.233(d)(3)(A), which provides an equation for calculating hourly SO_2 emissions. Adopted new §112.233(d)(3)(B) provides for the using monitored H_2S as a surrogate for total sulfur content. To correlate the measured level of H_2S to total sulfur, a process is provided in §112.233(d)(3)(B). New §112.233(d)(3)(B)(i) requires collecting a fuel sample at least monthly, along with a provision that the sampling frequency can be reduced to quarterly if three consecutive monthly samples find that H_2S makes up at least 90% of the molar concentration of total sulfur but that the frequency reverts to monthly if any quarterly sample has an H_2S molar concentration less than 90% of the total sulfur molar concentration. New §112.233(d)(3)(B)(ii) requires having the fuel or SRU incinerator fuel and waste gas streams sampled for total sulfur and H_2S concentrations. New §112.233(d)(3)(B)(iii) requires calculating SO_2 emissions using the equation in Figure 30 TAC §112.233(d)(3)(B)(iii), which accounts for the H_2S and total sulfur concentrations in converting the measured H_2S concentrations to SO_2 emissions at standard conditions. New §112.233(d)(3)(B)(iv) specifies that the total SO_2 emissions from EPN FLEX_R_CAP are calculated by summing the emissions

calculated in §112.233(b)-(d) for each combustion unit in EPN FLEX_R_CAP. New §112.233(d)(3)(B)(v) specifies that the total SO_2 emissions from EPN FLEX_MS_CAP are calculated by summing the emissions calculated in §112.233(b) - (d) for each combustion unit in EPN FLEX_MS_CAP.

Adopted new §112.233(e) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions. Use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

A new provision is added at adoption as §112.233(f) based on comments to allow the executive director of the agency to approve minor modifications of monitoring methods. As in the similar provision in 30 TAC §115.725(m), executive director approval and validation of the modified method using 40 CFR Part 63, Appendix A, Test Method 301, as applicable, is required for a modified monitoring method to be used. The language specifies that minor modifications include increases of the frequency of monitoring and replacements of parametric monitoring with a CEMS provided the quality control, quality assurance, and data validation requirements and accuracy specifications are specified and are at least as stringent as required in the rules.

§112.234, Testing Requirements

Adopted new §112.234 provides the testing and related notification requirements for sources at the P66 Borger Refinery. Adopted new §112.234(a) specifies the relative accuracy tests for the CEMS units required for monitoring in adopted new §112.233 must be conducted using the federal provisions and schedules in 40 CFR §105a(g)(2) for CEMS on the FCCU and in 40 CFR §60.106a(1)(iii) for CEMS on the SRUs.

Adopted new §112.234(b) requires performing initial and subsequent testing of monitoring devices for combustion units and flares in accordance with the manufacturer's specifications so that the monitors are calibrated and function properly by the compliance date. At adoption, language is added stating the initial retesting of previously tested sources is only required if documentation is unavailable that the initial testing was conducted appropriately and in accordance with manufacturer's specifications.

Adopted new §112.234(c) requires that any additional performance testing requested by the executive director be conducted according to specified federal requirements in 40 CFR §60.104a and using the test methods in §112.235. The paragraph also specifies that the notification requirements in 40 CFR §60.8(d) apply to all performance tests except those conducted for continuous monitoring system maintenance or calibrations. Adopted new §112.234(d) specifies that when analysis of fuels is required by this division, the test methods in adopted new §112.235 must be used.

§112.235, Approved Test Methods

The commission adopts new §112.235 to specify the test methods required to comply with the testing requirements in adopted new §112.234. Adopted new §112.235(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used for performance testing required for the P66 Borger Refinery. Adopted new §112.235(b) specifies that testing of exhaust gases at any site subject to Division 4 must be done using EPA Test Method 6 or 6C. Adopted new §112.235(c) specifies the test methods to be used for testing flare compliance at the P66 Borger Refinery.

Adopted new §112.235(d) specifies the test methods to be used for analyzing fuel gas for sulfur content; based on input from Phillips 66, the methods are changed at adoption to match those used at the site. At adoption, the test methods are expanded to include all methods used at the Phillips 66 Borger Refinery, and the date extensions on ASTM methods are removed based on an EPA comment that current methods should be used. ASTM Method D3588-93 is removed at adoption because it is not appropriate for determining sulfur content. Adopted new §112.235(e) allows the use of alternate methods after approval by the executive director and the EPA.

§112.236, Recordkeeping Requirements

The commission adopts new §112.236 to specify the records required to be maintained by the P66 Borger Refinery. All records are required to be maintained for at least five years. Based on an EPA comment that the format must be specified, a clause is added at adoption that the records must be in written or electronic format. Adopted new §112.236(1) requires all monitoring data and sampling analyses, including CEMS data for exhaust flow rates and sulfur composition data, used to quantify emissions be maintained. For the two FCCUs during authorized MSS activities, the specific emissions limit based on the flow rate (from §112.232(b)(5) and (6)) for each block one-hour period is also required to be recorded. Adopted new §112.236(2) requires maintaining the methods and calculations used for determining compliance. Adopted new §112.236(3) requires maintaining documentation of any exceedance and copies of the related reports submitted to the TCEQ; at adoption, wording is added to specify that the exceedance reports are those submitted to the appropriate regional office. Proposed §112.236(4) is changed at adoption to require maintaining copies of test reports and associated records in place of all emission test data and records. The test reports and associated records are sufficient to document compliance and are less burdensome for Phillips 66.

§112.237, Reporting Requirements

The commission adopts new §112.237(a) to specify the reporting to TCEQ Region 1 required from each site if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum: the date of, and an explanation of, each exceedance and noncompliance with any required stack parameter; whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for, or a malfunction of, the source or control device; the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s); and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO_2 is released, the provisions of §101.211 also apply, as do the reporting requirements for emissions events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section. Adopted new §112.237(b) requires the owners or operators of the P66 Borger Refinery to submit within 60 days of testing the results of emissions testing for determining compliance with the emission standards of SO_2 to the TCEQ

Office of Compliance and Enforcement, the appropriate TCEQ regional office, and any local air pollution control agency having jurisdiction.

The commission adopts new §112.237(c) as contingency measures if the EPA determines that the Hutchinson County SO_2 nonattainment area does not achieve attainment on or after the attainment date; based on a comment from the EPA, language is added at adoption throughout the subsection to include triggering the contingency measure if the EPA determines that the nonattainment area failed to meet RFP. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors, if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this subchapter and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO_2 source, the wind speed and direction at the monitor with the NAAQS exceedance, and any emissions events that may have occurred. Based on comments that the basis for an EPA finding of failure to attain would affect the information that is useful in determining what contributed to the finding, wording is added at adoption to §112.237(c)(2) to clarify that review and consideration of meteorological data are only needed if the EPA's finding is based on ambient air monitor data or modeling data. To clarify what must be covered in an FSA in all cases from what must be covered only if the EPA's determination is based on ambient air monitor data or modeling data, the provisions are separated into §112.237(c)(2)(A) and (B), respectively. Additionally, based on comments, the term "exceptional event" is changed at adoption to "emissions event" for clarity. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

§112.238, Compliance Schedule

The commission adopts new §112.238 to specify the date by which each source identified in §112.230 is required to comply with the requirements of Division 4. At adoption, the phrase "as soon as practicable, but" is removed from before "no later than January 1, 2025" based on an EPA comment that the wording is not enforceable and other comment that the wording makes the actual compliance date uncertain.

Division 5, Requirements for the Tokai Borger Carbon Black Plant

§112.240, Applicability

The commission adopts new §112.240 to specify that the new rules apply to sources at the Tokai Borger Carbon Black Plant at which the agency has determined emissions contribute to potential exceedances of the 2010 SO_2 NAAQS based on modeling conducted for the concurrently adopted SIP revisions discussed elsewhere in this preamble. The adopted rule provisions in new Division 5 are site-specific and specified by the current name and street address. The address of the site is added at adoption and the RN removed because the provision proposed as §112.202(a), which would have required approval for changing the RN, is removed at adoption. The adopted rules are also EPN specific and specified by the current names of affected existing sources and their EPNs as documented in a specified version of the NSR permit or the name and EPN used in attainment demonstration modeling for sources to be authorized and constructed. The adopted requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected sources.

The TCEQ conducted attainment demonstration modeling for sources in the Hutchinson County nonattainment area using the emission rates (during normal operations and, when applicable, during authorized MSS activities) from the NSR permit for each site or lower emission rates if needed to demonstrate attainment as well as emission rates provided by the company for sources to be constructed. As discussed elsewhere in this preamble, the owners and operators of the five sites in the Hutchinson County SO_2 nonattainment area committed to lowering emission rates. The lower emission rates were the rates used in the attainment demonstration modeling, which also used stack parameters supplied for each emissions point. Modeling was conducted to determine which specific emissions points have emissions that contribute greater than the SIL of 3 ppb (i.e., 7.85 $\mu g/m^3$) to the modeled design value concentrations at any receptor in the Hutchinson County SO_2 nonattainment area. If the emissions point had a contribution to the modeled design value that was less than the SIL, it is not included in the rules. If the emissions point had a contribution to the modeled design value that was greater than the SIL, its emission rates are specified in the rules. When modeled collectively with all emissions sources in the nonattainment area, the emission rates specified in the rule resulted in modeled design values below the NAAQS.

Instead of specifying the site by its RN, the address of the site is added at adoption because the provision proposed as §112.242(a), which would have required approval for changing the RN, is removed at adoption. This will eliminate the need for a SIP revision if the RN changes.

Based on comments, the last sentence of §112.240(a) is removed. This change does not affect when the rules no longer apply because their removal from the SIP must be approved by the EPA, which was the intent of the proposed language. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. After the EPA's approval, the rules are enforceable by both the EPA and the TCEQ. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

Adopted §112,240(b) specifies the sources at the Phillips 66 Borger Refinery that are affected by Division 5. The sources are designated by the name and EPN used in the MAERT specified by date for the site's NSR Permit, except for the New Flare (EPN New Flare) that may be constructed but is not yet represented in the site's NSR permit.

§112.241, Definitions

The commission adopts new §112.241 to define five terms used in Division 5. The commission adopts new §112.241(1) to define block one-hour average. At adoption, a definition for continuous monitoring is added as new §112.241(2) based on an EPA comment. The subsequent definition is renumbered. Adopted new §112.241(3), which was proposed as §112.241(2), defines the Hutchinson County SO_2 nonattainment area; at adoption, the citation of the *Federal Register* publication is removed because it is not needed. The commission proposed the prior §112.241(3) to define pipeline quality natural gas, but this def-

inition is not needed and is removed at adoption based on an EPA comment. Adopted new §112.241(4) defines production unit, which is used throughout the provisions for the two carbon black plants. Adopted new §112.241(5) defines tail gas, which is used throughout the provisions for the two carbon black plants.

§112.242, Control Requirements

Proposed §112.242(a), which would have prohibited an owner or operator of the Tokai Borger Carbon Black Plant from contravening the control requirements by changing the RN or EPN designation of any emissions point without prior approval by the agency and the EPA, is removed at adoption based on public comment. The EPA stated that the only manner of approval for such a change would be a full SIP revision, which is overly burdensome. The subsequent subsections are re-lettered.

Adopted new §112.242(a), which was proposed as §112.242(b), provides SO_2 emission limits during normal operations on a block one-hour average for the Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) of 109.10 lb/hr when the boilers, singly or together, are operating; the Plant 1 Dryer Stack (EPN 121) of 441.40 lb/hr; and the Plant 2 Dryer Stack (EPN 122) of 595.60 lb/hr. If the new flare is not authorized and constructed, adopted new §112.242(b), which was proposed as §112.242(c), provides SO_2 emission limits on a block one-hour average when neither Boiler 1 nor 2 is operating: for the Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1) of 420.00 lb/hr; the Plant 1 Dryer Stack (EPN 121) of 250.00 lb/hr; the Plant 2 Dryer Stack (EPN 122) of 400.00 lb/hr; and specifies that there can be no SO_2 emissions from the Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) during this period. At adoption, the wording in §112.242(b) and (c) "both Boilers 1 and 2 are not operating" is changed to "neither Boiler 1 nor Boiler 2 is operating" for clarity; the proposed wording might have been misunderstood to mean that the emission limits apply if only one boiler is operating. If the new flare (EPN New Flare) is authorized, constructed, and operated, adopted new §112.242(c), which was proposed as §112.242(d), provides SO_2 emission limits on a block one-hour average when neither Boiler 1 nor 2 is operating for the new flare (EPN New Flare) of 806.60 lb/hr; the Plant 1 Dryer Stack (EPN 121) of 272.50 lb/hr; the Plant 2 Dryer Stack (EPN 122) of 436.00 lb/hr; and specifies that there can be no SO_2 emissions from the Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) during this period. Adopted §112.242(d) prohibits combusting tail gas in any source whose emissions are not routed to EPN 121 (Plant 1 Dryer Stack), EPN 122 (Plant 2 Dryer Stack), EPN Flare-1 (Plant 1, Unit 1 Primary Bag Filter Flare), or EPN New Flare (New Flare).

Adopted new §112.242(e), prohibits tail gas from being combusted in a source whose emissions are not routed to EPN 119 (Boiler 1 and 2 Common Stack), EPN 121 (Plant 1 Dryer Stack), EPN 122 (Plant 2 Dryer Stack), EPN Flare-1 (Plant 1, Unit 1 Primary Bag Filter Flare), or EPN New Flare (New Flare 30 TAC §112.242(e), which was proposed as §112.242(f), is changed at adoption based on a comment to prohibit sending sulfur or sulfur containing compounds to these flares after the compliance date in adopted new §112.248, which only allows the use of current Flare 1 (EPN Flare-1) for controlling sulfur-containing materials but allows the use of these flares for controlling waste gases with no sulfur without the use of supplemental fuels with any sulfur-containing compounds. The prohibitions on the four flares are reorganized in §112.242(e) and §112.242(f) for clarity.

Adopted new §112.242(f), which was proposed as §112.242(g) to prohibit the use of all four flares for the carbon black reactors (EPNs Flare-1, Flare-2, Flare-3, and Flare-4) after the compliance date is changed at adoption based on a comment to prohibit sending any waste gases with sulfur to or using supplemental fuel with sulfur for EPN Flare 1 if the new flare EPN New Flare is constructed. The other three flares are removed from this subsection at adoption because the prohibition on their use for this purpose is already provided in adopted §112.242(e).

Adopted new §112.242(g) was proposed as §112.242(h) to prohibit the operation of the Plant 1 Number 1 and Number 2 Dryer Purge Stack (EPN 1) and Plant 1 Number 3 and Number 4 Dryer Purge stack (EPN 3) after the compliance date in adopted new §112.248. New §112.242(g) is changed at adoption based on a comment to only prohibit routing sulfur containing compounds to these sources so they can be operated with other supplemental fuels to combust fuels and waste gases with no sulfur. The company agreed to no longer emit SO_2 through Plant 1 Number 1 and Number 2 Dryer Purge Stack (EPN 1) and Plant 1 Number 3 and Number 4 Dryer Purge Stack (EPN 3) but may use these stacks for emissions from combustion of fuels without sulfur.

Adopted new §112.242(h), which was proposed as §112.242(i) to specify that if the new flare (EPN New Flare) is authorized and constructed, it must be used in place of the four existing flares (EPNs Flare-1, Flare-2, Flare-3, and Flare-4), is changed at adoption based on a comment to allow the use of the existing flares for waste gas and supplemental fuel streams without sulfur, under specified conditions. Proposed §112.242(h)(1), which proposed to require that EPN New Flare receive all waste gases instead of the other four flares, is removed at adoption, and the subsequent paragraphs are renumbered. Adopted new §112.242(h)(1), which was proposed as §112.242(h)(2), specifies that EPN New Flare may only receive tail gas when neither Boiler 1 nor 2 is operating. Adopted new §112.242(h)(2), which was proposed as §112.242(h)(3), was changed at adoption based on an EPA comment that changes to stack heights would require remodeling and now specifies that EPN New Flare is required to have a stack height of 60.35 meters and to be in the specific location where it was depicted in modeling.

Adopted new §112.242(i), which was proposed as §112.242(j), specifies that if the new flare (EPN New Flare) is not authorized, constructed, and operated, the Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1) may only receive tail gas when neither Boiler 1 nor 2 is operating.

Adopted new §112.242(j), which was proposed as §112.242(k) to allow the owner or operator to request an alternative SO_2 emission limit, is changed at adoption to reference AMOC provisions that were submitted in the comments from Phillips 66. The commission solicited comments on whether an additional mechanism to submit an application for alternative SO_2 emission limits, similar to the AMOC provisions 30 TAC Chapter 115, Subchapter J, Division 1, are appropriate to include in Subchapter F. Based on a comment received from the EPA that the only approvable request for change is a full SIP revision, proposed §112.242(k) is not adopted as proposed but is instead changed to a provision allowing the submittal of an application for an AMOC. The provisions for AMOCs are adopted as new §112.232(k) and are cross-referenced in this subsection. The specific AMOC rule text is adopted in Division 4.

§112.243, Monitoring Requirements

At adoption, the wording "the owner or operator shall" is added to §112.243(a) - (d), (f) - (h), and (j) to clarify that the requirements apply to the owner or operator. Adopted new §112.243(a) requires the installation, maintenance, and calibration of a CEMS

on Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) and specifies the applicable federal requirements for the combined stack of the two boilers. At adoption, the citations of the federal requirements are included in the subsection language rather than as separate paragraphs for brevity. The requirement to comply with 40 CFR 60, Appendix B, Performance Specification 6 is explicitly stated at adoption to ensure that emissions are accurately determined. At adoption, the words "sulfur dioxide" are added before the acronym "SO_2" for clarity.

To determine emissions based on a mass balance for each production unit, adopted new §112.243(b)(1) and (2), respectively, require monitoring, which is increased at adoption from daily to twice daily four hours apart in §112.243(b)(1) based on an EPA comment. The monitoring must use the test methods in adopted new §112.245 of the sulfur content by weight of each grade of produced carbon black and twice daily monitoring using the test methods in adopted new §112.245 of the carbon black oil fed to each production unit. Adopted new §112.243(b)(3) requires hourly measurements of the amount of each grade of carbon black produced by each carbon black production unit.

Adopted new §112.243(c) requires installing, calibrating, maintaining, and operating totalizing fuel flow meters with an accuracy variation of no more than 5% to continuously monitor carbon black oil feed rate to each carbon black production unit. Adopted new §112.243(d) requires installing, calibrating, maintaining, and operating totalizing tail gas flow meters with an accuracy variation of no more than 5% to continuously monitor tail gas feed rate to each source combusting this fuel.

Adopted new §112.243(e) requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions; use of an appropriate data substitution process, which is the most accurate method available, must be used to obtain all missing or invalidated monitoring data for the emissions point.

Changes are made at adoption to adopted new §112.243(f), which was proposed to require calculation, using a mass balance equation provided in proposed §112.243(j), of total SO_2 emissions from each production unit. Based on an EPA comment that calculation methods need to be more specific, the calculation methods for determining SO_2 emissions from production units are adopted in separate subsections §112.243(f) - (h) and (j). Adopted §112.243(f) is changed from covering all production units to only covering the Plant 1 Dryer Stack (EPN 121), and the equation for determining its emissions is added as Figure 30 TAC §112.243(f), which is a summation of the SO_2 from the sulfur in tail gas from each production unit. New §112.243(g) was proposed to require calculating SO_2 emissions from each production unit but is changed at adoption to provide for determining emissions from the Plant 2 Dryer Stack (EPN 122) in the same manner as for the Plant 1 Dryer Stack (EPN 121). Proposed §112.243(h) is changed at adoption to provide an equation for determining emissions from EPN Flare 1 or EPN New Flare in the same manner as for the Plant 1 Dryer Stack (EPN 121) and Plant 2 Dryer Stack (EPN 122). All three new equations are summations of the emissions from each production unit routed to that EPN as calculated under §112.243(j).

Adopted new §112.243(i) requires demonstration of compliance on an hourly basis (calculated as a block one-hour average) for the emissions points specified in §112.242(a) - (c). At adoption, the term "actual emissions" is changed to "emissions" for clarity because these are calculated emissions. In addition, the term "operational scenario" is removed at adoption because it is not defined and is not necessary to identify all emission limits.

Based on a comment from EPA, §112.243(j) is changed at adoption to provide a more detailed equation for determining the emissions generated by each production unit. At adoption, the word "from" is changed to "generated by" for clarity.

A new provision is added at adoption as §112.243(k) to allow the use of a CEMS to directly monitor emissions in lieu of the material balance to monitoring emissions from the dryers.

A new provision is added at adoption as §112.243(l) based on comments. The new provision allows the executive director of the agency to approve minor modifications of monitoring methods. As in the similar provision in 30 TAC §115.725(m), executive director approval and validation of the modified method using 40 CFR Part 63, Appendix A, Test Method 301, as applicable, is required for a modified monitoring method to be used. The language specifies that minor modifications include increases of the frequency of monitoring and replacements of parametric monitoring with a CEMS provided the quality control, quality assurance, and data validation requirements and accuracy specifications are specified and are at least as stringent as required in the rules.

§112.244, Testing Requirements

At adoption, the wording "the owner or operator shall" is added to §112.244(a) - (d) to clarify that the requirements apply to the owner or operator The commission adopts new §112.244 to specify the testing required for fuels, raw materials, produced carbon black and monitoring equipment used measure sulfur content of exhaust gas or the sulfur content at the inlet of the flares. Adopted new §112.244(a) requires initial compliance demonstration testing by the compliance date for the emission points listed in §112.242(a) - (c) but excepts flares. The emission points for which initial compliance demonstration testing are: EPN 119 (Boiler Stacks, Boiler 1 and 2 Common Stack); EPN 121 (Plant 1 Dryer Stack); and EPN 122 (Plant 2 Dryer Stack) since it excepts flares from the requirement. The acronym SO_2 is removed at adoption because it is not used again in the section.

Adopted new §112.244(b) requires that the test methods in adopted new §112.245 be used for the initial demonstration of performance testing. Adopted new §112.244(c) requires that performance tests be conducted when operating the source as close to the maximum rated capacity as practicable.

Adopted new §112.244(d) requires that additional performance be conducted if requested by the executive director using the test methods in §112.245. At adoption, a provision is added to require that the owner or operator perform additional demonstrations of compliance at least every five years. Adopted new §112.244(d) specifies that when analysis of carbon black, carbon black oil, and fuels is required by this division, the test methods in adopted new §112.245(e) must be used.

§112.245, Approved Test Methods

The commission adopts new §112.245 to specify the test methods required to comply with the testing requirements in adopted new §112.244. Adopted new §112.245(a) requires that the EPA Test Methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B be used for performance testing required for the Tokai Borger Carbon Black Plant unless an alternate test method is approved by the EPA. Adopted new §112.245(b) specifies that testing of exhaust gases must be done using EPA Test Method 6 or 6C. Adopted new §112.245(c) specifies the test methods to

be used for testing flare compliance; although these federal requirements are specific to refineries, the rule requires the Tokai Borger Carbon Black Plant to follow those requirements because they are appropriate for ensuring that the monitoring provides accurate emission data. Adopted new §112.245(d) specifies the test methods to be used for analyzing fuels and carbon black oil for sulfur content in Division 5. At adoption, test Methods D3358-93 and D1945-91 are removed and replaced with Method D4294, which is a more appropriate test method for carbon black oil based a comment from EPA. Adopted new §112.245(e) specifies the test method for carbon black at both carbon black plants. Adopted new §112.245(f) allows the use of alternate methods after approval by the executive director and the EPA.

§112.246, Recordkeeping Requirements

The commission adopts new §112.246 to specify the records required to be maintained by the Tokai Borger Carbon Black Plant. All records are required to be maintained for at least five years. Based on an EPA comment that the format must be specified, a clause is added at adoption specifying that the records must be in written or electronic format. Adopted new §112.246(1) requires records (in units of lb/hr) of the amount of each grade of produced carbon black from each production unit. Adopted new §112.246(2) requires records of twice-daily sampling of the sulfur content of carbon black oil feed to each production unit. Adopted new §112.246(3) requires records of daily sampling of the sulfur content of each grade of produced carbon black from each production unit. Adopted new §112.246(4) requires continuous records of the flow rate of carbon black oil to each production unit. Adopted new §112.246(5) requires continuous records of the flow rate of tail gas from each production unit to each combustion device using this fuel. Adopted new §112.246(6) the mass balance calculations of emissions of SO_2; the words "sulfur dioxide" are added at adoption before the acronym "SO_2" for clarity. Adopted new §112.246(7) requires records of continuous emissions data from SO_2 CEMS units.

Adopted new §112.246(8), which was proposed to require maintaining copies of required emissions test data and records, is changed at adoption to require maintaining documentation of any exceedances of emission limits or standards and copies of any exceedance reports submitted to the regional office. A new §112.246(9) is added at adoption to require maintaining copies of any performance tests and associated records.

§112.247, Reporting Requirements

The commission adopts new §112.247(a) to specify the reporting to TCEQ Region 1 required by the owner or operator of the Tokai Borger Carbon Black Plant if an affected emissions point exceeds an applicable emission limit or fails to meet a required stack parameter. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum: the date of, and an explanation of, each exceedance and noncompliance with any required stack parameter; whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for, or a malfunction of, the source or control device; the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s); and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO_2 is released, the provisions of §101.211 also apply, as do the reporting requirements for emissions events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

Adopted new §112.247(b) requires the owner or operator of the Tokai Borger Carbon Black Plant to submit within 60 days of testing the results of emissions testing for determining compliance with the emission standards of SO_2 to the TCEQ Office of Compliance and Enforcement, the appropriate TCEQ regional office, and any local air pollution control agency having jurisdiction.

The commission adopts new §112.247(c) as contingency measures if the EPA determines that the Hutchinson County SO_2 nonattainment area does not achieve attainment on or after the attainment date; based on a comment from the EPA, language is added at adoption throughout the subsection to include triggering the contingency measure if the EPA determines that the nonattainment area failed to meet RFP. If the EPA makes such a determination, the TCEQ will notify the owner or operator of each company (including successors, if appropriate) of the determination and that these contingency measures are triggered. The owner or operator of each company must conduct a full system audit of all their sources covered in this division and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from each SO_2 source, the wind speed and direction at the monitor with the NAAQS exceedance, and any emissions events that may have occurred. Based on comments that the basis for an EPA finding of failure to attain would affect the information that is useful in determining what contributed to the finding, wording is added at adoption to §112.247(c)(2) to clarify that review and consideration of meteorological data are only needed if EPA's finding is based on ambient air monitor data or modeling data. To clarify what must be covered in an FSA in all cases from what must be covered only if the EPA's determination is based on ambient air monitor data or modeling data, the provisions are separated into §112.247(c)(2)(A) and (B), respectively. Additionally, based on comments, the term "exceptional event" is changed at adoption to "emissions event" for clarity. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

§112.248, Compliance Schedule

The commission adopts new §112.248 to specify the date by which each source identified in §112.240 is required to comply with the requirements of this division. At adoption, the phrase "as soon as practicable, but" is removed from before "no later than January 1, 2025" based on an EPA comment that the wording is not enforceable and other comment that the wording makes the actual compliance date uncertain.

Subchapter G, Requirements in the Navarro County Nonattainment Area

§112.300, Applicability

The commission adopts new §112.300 to establish applicability for the only source in Navarro County to which the new requirements apply, which is the lightweight aggregate kiln and its control system at the Streetman Plant. The NSR Permit 5337 MAERT dated May 29, 2020, designated the emissions point as EPN E3-1. Although the rule provisions are site-specific and specified by the current name and the address of the site and the

affected source (including the EPN in a specified version of the NSR permit), the adopted rule specifies that the requirements will continue to apply regardless of any changes of ownership, control, or documentation of the affected source, unless removal of any requirement is approved by the EPA. The address of the site is added at adoption because the provision proposed as §112.302(a), which would have required approval for changing the RN, is removed at adoption.

Instead of specifying the site by its RN, the address of the site is added at adoption because the provision proposed as §112.302(a), which would have required approval for changing the RN, is removed at adoption. This will eliminate the need for a SIP revision if the RN changes.

The TCEQ conducted attainment demonstration modeling for the source in the Navarro County SO_2 nonattainment area using emission rates lower than authorized in the NSR permit that were provided by the company and are needed to demonstrate attainment. There is only one emissions point in the Navarro County SO_2 nonattainment area that contributed to nonattainment of the 2010 SO_2 NAAQS, so this was the only emissions point modeled. The company committed to reducing the emission rate sufficiently for air dispersion modeling to demonstrate attainment.

Based on comments, the last sentence of §112.300(a) is removed. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA, which was the intent of the proposed language. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

§112.301, Definitions

The commission adopts new §112.301 to define four terms used in Subchapter G. At adoption, a definition for continuous monitoring is added as new §112.301(1) based on an EPA comment. The subsequent definitions are renumbered. The commission adopts new §112.301(2), which was proposed as §112.301(1), to define lightweight aggregate kiln, which is the only type of source contributing to nonattainment in the Navarro County nonattainment area. For clarity, new §112.301(3), which was proposed as §112.301(2). is changed at adoption based on a comment from Arcosa to a definition based on industry standards instead of the one proposed that defined lightweight aggregate material based on a definition from the EPA. Adopted new §112.301(4), which was proposed as §112.301(3), defines the Navarro County SO_2 nonattainment area; at adoption, the citation of the *Federal Register* publication is removed because it is not needed. Based on comments from Arcosa and the EPA, proposed §112.301(4) is struck at adoption; because of the change in monitoring for the lightweight aggregate kiln, a definition for pipeline quality natural gas is not needed.

§112.302, Control Requirements

The commission adopts new §112.302 to specify the control requirements that are required for the lightweight aggregate kiln and any associated control device (EPN E3-1). The adopted rules include only the single emissions point from the kiln, which is currently from the stack of the water scrubber for controlling particulate emissions but may change if the company installs an additional control device for SO_2 or makes other changes. If additional emissions points are added to the lightweight aggregate kiln or its control system for any reason (such as a bypass), the same requirements apply to them. The adopted control requirements were determined for potential emissions points based on modeling conducted by the agency. The amount of SO_2 in the exhaust gases from the lightweight aggregate kiln must be controlled with a control device, by limiting the sulfur content of both the fuel combusted and raw materials processed, or by a combination of these methods. The limits apply when the lightweight aggregate kiln is operated or otherwise produces exhaust gases containing SO_2, such that the emission limits in this section are not exceeded during normal operations or during authorized MSS activities.

Proposed §112.302(a), which would have prohibited the owner or operator from contravening the control requirements by changing the EPN designation of the lightweight aggregate kiln's emission point (EPN E3-1) without prior approval by the agency and the EPA, is removed at adoption based on public comment. The EPA stated that the only manner of approval for such a change would be a full SIP revision, which is overly burdensome. The subsequent subsections are re-lettered.

Adopted new §112.302(a), which was proposed as §112.302(b), is changed at adoption based on a comment from the company to specify the minimum stack height for the kiln or any new control device, as well as the stack locations allowed. The company has not determined the type of control device to be used to meet the emission rate limitations in this section. Based on comments from Arcosa, the stack parameters are revised at adoption, including increasing the minimum stack height, and specifying the location of the stack within a certain area of the site. At adoption, a sentence is added for clarity that any bypass must vent through the stack. Based on an EPA comment, a typographical error is corrected at adoption by adding "aggregate" between the words "lightweight kiln" in the proposed subsection.

At adoption, the limits for SO_2 emissions, exhaust gas velocity, and temperature in §112.302(b), which was proposed as §112.302(c), are revised based on a comment from Arcosa. The adopted emission limit based on the attainment demonstration modeling that is sufficient to model attainment is 222.00 lb/hr SO_2. The stack parameters associated with this limit are the minimum exhaust gas temperature of 117 degrees Fahrenheit and the minimum stack velocity of 42.5 feet per second. Proposed §112.302(d) is struck at adoption based on Arcosa's comment because an alternate emission limit is not needed. The attainment demonstration modeling showed that the revised emission limit and associated stack parameters are sufficient to model attainment. Based on Arcosa's commitment in its comments to install a CEMS, proposed §112.302(e) and (f) are struck at adoption. Monitoring of fuels is not needed with a CEMS, which Arcosa committed to installing in its comments.

Proposed §112.302(g) would have allowed the owner or operator to request alternate SO_2 emission limits. The subsection is removed at adoption based on an EPA comment that these changes are not approvable unless submitted as full SIP revisions. The provision is not needed in the rules for such action to be allowed. Instead, adopted §112.302(c), which was proposed as §112.302(g), is changed at adoption to include AMOC provisions based off language submitted in the comments from Phillips 66. The commission solicited comments on whether an additional mechanism to request alternative SO_2 emission limits, similar to the AMOC provisions 30 TAC Chapter 115, Subchapter J, Division 1, are appropriate to include in the adopted

rules. Although there were no comment supporting an AMOC for Subchapter G, it is included at adoption for consistency with Subchapters E and F of this chapter.

§112.303, Monitoring Requirements

Adopted new §112.303 provides the monitoring requirements for the lightweight aggregate kiln and future control at the Streetman Plant. Based on EPA and Arcosa comments, the introductory paragraph is changed at adoption to require a CEMS to directly monitor SO_2 emissions from the stack. New §112.303 was proposed to require monitoring of the amounts and sulfur contents of fuels and raw materials to allow calculation of SO_2 emissions. Because Arcosa committed to installing a CEMS, the provisions are changed at adoption to require monitoring with the CEMS that is installed, operated, calibrated, and maintained according to the manufacturer's specifications and used in accordance with 40 CFR §60.13 and 40 CFR Part 60, Appendix B, Performance Specification 2 and 6 and Appendix W. New t§112.303(1) was proposed to require monitoring the amount of raw materials processed each hour; because this monitoring is not needed with a CEMS, the provision is changed at adoption to require that the CEMS monitor SO_2 emissions from the stack. New §112.303(2) was proposed to require monitoring the amount of each type of fuel used each hour; because this monitoring is not needed with a CEMS, the provision is removed at adoption. New §112.303(3) was proposed to require monthly analysis of the sulfur content of natural gas; because this monitoring is not needed with a CEMS, the provision is removed at adoption.

Proposed §112.303(4) required weekly monitoring of the average sulfur content of coal and coke fuels; because this monitoring is not needed with a CEMS, the provision is removed at adoption. Proposed §112.303(5), which would have required the monitoring of average sulfur content of raw materials but is not needed with a CEMs, is removed at adoption. The subsequent paragraphs are renumbered.

Adopted §112.303(2), which was proposed as §112.303(6), requires that the CEMS monitor the temperature and velocity of exhaust gases. The option of monitoring at the outlet of the control device is removed at adoption because all emissions must be through the stack, which must be monitored with the CEMS. Adopted §112.303(3), which was proposed as §112.303(7) to require quality control of monitoring data, requires the use of an appropriate QA/QC process to validate continuous monitoring data for at least 95% of the time the monitored emissions point has emissions and use of an appropriate data substitution process, which is the most accurate method available, to obtain all missing or invalidated monitoring data for the emissions point.

A new provision is added at adoption as §112.303(4) based on comments to allow the executive director of the agency to approve minor modifications of monitoring methods. As in the similar provision in 30 TAC §115.725(m), executive director approval and validation of the modified method using 40 CFR Part 63, Appendix A, Test Method 301, as applicable, is required for a modified monitoring method to be used. The language specifies that minor modifications include increases of the frequency of monitoring and replacements of parametric monitoring with a CEMS provided the quality control, quality assurance, and data validation requirements and accuracy specifications are specified and are at least as stringent as required in the rules.

§112.304, Testing Requirements

The commission changes new §112.304 at adoption to specify the testing required for a CEMS, rather than for fuels, raw materials, and the exhaust vent, to comply with the monitoring requirements in adopted new §112.303. Because calibration of a CEMS requires performance testing after its installation but before it is certified as accurate, new §112.304(a) is changed at adoption to require the owner or operator to performance test within 60 days of installation of the CEMS, which allows at least 30 days for calibration of the CEMS to be completed before the compliance date. Proposed §112.304(b) - (f) are struck at adoption because the testing that was proposed is not needed when a CEMS is used. Proposed new §112.304(g) is re-lettered as §112.304(b) at adoption and requires conducting additional performance testing if requested by the executive director using test methods specified in §112.305.

§112.305, Approved Test Methods

The commission adopts new §112.305 to specify the test methods that are required to comply with the testing requirements in adopted new §112.304. The test methods relate to the testing requirements in adopted new §112.304 and are specified by type of testing; changes are made at adoption to cover the requirements for the testing needed for a CEMS. Adopted new §112.305(a) requires EPA Test Method 6 or 6C for testing SO_2 in exhaust gases; language is added at adoption to specify that the requirement applies during the initial performance test and relative accuracy test audits. Adopted new §112.305(b) specifies the other test methods to be used in performance tests and relative accuracy test audits. Proposed §112.305(c) and (d) are removed at adoption because testing of fuels and raw materials are not needed with a CEMS. Proposed new §112.305(e) is re-lettered as §112.305(c) at adoption and allows the use of alternate testing methods after prior approval by the executive director and the EPA.

§112.306, Recordkeeping Requirements

The commission adopts new §112.306 with changes at adoption to specify the records required to be maintained for at least five years related to monitoring with a CEMS instead of the proposed provisions for monitoring fuels and raw materials. Based on an EPA comment that the format of records must be specified, a clause is added at adoption to specify that the records must be in written or electronic format. Proposed §112.306(1) - (4), (6) and (7) are removed because this monitoring is not needed with a CEMS, so no records are required. Proposed §112.306(5) is renumbered as §112.306(1) at adoption and requires records of the continuous monitoring of exhaust gas temperature and velocity, with the sulfur content of the exhaust gas added at adoption to reflect the data generated by the CEMS to be installed.

Proposed new §112.306(8) is renumbered as §112.306(2) at adoption and requires records of exceedances of emission limits or standards and copies of all exceedance reports submitted to the appropriate regional office. The provision is added to be consistent with the requirements for other sites. Proposed new §112.306(9) is renumbered as §112.306(3) at adoption; the owner or operator is required to maintain a copy of each performance test report and relative accuracy test audit report and associated records.

§112.307, Reporting Requirements

The commission adopts new §112.307(a) to specify the reporting required from the site if an affected emissions point exceeds the applicable SO_2 emission limit for the stack parameters at any given time or if required stack parameters are not met. The reports are due by March 31 of the year following the year in which the exceedance occurs. The reports are required to include at a minimum: the date of, and an explanation of, each exceedance

and noncompliance with any required stack parameter; whether the exceedance or stack parameter noncompliance was concurrent with an authorized MSS activity for, or a malfunction of, the source or control device; the actions taken by the owner or operator to address the exceedance or stack parameter noncompliance and the cause(s); and a certification that the information provided is accurate. A report is required regardless of whether the exceedance occurred from planned or unplanned events or during startup or shutdown. If a reportable quantity (500 pounds or more) of SO_2 is released, the provisions of §101.211 also apply, as do the reporting requirements for emissions events in §101.201 if the criteria therein are met. The reporting deadline of March 31 is intended to provide enough time for sites to determine the root cause of each exceedance to include in the report required by this section.

The commission adopts new §112.307(b) to require the owner or operator to submit within 60 days of testing the results of emissions testing for determining compliance with the emission standards of SO_2 to the appropriate TCEQ regional office. The commission adopts new §112.307(c) as contingency measures if the EPA determines that the Navarro County SO_2 nonattainment area does not achieve attainment on or after the attainment date; based on a comment from the EPA, language is added at adoption to throughout the subsection include triggering the contingency measure if the EPA determines that the nonattainment area failed to meet RFP. If the EPA makes such a determination, the TCEQ will notify the owner or operator of the Streetman Plant (including successors, if appropriate) of the determination and that these contingency measures are triggered. The owner or operator must conduct a full system audit of the lightweight aggregate kiln and its emissions controls and send a report of the results to the TCEQ executive director within 90 days of the notification from the TCEQ. The audit must include at a minimum a root cause analysis of the cause(s) of the failure to attain, including for the days that monitored exceedances occurred, a review of the hourly mass emissions from the lightweight aggregate kiln and its emissions controls, the wind speed and direction at the monitor with the NAAQS exceedance, and any emissions events that may have occurred. Based on comments that the basis for an EPA finding of failure to attain would affect the information that is useful in determining what contributed to the finding, wording is added at adoption to §112.307(c)(2) to clarify that review and consideration of meteorological data are only needed if the EPA's finding is based on ambient air monitor data or modeling data. To clarify what must be covered in an FSA in all cases from what must be covered only if the EPA's determination is based on ambient air monitor data or modeling data, the provisions are separated into §112.307(c)(2)(A) and (B), respectively. Additionally, based on comments, the term "exceptional event" is changed at adoption to "emissions event" for clarity. The provisions are included in the Reporting Requirements section of the rules because a report on the full system audit must be submitted to the executive director.

§112.308, Compliance Schedule

The commission adopts new §112.308 to specify the date by which the source identified in §112.300 is required to comply with the requirements of Subchapter G. At adoption, the phrase "as soon as practicable, but" is removed from before "no later than January 1, 2025" based on an EPA comment that the wording is not enforceable and other comment that the wording makes the actual compliance date uncertain.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking's purpose is to create state and federally enforceable emission limits and stack parameters as well as accompanying compliance obligations (monitoring, recordkeeping, reporting, and testing).

The adopted rulemaking would create new rule sections. The revisions to Chapter 112 would be used as control strategies for demonstrating attainment of the 2010 SO_2 NAAQS in the areas designated nonattainment, as discussed elsewhere in this preamble.

The adopted rulemaking implements requirements of the FCAA, 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified

in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted adopted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the required attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of the FCAA, 42 USC, §7410 the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Berry v. State Farm Mut. Auto Ins. Co*., 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); *Texas Citrus Exchange v. Sharp*, 955 S.W.2d 164 (Tex. App. Austin 1997); *Texas Dept. of Protective and Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170 (Tex. 2004); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

As explained previously in this preamble, the specific intent of the adopted rulemaking is to create state and federally enforceable emission limits and stack parameter requirements as well as accompanying compliance obligations (monitoring, recordkeeping, reporting, and testing) that would be used as control strategies for demonstrating attainment of the 2010 SO_2 NAAQS in the areas designated nonattainment. Thus, the adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because it does not meet the definition of a "major environmental rule," and also does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period and received comments on the proposed analysis. The response to comments section of this preamble includes responses to these comments.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the adopted rulemaking is to create state and federally enforceable emission limits and stack parameter requirements as well as accompanying compliance obligations (monitoring, recordkeeping, reporting, and testing) that will be used as control strategies for demonstrating attainment of the 2010 SO_2 NAAQS in the areas designated nonattainment.

Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

The adopted rulemaking implements requirements of the FCAA, 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that

these areas can be brought into attainment on the schedule prescribed by the FCAA. While the SIP rules will have an impact on the emissions points subject to the emission limits and compliance obligations required by the adopted rules, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The adopted rules fulfill the FCAA requirement for states to create plans including control strategies to attain and maintain the NAAQS, as discussed elsewhere in this preamble. The adopted rules will assist in achieving the timely attainment of the 2010 SO_2 NAAQS and reduced public exposure to SO_2 emissions. The NAAQS are promulgated by the EPA in accord with the FCAA, which requires the EPA to identify and list air pollutants that "cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diversion mobile or stationary sources", as required by 42 USC §7408. For those air pollutants listed, the EPA then is required to issue air quality criteria identifying the latest scientific knowledge regarding on adverse health and welfare effects associated with the listed air pollutant, in accord with 42 USC §7408. For each air pollutant for which air quality criteria have been issued, the EPA must publish adopted primary and secondary air quality standards based on the criteria that specify a level of air quality requisite to protect the public health and welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air, as required by 42 USC §7409. As discussed elsewhere in this preamble, states have the primary responsibility to adopt plans designed to attain and maintain the NAAQS.

Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the coastal management program.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 112 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the compliance date of the rules, revise their operating permit to include the new Chapter 112 requirements.

Public Comment

The commission offered public hearings in Big Spring, Texas, on May 18, 2022, and in Corsicana, Texas, on May 23, 2022, but no one provided comments at either hearing. The commission held a public hearing on May 19, 2022, in Borger, Texas. The comment period closed on June 2, 2022. The commission received comments from Arcosa Incorporated (Arcosa); Chevron Phillips Chemical Company LP (CP Chem); Alon USA, LP, a wholly owned subsidiary of Delek US Holdings (Alon); the United States Environmental Protection Agency, Region 6 (EPA); Phillips 66 Company (Phillips 66); SOLVAY Specialty Polymers USA (Solvay); and Tokai Carbon CB, Ltd. (Tokai).

All commenters supported parts of the rules but commented against other parts, and all commenters suggested changes to parts of the rules. Except for the EPA and Solvay, the requested changes were limited to the parts of the rule applicable to the commenting company.

Response to Comments

General

Comment

Tokai, CP Chem, and Phillips 66 supported the overall objectives of the rulemaking. Alon expressed general support for the rulemaking and its practical approach to attainment. Tokai and Arcosa expressed appreciation for the staff's willingness to develop a flexible approach to ensuring attainment. Solvay expressed support for the state to meet its regulatory obligations. CP Chem noted that it shared the TCEQ's goal of achieving the SO_2 NAAQS in Hutchinson County. Tokai supported the proposed emission limits; and Phillips 66 commended staff's efforts.

Response

The commission appreciates the commenter's support.

Comment

Tokai requested changes to the rules to address technical corrections, provide additional flexibility, and remove requirements that are unreasonable or otherwise exceed federal standards. Alon provided requested rule changes to enhance rule clarity, ensure consistency and alignment with other applicable federal regulations as well as create some efficiencies without compromising attainment of the SO_2 NAAQS. Phillips 66 and CP Chem commented that the rules should be modified to address infeasible requirements, provide compliance flexibility that does not impact the goal of NAAQS attainment, and improve the overall clarity of the rules. Solvay commented that the rule should be adjusted to ensure that they can continue to make timely adjustments to operations to meet ever-changing market conditions. CP Chem commented that the rule should be modified to address infeasible requirements, provide compliance flexibility that does not impact the goal of NAAQS attainment, and improve the overall clarity of the rules.

Response

The commission appreciates the comments and has addressed specific comments as discussed elsewhere in this response to comments, providing flexibility where appropriate.

Comment

Arcosa provided revised cost information for the Fiscal Note, showing their control devices would cost $10 million to install with annual operating costs at $500,000. Arcosa also provided compliance testing and monitoring cost estimates of approximately $100,00 per year.

Response

The commission appreciates the information on the estimated costs to install control devices on a lightweight aggregate kiln. However, it is not clear from Arcosa's comment what type of control is associated with these costs or that they correspond to the control device(s) that will be installed. The information Arcosa provided indicates that the cost estimates in the proposal fiscal note greatly overestimated the capital costs and annual operating costs for Arcosa, so the fiscal impact will be less than anticipated. No change to the rules was made in response to this comment.

Comment

Tokai commented that the TCEQ should conduct the required Takings Impact and Regulatory Impact Analyses. Tokai also commented that to the extent that the TCEQ exceeds its own authority, imposes technically infeasible requirements, or otherwise requires more than is necessary to comply with the FCAA, it disagrees with the TCEQ's position that it is exempt from statutory safeguards on administrative process. Similarly, Phillips 66 commented that the Takings Impact and Regulatory Impact Analyses are required because some provisions exceed federal requirements or render compliance impracticable as described in their comments on the rules, as discussed elsewhere in this response to comments.

Response

The commission disagrees that Takings Impact and Regulatory Impact Analyses are necessary for the reasons stated in the adopted rules. The commenters provided no evidence that the commission is exceeding its authority. The commission has addressed comments made regarding the technical or practical infeasibility of the rules elsewhere in this response to comments and does not agree that the adopted rules pose technical or practical infeasibility issues; therefore, the rules have no effect on the Takings Impact and Regulatory Impact Analyses. As indicated elsewhere in this preamble, the rules are no greater than what is necessary to comply with the FCAA requirement to adopt SIPs to ensure attainment and maintenance of the SO_2 NAAQS and are designed to significantly advance that health and safety purpose. The adopted rules require only what is necessary to comply with the FCAA, as demonstrated by the air dispersion modeling and technical analysis provided in the SIP revisions associated with these adopted rules; therefore, they do not impose a greater burden than is necessary to achieve the health and safety purpose, nor do they exceed a standard set by federal law or state law. Thus, these adopted rules are not subject to the requirement to prepare a Regulatory Impact Analysis under the Texas Government Code, §2001.0225 or a Takings Impact Assessment under the Texas Government Code, Chapter 2007. No change was made in response to these comments.

Comment

Tokai supported changes to the rules to address technical corrections, provide additional flexibility, and remove requirements that are unreasonable or otherwise exceed federal standards. Alon provided requested rule changes to enhance rule clarity, ensure consistency and alignment with other-applicable federal regulations as well as create some efficiencies without compromising attainment of the SO_2 NAAQS. Phillips 66 and CP Chem commented that the rules should be modified to address infeasible requirements, provide compliance flexibility which does not impact the goal of NAAQS attainment, and improve the overall clarity of the rules. Solvay commented that the rule should be adjusted to ensure that they can continue to make timely adjustments to operations to meet ever-changing market conditions. CP Chem commented that the rule should be modified to address infeasible requirements, provide compliance flexibility that does not impact the goal of NAAQS attainment, and improve the overall clarity of the rules.

Response

The commission appreciates the comments and has addressed specific comments as discussed elsewhere in this response to comments, providing flexibility where appropriate.

Comment

Phillips 66 commented that the citation of the EPA's 2014 guidance document for RACT/RACM requirements is incorrect because the requirements arise from 40 CFR §51.100(o), which makes clear that controls must be reasonably available, including both necessary and reasonable for their social, environmental impacts. Many of the changes suggested by Phillips 66 for the Subchapter F Division 4 rules were based on concerns that the proposed requirements are not necessary or feasible and reasonably available, or do not account for social, environmental, or economic impacts.

Response

The commission notes that, while 40 CFR §51.100(o) defines RACT, the EPA's 2014 guidance document provides greater specificity on implementing RACT and RACM for SO_2 nonattainment areas. In evaluating the provisions in these rules, the commission worked with the affected companies to determine the most reasonable way of achieving attainment in the attainment demonstration modeling. The commission understands the societal and economic impacts on the affected companies are in some cases large but also understands the impacts to public health of not attaining the NAAQS and the potential impacts to the affected companies if an approvable SIP is not submitted to the EPA. To find emission rates and stack parameters that allowed an attainment demonstration through modeling, the commission worked with the companies in each nonattainment area to identify the appropriate sources to include in the rules and the emission limits and stack parameters that would model attainment. In some cases, similar sites requested different approaches. In other cases, the approaches favored by the company did not model attainment without changes. The commission proposed emission rates and stack parameters that were intended to meet the EPA's guidance for complying with the FCAA for SO_2 nonattainment areas, which discusses the statutory requirement (FCAA, §172), as well as national and regional measures that may fulfill RACT/RACM in addition to discussing source specific emission limitation concerns. The EPA guidance does not conflict with the requirements of 40 CFR §51.100(o). The commission considers the provisions in the rules to be both necessary for modeling attainment and feasible for the companies and has considered social, environmental, and economic impacts in promulgating the proposed rules.

Comment

The EPA commented that the rules (§§112.107, 112.117, 112.207, 112.217, 112.227, 112.237, 112.247, and 112.307) should be revised to clarify that contingency measures are also triggered upon failing to meet RFP and that evaluation or investigation of monitored exceedances would be beneficial to understand the problem and would allow consideration of changes to processes, work practices, emission rates and monitoring that would be beneficial.

Response

In response to this comment, language was added to all the contingency measure provisions to specify that the contingency measures will also be triggered if the EPA finds that a nonattainment area failed to meet RFP. Additionally, changes to the rule provisions are made to specify the factors to be covered in all full system audits and in those required because the EPA determined a failure to attain based on ambient air monitor data or on modeling. The TCEQ notes that all sites address in the rules are subject to the Title V Operating Permits Program which provides additional compliance tools that, in conjunction with other aspects of the compliance and enforcement program, will ensure attainment is reached as expeditiously as practicable. The TCEQ's robust enforcement program, exceedance reports in the associated rules, Title V deviation reports, and Title V compliance certifications will be used to investigate and address exceedances and violations of permit limits.

Comment

The EPA commented that compliance with the SO_2 NAAQS is required as expeditiously as possible and that there should be detailed discussion of the January 1, 2025 compliance date is appropriate for each of the rule divisions and Subchapter G. To satisfy RFP, the earliest compliance date achievable is required. The EPA requested that the TCEQ provide more explanation and rationale for how the selected compliance dates for affected sources in Howard, Hutchinson, and Navarro Counties satisfy this requirement.

Response

In response to this comment, the TCEQ has reevaluated the compliance dates to ensure that compliance is achieved as soon as practicable. The compliance dates depend on site specific constraints, as well as other considerations such as global supply chain delays. The basis for the compliance dates for each site is discussed in the response to comments for each section.

Comment

The EPA commented that in each rule division and Subchapter G, the compliance and monitoring requirements should include the methods and equations used to calculate emissions when they are not directly measured with an instrument and that details on monitoring that are consistent across the rules should be provided that specify the manner, form, accuracy of data, number of samples required, etc.

Response

In response to this comment, the TCEQ added additional details and clarity regarding monitoring requirements in several sections. Where appropriate, equations were added for calculating emission rates, and consistency within the rules was improved.

Comment

The EPA expressed its preference for hourly data collection and calculation because it matches the one-hour NAAQS.

Response

In response to this comment, the mass balance calculations relying on weekly sampling in Subchapter G were replaced with the requirement to install a CEMS, and the frequency of sampling at the carbon black plants was increased from once per day to twice per day. The use of continuous sulfur analyzers at the carbon black plants was evaluated, but the measure was found to be cost prohibitive (costing about $1.3 million to provide continuous sulfur analyzers for each tail gas stream at both Tokai carbon black plants. Additionally, there is concern that the monitors may become clogged or damaged and require frequent repair or replacement. Because the emissions from the Orion site are monitored with a CEMS, with the exception of emissions from the flare, which is infrequently used the additional cost of a continuous sulfur analyzer is even less justifiable.

Comment

The EPA commented that evaluation of CEMS should be done for all sites (especially for Arcosa) or, when CEMS cannot be easily installed and unless technically or cost prohibitive, post-combustion analyzers should be required for continuous monitoring of total sulfur content and flow rate of exhaust gases.

Response

An evaluation was completed, and it was determined that a CEMS is not appropriate for all sites or for all sources subject to these rules. For example, the only affected emission sources at CP Chem are fugitive emissions and flares, neither of which can be monitored with a CEMS. As previously discussed in this response to comments, continuous sulfur analyzers were evaluated for the carbon black sites which are the only sites not required to collect continuous sulfur concentration data in the proposal. Continuous sulfur analyzers for the carbon black plants were determined to be cost prohibitive and potentially difficult to maintain. Instead of requiring continuous analyzers for these sites, the frequency of sampling carbon black oil is increased from once per day to twice per day and performance testing once every 5 years is now required in order to collect additional compliance information for the carbon black sites without CEMS.

Comment

The EPA commented that throughout the rules, any ASTM method cited should be to the most current version and should be relevant to the feed being tested. The EPA further stated that justification should be provided on why the use of a nonrelevant method is appropriate and how it is equally stringent for measuring SO_2 emissions.

Response

Based on this comment, the dates associated with referenced test methods were removed from the rules to no longer specify a version and to allow use of updated versions in the future. The agency reviewed the ASTM methods, made revisions where appropriate, and confirmed that all methods in the adopted rules are relevant to the feed being tested.

Comment

The EPA recommended updating the first subsection of each rule section for control requirements (§§112.102, 112.112, 112.202, 112.212, 112.222, 112.232, 112.242, and 112.302) to clarify that the phrase "prior approval of the executive director and EPA" meaning that the formal SIP revision and approval process must

be followed and provided specific rule language for consideration.

Response

The commission does not agree that a full SIP revision is the only mechanism available under the FCAA for making minor revisions to rule requirements adopted as part of the SIP. The EPA previously approved provisions that allow making changes in other rules that were adopted as part of the SIP, including the AMOC program in 30 TAC Chapter 115 Subchapter J Division 1 and the alternate control provisions in 30 TAC §115.725(m). However, in response to this comment the TCEQ removed this provision and is instead identifying the site by its location and the EPN by the name of the sources in the New Source Review permit.

Comment

The EPA commented that in §§112.102, 112.112, 112.202, 112.212, 112.222, 112.232, 112.242, and 112.302, the requirements for a full system audit should include all SO_2 sources identified in the site's NSR permit. The EPA commented that, in addition to triggering based on monitoring data, the requirements should be triggered by a determination that a nonattainment area failed to achieve attainment based on review to other available information, including modeling and compliance data.

Response

As discussed previously in this preamble, the TCEQ has identified all significant sources in the SO_2 nonattainment areas based on whether their emissions impact any receptor at or above the SIL; as a result, those sources are the sources that should be the focus of an FSA. In addition, a determination of failure to attain based on other information such as modeling or compliance information should not automatically require an FSA because these instances of failure to attain will be addressed by existing programs including the compliance and enforcement program and Title V.

Comment

The EPA commented that the recordkeeping provisions in §§112.106, 112.116, 112.206, 112.216, 112.226, 112.236, 112.246, and 112.306 should all be consistent and that the requirements should be more prescriptive. This includes specifying the type of units to use for measurements and calculated emissions as well as the format and layout for keeping the records. The EPA also commented that records should be kept of the accuracy of measurements and methods used for its verification. The EPA also provided specific rule language additions for consideration.

Response

In response to this comment, the commission revised the proposed recordkeeping rules to clarify that records can be kept in either electronic or hard copy format. The commission also included emission calculations for determining emission rates in lb/hour where appropriate, including the units to be used in the equations, and accuracy specifications for monitoring equipment.

Comment

The EPA commented that §§112.100, 112.110, 112.200, 112.210, 112.220, 112.230, 112.240, and 112.300 should be clarified regarding whether the rules apply only to the units listed in subsection (b) of each rule or to all units in the sites' permits. The EPA noted that some units associated with the listed emission sources are mentioned in the rules but are not covered in the respective applicability section and suggested that all sources within each production unit be included as applicable. The EPA further commented that in subsection (a) of each of the applicability sections should clarify whether the prohibition on changing EPNs and RNs applies to all RNs and EPNs in the permit or only to the listed units.

Response

The affected sources are identified by the EPN to which the emission limits apply. However, monitoring, recordkeeping and reporting requirements may apply to raw materials or process streams that generate emissions from the identified EPNs. The prohibitions on changing RNs and EPNs were removed because sites are no longer identified by RNs but instead by addresses or latitude and longitude, and sources are identified by the EPN name on the MAERT issued on the identified date.

Comment

The EPA commented that in the definitions sections in each rule division and Subchapter G, definitions should be added for the following terms: actual emissions (recommended to be "monitored emissions using a CEMS or a monitoring device that directly measures the emissions from an affected source and determined without the use of any mass balance calculations"); calculated emissions (to differentiate from actual emissions); continuous monitoring; continuous emissions monitoring system; raw materials; refinery gas stream; and waste gas. The EPA commented that the definition of any term not used be removed from the respective definition section if it is not used in that rule division or Subchapter G.

Response

The TCEQ removed the term "actual emissions" and instead refers to emission calculations where emissions are not directly measured. The TCEQ also specified that continuous monitoring is monitoring at least every 15 minutes, consistent with the federal definition. The term "raw materials" is no longer used due to the replacement of periodic sampling with continuous monitoring. The term "waste gas" was removed from the rule to identify more clearly to which streams the requirements apply. As specified in each definition section, all terms have the meanings commonly used in the field of air pollution control unless they are specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in 30 TAC §101.1 or §112.1.

Comment

The EPA commented that the rules do not describe how or when MSS activities are authorized and should clearly describe what MSS activities are authorized, the process for authorizing them, and recordkeeping requirements to identify the MSS periods in which the MSS emission limits apply.

Response

The commission made no change in response to this comment. MSS activities are authorized through case-by-case permits, standard permits, or permits by rule under the NSR program. The activities authorized as MSS are identified through the NSR program, and it is neither appropriate nor necessary to define what activities are or are not authorized through the NSR program in these rules. Similarly, upsets are governed by Chapter 101 and are not included or defined under this chapter.

Comment

The EPA requested that the TCEQ provide an assurance that the proposed flare emission limits apply only to MSS periods and not to upsets or periods of malfunctions. The EPA further commented that the TCEQ should clarify that the analysis of historical events supporting development of emission limits and number of operating days for MSS periods does not include any malfunction events.

Response

The emission limits in the rules apply only to authorized emissions. Air permits authorize normal unit operation and planned MSS activities pursuant to 30 TAC Chapter 116. Authorized emission limits and permit conditions are based on application representations of unit operations and planned maintenance activities. Requirements for emissions events and emissions due to unscheduled activities are addressed in 30 TAC Chapter 101, Subchapter F, Divisions 1 and 2.

Comment

The EPA commented that the screening out from inclusion in the rules of some sources at a 3 ppb threshold at the maximum design value in the attainment demonstration modeling is not protective of the NAAQS because those excluded sources would change emission limits or stack parameters resulting in exceedances of the NAAQS. The EPA commented that all sources included in the modeling must have enforceable limits. The EPA stated that the TCEQ did not document how the 3 ppb level is protective but relied on this threshold as an interim SIL in permitting to evaluate impacts from all sources at a site rather than on a unit-by-unit basis. The EPA noted that the use of the SIL in permit modeling evaluates cumulative emission increases for all ambient air receptors rather than for individual sources at only the maximum design value receptor, such that the cumulative from multiple units at a site could represent a significant portion of the 75 ppb NAAQS. The EPA commented that the maximum design value in the attainment demonstration for Howard County is 72 ppb and for Hutchinson County is 74.9 ppb, meaning that only small increases could exceed the NAAQS, and that there are many receptors within a few ppb of the NAAQS.

Response

The commission clarifies that the attainment demonstration modeling included all sources in each nonattainment area and a cumulative impact of emissions from all sources was simulated at all ambient receptors. For inclusion into the rules, the impact of each individual source was evaluated at all ambient receptors in the modeling domain and not only at the maximum design value receptor, as the EPA mistakenly stated in its comment. Because the SIL is used in other SIP-approved programs to identify the sources with the most significant impacts, it is a reasonable threshold for determining which sources are most likely to impact attainment of the NAAQS. No change to the rule was made in response to this comment.

Alternative SO_2 Emission Limit Comment

The EPA commented that these subsections 112.102(j), 112.112(j), 112.202(d), 112.212(e), 112.222(g), 112.232(l), 112.242(k) and 112.302(g), must be revised to accurately reflect FCAA requirements for SIP revisions (reasonable notice and public hearing) and provided suggested revised regulatory text for the proposed rules. The EPA recommended each subsection be revised to require both Executive Director and EPA approval of any alternate emission limits as well as any deviations from the attainment demonstration modeling methodology through submission of a SIP revision by the executive director. The EPA also commented that any changes must satisfy FCAA §110(l). In response to the commission's solicitation of comments on whether an additional mechanism to request alternative SO_2 emission limits similar to the 30 TAC Chapter 115, Subchapter J, AMOC rules could be used to establish an intra-plant trading program would be appropriate, the EPA commented that intra-plant trading is not an appropriate method of control for these sources. The EPA stated that the inclusion of provisions that allow for alternate emission limits to be established outside the required FCAA SIP revision process is not approvable.

Response

The commission removed the alternative SO_2 emission limit provisions in proposed §§112.102(j), 112.112(j), 112.202(d), 112.212(e), 112.222(g), 112.232(l), 112.242(k) and 112.302(g). The commission added an AMOC process in new Subchapters E and F, as requested in comments submitted by Phillips 66 and supported by Tokai, Solvay and CP Chem, which are similar to EPA-approved AMOC rules in 30 TAC Chapter 115. A procedure for allowing sources to make changes to emission limits that result in equivalent or lower emissions was already approved by the EPA into the Texas SIP. This procedure is found in the 30 TAC Chapter 115 AMOC rules (30 TAC §§115.910 - 115.916). In approving these rules in 1997, the EPA stated that the AMOC provisions meet the requirements of the FCAA by requiring "greater emission reductions for alternate control methods ... a public comment period, and ... EPA approval/disapproval." (*see* Clean Air Act Limited Approval of Volatile Organic Compound (VOC) Control Measure for Texas, 62 Fed. Reg. 27964, 27965 (May 22, 1997).

Comment

Phillips 66 commented in support of making an AMOC mechanism patterned after SIP-approved AMOC provisions in 30 TAC Chapter 115 available for alternate SO_2 emission limits as proposed in 30 TAC §112.232(l). Phillips 66 urged the TCEQ to include an AMOC program that allows sites to make changes to affected sources that are protective of the attainment demonstration modeling without requiring a SIP revision. Phillips 66 further commented that flexibility on unit-specific emission limits without the delay and uncertainty of a full SIP revision is vital to the viability of the Borger Refinery in the fuels market and would incentivize environmentally beneficial projects while a lack thereof disincentivizes them. Phillips 66 provided an example of an environmentally beneficial project that would not be possible without provisions for an AMOC. Phillips 66 provided a suggested AMOC process and rule language, which they state provides for a narrow range of projects that parallels the EPA-approved AMOC provision in 30 TAC Chapter 115 while requiring a demonstration that the modeled impacts of all emission units affected by the trade have no net increase in ground-level concentration along with procedural requirements, public process, and authority for the Executive Director to approve minor changes to monitoring, reporting, recordkeeping and testing. Therefore, Phillips 66 commented that the suggested AMOC process is consistent with the FCAA and federal caselaw, citing to *United States v. General Motors Corporation*, 702 F. Supp. 133, 135 (N.D. Tex. 1988).

Tokai commented that it expects the EPA would disapprove §§112.112(j) and 112.242(k), which would allow Tokai to request alternative SO_2 emission limits because these subsections imply EPA approval without a formal SIP revision. Tokai commented that an AMOC is its preferred approach to setting alternative

emission limits. Tokai stated the approach should extend to changes in emission point locations and stack heights and requested that a plan based on the AMOC provisions in 30 TAC Chapter 115, Subchapter J be developed with changes as needed. Tokai stated that AMOC plans are consistent with the FCAA if they meet procedural requirements and EPA's implementing regulations and do not constitute SIP revisions but are rather a discretionary economic incentive program as codified in 40 CFR Part 51 Subpart U. Tokai stated that, similarly to the SIP-approved AMOC provisions in 30 TAC §115.725(m) and elsewhere, the executive director should be allowed to approve minor changes to monitoring, recordkeeping, reporting and testing requirements. Tokai commented that a streamlined dispersion modeling process should be provided that does not require recreating TCEQ's full attainment demonstration modeling and that is based on the net change in ground level SO_2 concentrations such as the highest first-high modeled concentration because this approach would provide greater environmental benefit than the full SIP revision process. Tokai stated that the AMOC provisions should be limited to the executive director alone approving minor modifications of test and monitoring methods, which states are routinely given authority by EPA to grant, because there is not streamlined EPA approval process for modifications.

Solvay commented that the AMOC provisions should be added to the rule as another process to request alternative SO_2 emission limits as provided in 30 TAC §112.232(l) and expanded to allow trading of emission reductions for contiguous sites, which would allow the most efficient use of capital to achieve reductions.

CP Chem urged the TCEQ to include the AMOC program regulatory language suggested by Phillips 66 that will allow stationary sources to make changes to SO_2 emitting EPNs that are protective of the attainment demonstration without requiring a SIP revision.

Response

The commission made changes to the alternative emission limits subsections in Subchapter E and F to reference rule text to add an opportunity for an AMOC process, as discussed in the section-by-section portion of this preamble. The commission agrees that the proposed language in §§112.102(j), 112.112(j), 112.202(d), 112.212(e), 112.222(g), 112.232(l), and 112.242(k), did not provide the necessary steps to ensure that changes to emission limits established in the rule would be protective of the NAAQS. Additionally, the proposed language did not specify public participation procedures. The commission agrees with the commenters that the AMOC process requested by Phillips 66, which is based on the EPA-approved rules in 30 TAC Chapter 115 will provide sources flexibility to make future changes at their plants while ensuring attainment of the SO_2 NAAQS is not jeopardized.

This AMOC process adopted in this rule provides the necessary public, TCEQ and EPA review as well as requiring a conservative dispersion modeling demonstration ensuring changes in emissions will maintain SIP integrity and NAAQS protectiveness. An increase in the pound per hour emission limit for a source subject to the control requirements is allowed if the AMOC also includes an equivalent decrease in the pound per hour emission limit for one or more sources subject to the rules. An AMOC provision incentivizes environmentally beneficial projects while a lack thereof disincentivizes them because a SIP revision would be needed before any changes can be made to sources covered by these rules. Further, the AMOC process is not a substitute for authorization of new emissions through the NSR program. All required authorizations must still be obtained as required by TCEQ rules.

Subchapter E Division 1 (Alon)

General for Division 1

Comment

Alon commented that the citations throughout the division to federal requirements in 40 CFR Part 60, Subpart Ja should be changed to "the currently applicable federal requirement" because the FCCU and SRUs are currently subject to the federal requirements in 40 CFR Part 60. Subpart J. Alon stated that under their consent decree with the EPA, it could choose to comply with Subpart Ja in the future and that the wording change would still accomplish the intent of the provisions.

Response

The proposed rules were based on compliance with the modeled emission limits in the attainment demonstration emission limits and not the currently applicable federal rules. Additionally, staff identified specific concerns that would result from relying solely on a general reference to 40 CFR Part 60, Subpart J (Subpart J): 1) Subpart J does not contain a method to calculate pound per hour SO_2 emissions; 2) FCCU and SRU concentration limits in Subpart J will not establish compliance with proposed rule pound per hour SO_2 emission limits; 3) Subpart J has monitoring provisions for FCCU alternative coke burn-off (instead of H_2S and SO_2 concentrations) for units without add-on control, which would not generate sufficient data to determine pound per hour SO_2 emissions; 4) Subpart J authorizes SRU total reduced sulfur continuous parametric monitoring for units with reduction controls not followed by incineration, compared to the more accurate CEMS in the proposed rule; 5) the EPA commented that the monitoring provisions should contain more prescriptive language to describe calculations and methods used to derive pound per hour SO_2 emissions, which do not appear in Subpart J; 6) a general reference to applicable federal requirements would not provide the same data quality, level of accuracy, or compliance determination assurance as the proposed rules; and 7) NSPS J or Ja both contain MSS exemption from emission monitoring standards that are not appropriate for rules intended to enforce MSS SO_2 pound per hour emission limits. Therefore, a general reference to federal rules, which are designed to enforce concentration limits, would not be as accurate or effective in determining pound per hour SO_2 compliance as the proposed rules. No change to the rules was made in response to this comment.

§112.100

Comment

Alon agreed with the applicability sentence and change of ownership provision in §112.100(a) but commented that the last sentence ("Once approved by the United States Environmental Protection Agency (EPA), the requirements in this division continue to apply until the EPA approves their removal.") should be deleted because it is not needed to convey that the EPA authority over provisions in approved SIPs and implies that the TCEQ could continue to enforce the provision even if it is repealed, which exceeds the agency's authority.

Response

The commission disagrees with the commenter's assertion that the agency will enforce rules that are repealed; however, to avoid

confusion this language has been removed at adoption. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

§112.102

Comment

Alon requested TCEQ revise §112.102(c) to simply state the four MSS flares must comply with 40 CFR Part 60, Subpart Ja requirements. The inclusion of the 162 ppmv limit from Subpart Ja in the rules makes that limit applicable at all times, although under Subpart Ja it does not apply during upsets. The inconsistency with the existing federal requirement would inadvertently create new conflicting requirements and/or limit options. The concentration limit was not used for the attainment demonstration modeling.

Response

In response to Alon's concern that it is not technically feasible for MSS flare activities to meet the 162 ppmv standard, the commission is adding the phrase "during normal operations" to the to the end of §112.102(c).

Comment

Alon commented that the FCCU and SRUs' applicability references throughout the division to federal requirements in 40 CFR Part 60, Subpart Ja should be changed to "the currently applicable federal requirement" because the FCCU and SRUs are currently subject to the federal requirements in Subpart J. Alon stated that under its decree with the EPA, it could choose to comply with Subpart Ja in the future and that the wording change would still accomplish the intent of the provisions.

Response

In response to Alon's comment and EPA comments about the need to clearly specify monitoring and other regulatory requirements, the commission is revising §112.102(c). The updated language specifies the requirements applicable to the FCCU and SRU and contain some of the same monitoring methodology but does not duplicate verbatim the federal rule provisions in 40 CFR Part 60, Subpart Ja. The proposed Chapter 112 rules are designed to enforce the emission limits (during both normal and authorized MSS operation) used in the Howard County attainment demonstration modeling. Flare and other combustion equipment parametric monitoring provisions are authorized in the rule for sources that present inherent direct SO_2 exhaust monitoring difficulties and contain allowable methods to measure the total sulfur content of the precombustion feed stream and use it to calculate the resultant SO_2 combustion emissions. Minimum parametric monitoring requirements to verify compliance include a total sulfur or H_2S analyzer, totalizing flow meter and temperature measurement instrumentation. The federal requirements in Subparts J and Ja limit gaseous hydrocarbon streams combusted in both attainment and nonattainment area refineries to 162 ppmv H_2S during normal operations, rather than providing pound-per-hour values like proposed Chapter 112 rules, and only require an H_2S monitor. It is not sufficient or feasible to determine compliance with the rules by generically referencing Subpart Ja or "currently applicable federal requirement" methodology for the concentration limits for the rules.

§112.103

Comment

Alon requested the TCEQ revise §112.103(2) to state the flares must only comply with Subpart Ja monitoring provisions. The proposed rule requires monitoring during upsets, which is not required by Subpart Ja. The inconsistency with the existing federal requirement would inadvertently create new conflicting requirements and/or limit options.

Response

The change requested by Alon is not appropriate for this rule. Supplemental language is added to the rule to address the EPA's concerns that the monitoring specifications are not prescriptive enough to fully describe the necessary flare monitoring requirements. It would be inappropriate simply require 40 CFR Part 60, Subpart Ja flare monitoring provisions that are intended to verify flare normal operations compliance with a 162 ppmv H_2S concentration limit, rather than monitoring methodology that is intended to verify flare compliance with rule limits that apply during both normal and MSS operations on a pounds-per-hour basis. A total sulfur analyzer and dedicated flow meter are the most accurate methodology to monitor flare compliance during MSS and normal operations, and provisions are added to the proposed rule for this purpose, as well as an alternative method of monitoring H_2S as surrogate parameter to quantify SO_2 emissions.

Comment

Alon commented that the provisions in §112.103(1) - (3) are unclear on how they apply to flow monitoring devices and that the provisions should be amended to allow the use of best engineering judgement when data from flow measurement devices is lost or invalid. Because flow monitoring does not have conventions for calculating downtime, §112.103(a)(4) should not require 95% uptime. The rule also does not state the time period for attaining the 95% uptime; for consistency with federal CEMS requirements, the period should be semiannually. Because of the complexity of flow monitoring and sulfur analyzers for flares, the uptime requirement for those should be 90%.

Response

The TCEQ evaluated Alon's request to reassess and clarify monitoring requirements. Additional monitoring instrument and accuracy language is added to clarify §112.103(1) - (3) provisions. Engineering judgment provisions are kept in §112.103(4) so this method may be employed to satisfy data substitution requirements as requested. The TCEQ determined that the 95% monitoring instrument uptime provisions, which are similar to federal rule and state new source review requirements, represent an appropriate and reasonable standard for proposed §112.103(4) requirements. Therefore, the 95% monitor uptime requirements are maintained in §112.103(4).

Comment

Alon requested the TCEQ delete §112.103(4) provisions requiring a minimum of engineering judgement be employed to replace invalid or missing monitoring data in determining pound per hour SO_2 emission limit compliance.

Response

Requiring a minimum of engineering judgement is a reasonable and appropriate standard that is consistent with other state and

federal requirements. No change was made to the proposed rule in response to this comment.

§112.104

Comment

Alon commented that the monitoring devices required by §112.103 have been in place for several years, so the initial testing requirement in §112.104(2) should exclude monitors that have had previous testing.

Response

The provision in §112.104(2) only requires initial testing that was conducted in accordance with the manufacturer's specifications. If prior testing of existing monitors was done according to manufacturer's specifications, the provision does not require any action. However, if prior testing was not in accordance with the manufacturer's specifications, the monitor must be retested to ensure that it is calibrated and functions properly. The rule language was clarified to better depict these requirements.

§112.105

Comment

Alon commented that including the ASTM methods in §112.105(b) is unnecessary and redundant because continuous monitoring of SO_2 emissions and of the sulfur content of flared gases is required.

Response

The test methods are needed for determining the sulfur content of fuel during the testing specified in §112.104. No change to the rule was made in response to this comment, but additional test methods are added for consistency between the requirements for the two refineries.

§112.107

Comment

Alon requested the TCEQ change the 90-day deadline (March 31st) in §112.107(a) for reporting exceedances and noncompliance to 135 days (May 15th) to better align with other state and federal reporting requirements.

Response

Exceedance reports are needed in a timely manner, and 90 days after the year in which the exceedance occurs provides sufficient time to report. If the deadline for submitting the report were extended to May 15, it could be up to 16 months between the time an exceedance occurred and the TCEQ was notified. More timely notification is needed to ensure compliance with the rules. No change to the rule was made in response to this comment.

Comment

Alon stated concerns that the full system audit in §112.107(c) is not appropriate for Howard County because it does not know the emissions from other sites and therefore cannot determine the source of an exceedance. For cases where modeling is required for an audit, the 90-day deadline in §112.107(c) for submitting the audit results should be extended to 180 days.

Response

TCEQ considers 90 days to be adequate time for the completion of a full system audit since Alon will not be responsible for submitting modeling or information from other sites as part of this audit.

§112.108

Comment

Alon commented that the phrase "as soon as practicable" should be deleted from §112.108 to avoid uncertainty on when control measures must be in place.

Response

The commission has evaluated the compliance dates for each site, and determined that each date, revised as appropriate, is as expeditiously as practicable. As a result, this language was deleted.

Comment

The EPA stated it is unclear when the control requirements of §112.108 would require installation of controls or other reductions and modifications. The language indicates the owner or operator must comply with the requirements "as expeditiously as practicable, but no later than January 1, 2025." There is no discussion of how soon Alon can comply with the new emission limits nor a discussion and rational of why several years are necessary to achieve compliance with the emission limits. It is important to get the reductions in place as expeditiously as practicable in order to achieve attainment because the monitored design value that will be part of the basis of determining attainment or nonattainment is based on three consecutive years of data. The EPA noted that other areas which require longer times for compliance provide dates and RFP achievements as a demonstration that they are satisfying the "as expeditiously as practicable" requirement.

Response

Alon indicated that it can comply with the requirements for the FCCU (EPN 06ESPPCV) and the SRU incinerators (EPN 69TGINC and EPN 71TGINC) by November 1, 2023, but that complying for other sources may take until January 1, 2025. The January 1, 2025 compliance date for requirements associated with the flares is necessary to make physical and operational changes needed to comply with control and monitoring requirements in Subchapter E. Therefore, the rule is revised at adoption to provide an earlier compliance date for the FCCU and SRU incinerators. Because the soonest practicable dates for compliance are identified in the rule, the term "as soon as practicable" was removed at adoption.

Comment

The EPA stated that in background and summary portion of the proposed rulemaking, the TCEQ mischaracterized their comments regarding averaging times longer than one hour in the 2014 SO_2 SIP guidance.

Response

In response to this comment the discussion of longer averaging times has been updated consistent with the EPA's comments.

Subchapter E Division 2 (Tokai)

§112.110

Comment

Tokai requested TCEQ delete §§112.110(a) and 112.240(a) that contain the following provision: "Once approved by the, the requirements in these rules continue to apply until the EPA approves their removal." This requirement provides that TCEQ may enforce the rules after they are repealed or alternately, that

TCEQ may not repeal the rules without EPA permission. Tokai stated that it doubts TCEQ has authority to promulgate such a requirement and should delete §§112.110(a) and 112.240(a) and similar provisions in Chapter 112.

Response

The commission disagrees with the commenter's assertion that the agency will enforce rules that are repealed; however, to avoid confusion this language has been removed at adoption. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

§112.112

Comment

The EPA commented that the emission limits for various furnace operation scenarios should be revised for clarity to state how and when the limits apply and how the table should be interpreted, including how each column correlates to a specific operational scenario, or whether each column is separately enforceable as an operating scenario. For the requirement that the fewest number of furnaces on-line be used to calculate an emission limit, clarify if this means the total number of furnaces in operation at any time or if it applies to an individual set of production units or if one set of production units controls the emission limit used for the scenarios, and if less units do not equal less emissions, the provisions should specify whether the lower emissions rate or the number of production units control the emission limit used for that scenario.

Response

The number of furnaces on-line in each production unit determines the set of emission limits that apply. The number of furnaces in operating units one and two should be combined to identify the appropriate rows that could apply based on the first column. Then the number of furnaces in production unit 3 should be determined to identify which of those rows is the exact row containing the set of emission limits that apply during any one hour. For example, if there are two furnaces on-line in production unit 3, three furnaces on-line in production unit 1 and no furnaces on-line in production unit 2, the emission limits would be 519.42 lb/hr for the overall cap, 436.23 lb/hr for EPN 13A or Flare 4, 156.02 lb/hr for EPNs 7A and 12A combined, and 73.00 lb/hr for EPN 12A. The provision specifying that the fewest number of furnaces on-line should be used to determine the emission rate was clarified to reflect that fewest number of furnaces on-line in each production unit should be used to determine what the emission limit is during transition periods. Another option for determine the appropriate emission limit during these periods is also provided in response to a comment from Tokai. The TCEQ also removed the redundant monitoring requirement regarding measuring the volumetric flow rate to the dryers. The inadvertent typographical errors are corrected in the rule and figure. In response to this comment additional language was added to this provision for clarity. The number of furnaces on-line in each production unit determines the set of emission limits that apply in any one hour. Each row represents a different operating scenario and each cell in the tables is enforceable based on the number of furnaces on-line in any hour. The number of furnaces in operating units one and two should be combined to identify the appropriate rows that could apply based on the first column. Then the number of furnaces in production unit three should be used to identify which of those rows is the row containing the set of emission limits that apply during any one hour. For example, if there are two furnaces on-line in production unit three, three furnaces on-line in production unit 1 and no furnaces on-line in production unit two, the emission limits would be 519.42 pounds per hour for the overall cap, 436.23 pounds per hour for EPN 13A or Flare 4, 156.02 pounds per hour for EPNs 7A and 12A combined, and 73.00 pounds per hour for EPN 12A. The provision specifying that the fewest number of furnaces online should be used to determine the emission rate was replaced with an equation that determines the appropriate emission limits based on the time weighted average of any set of emission limits that could apply in any minute of an hour.

Comment

Tokai requested TCEQ delete all entries in Figure 30 TAC §112.112(b) specifying an emission limit where only one (1) furnace is on-line. Units 1 and 2 cannot operate with exactly one (1) furnace on-line, nor can Unit 3. Tokai disagreed with the inclusion of impossible operating scenarios in the table of emission limits. Since their modeling would entail the use of hypothetical discharge parameters in the Attainment Demonstration modeling, Tokai applauds the apparent absence of such scenarios from the Modeling TSD (Appendix K of SIP revision).

Response

The entries in proposed Figure 30 TAC §112.112(b), which is re-lettered as Figure 30 TAC §112.112(b) at adoption. specifying an emission limit where only one (1) furnace is on-line are deleted at adoption, and a prohibition on operating either Units 1 and 2 or Unit 3 with only one furnace is added to re-lettered §112.112(a).

Comment

Tokai requested the TCEQ change §112.112(c) to allow a weighted average of the number of furnaces used during each hour of production rather than the minimum number to calculate the allowable emission limit for that hour. The proposed requirement to use the minimum number of furnaces is impossible to comply with under some operating scenarios. Difficulties would arise during unit start-ups and shutdowns, and during other transitional periods as well. The rule requires performing unit start-ups and shutdowns instantaneously, at precisely the top of the hour to remain compliant. Tokai provided an equation for calculating emissions based on the number of furnaces operating in each minute of an hour that would be summed to give the hour's emission limit.

Response

The TCEQ understands that the use of the fewest number of furnaces on-line during the transitional hours may be impossible to comply with during certain circumstances. As a result, the TCEQ adopted the time weighted average as a reasonable way to determine the appropriate emission limits during infrequent (3.5% of the time) transitional periods. The TCEQ modeled 192 scenarios that bookend the possible range of emission limits when various combination of furnaces could be on-line. TCEQ's modeling showed attainment of the NAAQS under all 192 scenarios.

Comment

Tokai requested TCEQ delete §112.112(g) which prohibits operation of the three existing flares following the rule compliance date and which would apply even if the equipment in question did not combust tail gas and had no SO_2 emissions. Tokai stated that although it does not foresee a need to operate the existing flares following the compliance date, the TCEQ exceeds its authority by requiring actual cessation of operation, rather than simply prohibiting the combustion of tail gas in the referenced equipment, as it has already done in proposed §112.112(e).

Response

Tokai represented that there would be no SO_2 emissions from these sources in the modeling; consequently, the rule cannot allow SO_2 emissions from these sources. However, to provide the most flexibility possible, the TCEQ changed the language to prohibit the routing of sulfur or sulfur containing compounds to the EPNs rather than prohibit their operations.

Comment

The EPA commented §112.112(h) indicates EPN Flare 4 must be constructed at the specific location as modeled and have a stack height of at least 60.35 meters. If a flare taller than 60.35 meters is constructed, the modeling will have to be redone prior to construction as dispersion parameters will change and overlap of sources may generate different concentration fields and maximum modeled DVs.

Response

The rule is changed to state that the stack height for EPN Flare 4 must be 60.35 meters as modeled in the attainment demonstration.

Comment

The EPA commented §112.112(i) states EPN 13A must have stack height of no less than 65.00 meters. This provision should be changed to "EPN 13A must have a stack height of 65.00 meters". As written, a stack height greater than 65.00 meters could be installed that would be in violation of Good Engineering Practice (GEP) rules. Any height above 65.00 meters must be approved by TCEQ and EPA in accordance with GEP rules. If a stack taller than 65 meters is approved, the modeling will have to be redone prior to construction as dispersion parameters will change, and the overlap of sources may generate different concentration fields.

Response

The stack height requirement in §112.112(i) is changed to be 65.00 meters.

§112.113

Comment

The EPA commented that §112.113 includes requirements to monitor the volume of tail gas that is routed to the incinerator or flare and to the dryers using continuous monitoring for each gas stream and to continually determine the split of the tail gas that is routed to the dryers and to the incinerator or flare. Emission estimates in the current modeling are based on a split of 70% of the tail gas going to either the incinerator or flare and the other 30% routed to the dryers. Hourly calculations will be generated and should be compared to this 70/30 split. If these hourly calculations differ by more than 5%, that would result in significantly different emissions from the individual sources at Tokai and would require additional modeling to verify that modeling still demonstrates attainment based on a different split of tail gas and emission rates. Alternatively, the 70/30 could be included as a specific a limit in this section.

Response

The model was not based on an assumed 70/30 split but instead on the emission limits in the rule. In response to this comment the emission calculations were corrected to use the actual split of tail gas from each production unit rather than assume that the split is equal across all units.

Comment

The EPA commented that §112.113 should also include continuous measurement of total sulfur in tail gas stream on a continuous basis to the incinerator or flare if accurate measurements can be collected. Using total sulfur monitoring data and the volume tail gas monitoring through both the incinerator or flare and through the dryers, hourly emissions for each stack or flare could be explicitly calculated instead of sampling feedstocks and finished products periodically and determining a mass balance that would not be as protective of the one-hour SO_2 NAAQS. Feedstock sampling and finished product sampling could be completed when the tail gas volume monitors or the total sulfur sampling are not operating. Additional recordkeeping and reporting requirements would need to be included in §112.113, including a formula for SO_2 emissions calculation for hourly emissions from the incinerator & HRSG, dryers, and flare(s).

Response

The TCEQ evaluated the use of continuous sulfur analyzers; however, they were determined to be cost prohibitive and potentially difficult to maintain. Tokai estimates that continuous total sulfur analyzers required to determine hourly emissions from each EPN would cost approximately $1.3 million for both carbon black sites addressed in this rulemaking. However, additional sampling of carbon black oil was included in the rule to improve the accuracy of the mass balance approach. Additional emission calculations for each EPN were also added to §112.113 for clarity. Stack testing once every five years was also added to the provisions to provide additional information regarding compliance.

Comment

The EPA commented that for §112.113(b) EPN 13A is listed twice and that one should be EPN 12A. The EPA commented that in Figure 30 TAC §112.113(b) the citations of §112.112(4)(E) and (F) should likely cite to §112.113(e)(5) and (6).

Response

The inadvertent typographical error for EPN 12A is corrected at adoption. The citations in Figure 30 TAC §112.113(b) are corrected at adoption.

Comment

The EPA commented that §112.113(e)(2) requires measuring the flow of tail gas to each dryer but §112.113(e)(3) requires the measurement for all dryers, that the applicability of the provisions should be clarified, and that the applicable dryers should be listed as affected units.

Response

The TCEQ deleted the redundancy and clarified the requirements for measuring flow from each production, as needed for the mass balance emission calculations.

Comment

The EPA commented that §112.113(g) requires daily measurement of the sulfur content of carbon black oil feedstock, but it is not clear that if more than one feedstock is used with differing sulfur contents, whether each would be monitored. Please clarify if more than one feedstock is used and how multiple feedstocks would be handled and monitored.

Response

Feedstock from different sources is sent to a single mix tank where it is mixed before being fed to production units. Sampling from this mix tank will minimize any differences in feedstock from different sources. In the adopted rule, sampling of the feedstock was increased from once per day as proposed to twice per day to minimize the impact of any differences in sulfur concentration in feedstock over time.

§112.115

Comment

Tokai stated concerns about provisions in §112.115(e) that vaguely refer to approval by EPA, without clearly stating how such an approval process is to take place. Tokai is not aware of any streamlined process for EPA approval of an alternative to test methods specified in a SIP, other than an actual SIP revision. If such a streamlined process exists, TCEQ should explain what it is. Otherwise, TCEQ should revise the provisions such that they only refer to minor modifications to test methods or monitoring methods which States are routinely given authority by EPA to grant.

Response

The TCEQ agrees that minor modifications to monitoring methods or test methods should be allowed without rulemaking and a SIP revision. The TCEQ notes that a provision allowing this was approved by the EPA as a SIP revision under 30 TAC 115.725(m). As a result, TCEQ is adopting language consistent with 30 TAC Chapter 115 to allow minor modifications to test methods or monitoring methods if approved by the executive director. In addition, language was added to clarify that increases in the frequency of monitoring and replacement of parametric monitoring with direct emissions monitoring can be approved under this provision.

§112.117

Comment

Tokai recommended TCEQ delete §112.117(c), which requires conducting a "full system audit" as a contingency measure if the EPA determines the Howard County SO_2 nonattainment area fails to achieve attainment, and instead refer to TCEQ's existing enforcement policies. Tokai stated that TCEQ's FSA provision suggests that TCEQ will limit its enforcement of the NAAQS to the required reporting scheme, which may be contrary to what EPA envisioned in issuing its guidance and that the FSA provisions require Tokai to identify exceptional events under 40 CFR §50.14, but these demonstrations are the responsibility of a State, federal land manager, or other federal agency, not a regulated entity. Tokai also stated that TCEQ's FSA provision implies that the EPA only issues findings of failure to attain when actual air quality does not meet the NAAQS, which is at odds with how the EPA handled recent determinations. Tokai gave as an example, the EPA finding for St. Bernard Parish, LA, which was based on its review of Title V deviation reports, despite the presence of valid monitoring data consistent with a finding of attainment. Tokai further commented that if a similar outcome occurred for Howard County, a systems audit focused on local meteorology and monitoring data would *not* generate any useful data.

Response

The commission proposed the full system audits throughout the rules to receive information from each site within a nonattainment area, after a finding of failure to attain, on the conditions at each site that may have contributed to the finding. The commission notes that the audits are triggered by notices from the TCEQ, not from the finding of failure to attain itself. If it is clear from available information (ambient monitoring, modeling, compliance reports, etc.) that a site was not responsible for a failure to attain, the TCEQ would not require a full system audit of that site. However, because it may not be clear which site(s) contributed to the EPA's finding, under some circumstances the commission may require the audits for all sites in the nonattainment area. At adoption, the wording is changed so that the sites are not required to identify an exceptional event but rather any emissions event(s) and the conditions that existed at their site during the relevant period. The commission recognizes that an EPA finding of failure to attain could be based on Title V deviation reports as well as other information but also that the information from the audits may be important for determining if other conditions within the nonattainment area with a potential to affect conditions leading to the EPA's finding were occurring at the same time.

§112.118

Comment

The EPA stated it is unclear when the control requirements of §112.118 would require installation of controls or other reductions and modifications. The EPA stated that the language indicates the owner or operator must comply with the requirements "as expeditiously as practicable, but no later than January 1, 2025." The EPA also commented that there is no discussion of how soon Tokai can comply with the new emission limits nor a discussion and rational of why several years are necessary to achieve compliance with the emission limits. The EPA further stated it is important to get the reductions in place as expeditiously as practicable in order to achieve attainment because the monitored DV that will be part of the basis of determining attainment or nonattainment is based on three consecutive years of data. EPA noted that other areas which require longer times for compliance provide dates and RFP achievements as a demonstration that they are satisfying the "as expeditiously as practicable" requirement.

Response

In response to this comment, the TCEQ reevaluated the compliance dates to ensure that compliance is achieved as soon as practicable, depending on site specific constraints. Upon the effective date of the rule there will be shortly over two years before the proposed compliance date. Tokai is designing and constructing a new stack for the incinerator and a new flare and expressed concern that the schedule may be impacted by global supply chain issues. As a result, they have indicated that they cannot comply until January 1, 2025. Because the soonest practicable date for compliance is January 1, 2025, the term "as soon as practicable" was removed from the provisions at adoption.

Subchapter F Division 1 (CP Chem)

Comment

The EPA commented that rule sections on testing requirements and approved test methods are missing and needed to clarify what the testing requirements and approved test methods are for Division 1.

Response

The only affected sources at the CP Chem site are two flares and fugitive sources, neither of which have stacks that allow for performance testing in the way that other sources do. In addition, a mass balance approach to determining emissions is not used for this source which means that test methods for sampling are not needed. The monitors used by CP Chem for their flares detect both H_2S and organic sulfur. There are only very minor amounts of SO_2 in the flared gases to the South Flare (none to North Flare), which CP Chem accounts for by adding 0.015 lb/hr SO_2 to each hourly calculation of SO_2 emissions for the South Flare. The fugitive emission calculations are based on testing already done by CP Chem with no additional testing needed. Therefore, testing requirements and approved test methods are not needed for CP Chem.

§112.202

Comment

The EPA commented that individual flare limits modeled should be included in §112.202 along with the cap for both flares.

Response

The commission tested different scenarios of the cap including scenarios where the maximum cap limit was assigned to each individual flare. All cap scenarios tested demonstrated attainment of the NAAQS. Therefore, it is concluded that the cap emission limit is protective of the NAAQS and individual flare limits are not required. No change was made to the rule in response to this comment.

§112.203

Comment

The EPA commented for §112.203 that monitoring the temperature in the trailers used to store sulfolene does not account for SO_2 emissions from the sulfolene building and that there is no calculation method to determine SO_2 emissions from the trailers based on the measured temperatures. The EPA recommended providing an analysis and data of how the specific temperature threshold is calculated, in addition to documenting how that temperature threshold was used to calculate emissions.

Response

In response to this comment the TCEQ added equations for the calculation of SO_2 fugitive emissions from the trailers and building. Because there is no clearly established method for determining SO_2 fugitive emissions, the TCEQ relied on a site-specific study to determine the decomposition rate of sulfolene to SO_2 and butadiene. Hourly fugitive emissions will be calculated by multiplying the decomposition factor by the weight of the sulfolene stored. The decomposition rate is determined by an empirical equation using the amount of time the sulfolene is stored, the temperature at which it is stored, and the amount stored in the sulfolene handling building and in each trailer.

Comment

CP Chem provided alternate language for §112.203(b): "Monitor the sulfur content of gases routed to EPN FL-1 (North Flare) and to EPN FL-2 (South Flare) by using separate analyzer, which are capable of measuring and recording total sulfur compounds levels on a continuous basis with an accuracy of ±2.5% of full scale for >50 parts per million concentrations".

Response

In response, the rule was changed to incorporate the accuracy language from CP Chem in place of the detection limit that was proposed. CP Chem indicated that there sometimes are low amounts of SO_2 in the gases sent to the flare but that their monitor does not detect SO_2. To account for the SO_2 present prior to flaring, CP Chem committed to adding 0.015 pound per hour of SO_2 to each hourly calculation of SO_2 emissions from the South Flare.

Comment

CP Chem stated that the monitoring and recordkeeping requirements in §112.203 and §112.204 should be based on a "block one-hour average" and requested that the TCEQ make that change.

Response

The temperature in the sulfolene trailers is required to be measured on an hourly basis, and continuous monitoring is required for gases routed to the flares. Continuous monitoring averaging times are already defined, and a one block average is not necessary when emissions are monitored once per hour. As a result, the commission does not consider a block one-hour average to be appropriate for either. No change was made to §112.203 in response to this comment.

§112.206

Comment

CP Chem commented that the proposal preamble discussion for §112.206 is incorrect for the number of storage trailers at each of the sulfolene holding areas is incorrect. There are two trailers at the sulfolene building and six at the parking area.

Response

The preamble discussion was corrected on the numbers of trailers. No change was made to the rule in response to this comment.

§112.207

Comment

CP Chem commented that the requirement for submitting reports in §112.207(a) and (b) conflict, with (a) only requiring exceedance reports in the year after an exceedance occurred while (b) requires the same exceedance report with additional information on exceedances of temperatures in the sulfolene storage trailers every year. CP Chem commented that an exceedance of the highest temperature at which they tested the decomposition of sulfolene does not mean that there was an exceedance of the emission limit for the sulfolene storage areas. CP Chem requested that the rule require an exceedance report of the excess temperature only if there is an exceedance of the emission limit as well.

Response

Proposed §112.207(b) is removed at adoption based on changes for the monitoring of the fugitive emissions from sulfolene decomposition. CP Chem updated the study used to determine decomposition to ensure the temperature range it covers is adequate. In addition, the TCEQ added equations for calculat-

ing emission rates and removed the limit on the temperature of the trailers because the temperatures will be taken into account in the emission calculations and reports will be required based on exceedance of emission limits rather than exceedance of temperature. CP Chem will only need to file a report under §112.207(a) if there is an exceedance of an emission limit provided in §112.202.

§112.208

Comment

The EPA commented for §112.208 that it is not clear what schedule is intended for the installation of controls or making reductions and modifications and that a detailed analysis of what is needed to meet each requirement and what constitutes "as expeditiously as practicable" for each requirement.

Response

In response to this comment, the TCEQ reevaluated the compliance dates to ensure that compliance is achieved as soon as practicable, depending on site specific constraints. Upon the effective date of the rule there will be shortly over two years before the proposed compliance date. CP Chem expressed concern over the impact global supply chain issues may have on their ability to procure a monitor and as well as the amount of time it will take them to identify an appropriate monitor for this particular gas stream. CP Chem also pointed out that it will need to install temperature monitors and design new monitoring procedures. As a result, CP Chem has indicated that they cannot comply until January 1, 2025. Because the soonest practicable date for compliance is January 1, 2025, the term "as soon as practicable" was removed from the provisions at adoption.

Subchapter F Division 2 (IACX)

Comment

The EPA commented that rule sections on testing requirements and approved test methods are needed to clarify what testing using which methods are needed for Division 2.

Response

Because changes to the monitoring methods in §112.213 at adoption require on-going testing, testing requirements and approved test methods are added as §112.213(b) and (c), respectively.

§112.213

Comment

The EPA commented that the analyzer in §112.213(1) should be able to measure all sulfur compounds that might be present in sour gas instead of only H_2S.

Response

In response to this comment, the monitoring requirements in §112.213(1) are changed to provide IACX the options of monitoring the total sulfur content of the flared gases consistent with 40 CFR §60.107a(e)(1) or monitoring H_2S and using it as a surrogate for total sulfur consistent with 40 CFR §60.107a(e)(2).

§112.218

Comment

As in §112.208, the EPA commented for §112.218 that it is not clear what schedule is intended for the installation of controls or making reductions and modifications and that a detailed analysis of what is needed to meet each requirement and what constitutes "as expeditiously as practicable" for each requirement. The EPA commented further that since IACX is only lowering allowable emission rates without installing controls or changing stack parameters, it seems the site could comply within 6 months to a year. Achieving reductions as quickly as possible is important because the design value is based on emissions over three years.

Response

In response to this comment, the TCEQ reevaluated the compliance dates to ensure that compliance is achieved as soon as practicable, depending on site specific constraints. IACX Rock Creek Gas Plant committed to a compliance date of October 1, 2023, and the rule was updated accordingly. Because the soonest practicable date for compliance is identified in the rule, the term "as soon as practicable" was removed from the provisions at adoption.

Subchapter F Division 3 (Orion)

§112.222

Comment

The EPA commented that the language in §112.222(c) should be reworded to say that tail gas can only be routed to and combusted in the Waste Heat Boiler or Combined Flare rather than combusted in a source whose emissions are routed to the boiler's stack or the flare.

Response

The comment does not reflect how the production units operate. Tail gas is burned in the carbon black dryers as well as the Waste Heat Boiler or flare. Rather than venting to the atmosphere, emissions from the dryers are routed to the boiler or flare (used only when the boiler is not operating) and are thereby routed to (and exhausted from) EPN E-6BN or the flare (to become EPN CFL) as stated in the proposed rule. Making the change requested would prohibit the dryers from burning tail gas, requiring a switch to natural gas and resulting in a slight increase in the SO_2 emissions from the site. No change to the rules was made in response to this comment.

§112.223

Comment

The EPA commented that the use of periodic sampling and a mass balance calculation in §112.223 is not protective of the NAAQS and that the total sulfur content and flow rate of the tail gas stream to the flare should be continuously monitored, with the sampling and mass balance calculation used only when the continuous monitor or flow monitor is not operating.

Response

Orion doesn't typically use the flare and is restricted by their consent decree with the EPA to using it 168 hours per year on an annual basis and 720 hours during flaring events that are limited to occurring once every five years. Orion's only other EPN is monitored with a CEMS. Considering that the flare is only used as a backup, the only other EPN has a CEMS, the cost analysis provided for the other carbon black sites, as well as the ongoing concerns regarding reliability of analyzers for these types of streams, the TCEQ determined that continuous total sulfur analyzers are not economically reasonable in this case. However additional sampling of the carbon black oil was included in the rule to minimize the impact of any variations in sulfur content on

emission calculations when the boiler is down and the flare is used.

Comment

The EPA commented that for the daily measurement of the sulfur content of the feedstock it is not clear that each feedstock would be monitored if there is more than one.

Response

Because the flare is infrequently used, variations in sulfur content of feedstock will not typically impact the determination of emission rates. In addition, all feedstock is mixed in a mix tank before being fed to the reactors, and samples are taken from the mix tank which minimizes the impact of any differences in sulfur content in feedstocks from different sources. In addition, the frequency of monitoring the carbon black oil is increased from once per day to twice per day to minimize the impact of changes in the sulfur content of the carbon black oil over time.

§112.228

Comment

As for §112.208, the EPA commented for §112.228 that it is not clear what schedule is intended for the installation of controls or making reductions and modifications and that a detailed analysis of what is needed to meet each requirement and what constitutes "as expeditiously as practicable" for each requirement.

Response

In response to this comment, the TCEQ reevaluated the compliance dates to ensure that compliance is achieved as soon as practicable, depending on site specific constraints. Orion Borger Carbon Black Plant committee to a compliance date of June 30, 2023, except for those requirements that relate to the construction of a new flare and the rule was updated accordingly. Because the soonest practicable dates for compliance are identified in the rule, the term "as soon as practicable" was removed from the provisions at adoption.

Subchapter F Division 4 (P66)

General

Comment

Phillips 66 stated that it is a major employer in Hutchinson County but is only marginally competitive in the fuels marketplace. Phillips 66 commented that the proposed rules impair their ability to adapt and improve competitiveness, jeopardizing the future of the refinery, and that other refineries in the area do not have the same restrictions and can therefore make modifications easier at a lower cost. Phillips 66 stated that the refinery and its employees share the goal of improving air quality for the community and that everything it requests still supports that goal.

Response

The TCEQ provided additional flexibility through the AMOC provisions added as adopted §112.232(k).

§112.230

Comment

Phillips 66 requested that TCEQ delete the last sentence of §112.230(a): "Once approved by the United States Environmental Protection Agency (EPA), the requirements in these rules continue to apply until the EPA approves their removal." EPA actions on SIP submittals and TCEQ rulemaking are completely separate processes. The TCEQ can enforce rules before they become part of the SIP but cannot enforce after they are repealed.

Response

The commission disagrees with the commenter's assertion that the agency will enforce rules that are repealed; however, to avoid confusion this language has been removed at adoption. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

§112.232

Comment

Phillips 66 commented that the approach to emission limits for FCCUs at the Borger Refinery is completely different than what is proposed for the Alon USA Refinery, which has a seven-day rolling average proposed with no limits on stack flow. The difference is based on Alon's supplying four years of CEMS data to demonstrate the discount factor is appropriate. However, the TCEQ does not explain why a different approach was taken, and Phillips 66 is concerned that the difference is arbitrary and may put the Borger Refinery at a competitive disadvantage and that the TCEQ did not consider social and economic factors in setting their FCCUs' emission limits. With respect to the restrictions on stack flow, Phillips 66 stated that because stack flow necessarily changes from zero to non-zero values during startups and to zero in shutdowns and because turndown rates are needed for operations, it is not possible to comply with the limits at all times. Phillips 66 commented that a seven-day rolling average should be provided for the Borger Refinery FCCUs. Phillips 66 stated that the data relevant to the discount factor was provided with the comments and that because differing FCC loads were not modeled for Alon, the 100% load-case CEV of 155.49 lb/hr should be used for the Borger Refinery FCCUs, which with the discount factors of 0.749 for FCC P29 and 0.780 for FCC P40 yield emission factors of 116.47 lb/hr and 121.25 lb/hr, respectively. Phillips 66 requested that the rules be changed to include these seven-day rolling average emission factors in place of those on a one-hour basis, remove the emission limits based on varying load, and remove the stack flow restrictions.

Response

The TCEQ has evaluated the historical data provided by Phillips 66 and determined that a longer averaging time is supported based on variability and the likelihood that exceedances of the CEV will be rare. Before adopting the one hour averaging period for these sources the one-hour CEV was lowered significantly from the maximum hourly rate in the proposed rule of 155.49 lb/hr. The longer averaging time is appropriate because there is high degree of variability in the historic emissions data and exceedances of the CEV are expected to be rare. In addition, the variable load limits have been removed as have the restrictions on stack flow. Because P66 agreed to a new lower emission rate of 130 lb/hr emission rate for the two FCCU units under all operating conditions. The TCEQ modeled the new emission rates for various operating scenarios including the 50% and 75% operating load scenarios with lower stack velocity. All scenarios

showed attainment with the lower emission rate thereby negating the need for stack flow restrictions.

Comment

Phillips 66 commented that §112.232(e) should be deleted or changed to only apply to normal operating conditions or that the TCEQ should explain its reasoning for the provision. Phillips requested that if the TCEQ intended that the requirement apply at all times, even though EPA determined it should not, the TCEQ should also provide an analysis of the economic and social consequences of the requirement, including its assessment of technical feasibility.

Response

The TCEQ understands that it may not be technically feasible to comply with the sulfur content requirement during MSS and compliance with that limit during MSS is not required to meet the MSS emission limits established in the rule. As a result, the rule is clarified that the limit applies except as provided for in 40 CFR §60.103a(h).

§112.233

Comment

Phillips 66 commented that the proposal preamble discussion for §112.233 implies that the TCEQ believes the FCCUs at the Borger Refinery are all subject to 40 CFR Part 60, Subpart Ja, but these sources are subject to Subpart J instead. In addition, Phillips 66 proposed that §112.233(a) be revised as follows: "Install, operate, calibrate, and maintain a CEMS to measure and record the SO_2 emissions from EPN 29P1 and EPN 40P1 in accordance with the procedures specified at 40 CFR §60.105a(g) for FCCUs and FCUs subject to an SO_2 limit under NSPS Ja (regardless of whether EPN 29P1 and EPN 40P1 are 'affected facilities' for purposes of NSPS Ja)."

Response

TCEQ incorporated at adoption Phillips 66 comments into minor §112.233(a) revisions to definitively identify the specific portions of 40 CFR §60.105a(g) procedures (40 CFR §60.105a(g)(1), (2), and (5)) that apply to EPN 29P1 and EPN 40P1 monitoring requirements. These minor revisions were adopted to clarify the proposed rule requirements.

Comment

Phillips 66 requested that the phrase "and the exhaust gas flow rates" be removed from §112.233(a) because 40 CFR Part 60 Subpart Ja does not require stack flow monitoring and that the clause "regardless of whether EPN 29P1 and EPN 40P1 are "affected facilities" for purposes of NSPS Ja)" be added because the FCCUs are not currently subject to Subpart Ja.

Response

Subpart Ja does not require flow monitoring because the emission standards are on a concentration rather than on a pounds-per-hour basis. Exhaust gas flow rates are required for demonstrating compliance with the emission limits in these rules; therefore, the requirement to monitor flow is not removed from the rule. However, the phrase "regardless of whether these provisions otherwise apply or provide exemptions for certain activities" is added in response to this comment.

Comment

Phillips 66 commented that the proposal preamble discussion for §112.233 implies that the TCEQ believes the SRUs at the Borger Refinery are all subject to 40 CFR Part 60, Subpart Ja, but this is incorrect and these units are subject to Subpart J instead. Since Subpart J does require the SRUs to install a CEMS, Phillips 66 proposed that §112.233(b) be revised as follows: "Install, operate calibrate and maintain a CEMS to record hourly SO_2 emissions from EPN 34I1 and EPN 43I1 in accordance with the procedures specified at 40 CFR §60.105(a)(5)."

Response

TCEQ proposed rules contain the most detailed, current and complete SRU monitoring requirements codified under 40 CFR Part 60, Subpart Ja to accurately verify compliance with the Hutchinson County modeled emission limits in the attainment demonstration. In staff's opinion, it would not be appropriate or consistent with the monitoring requirements for other similar sources in the proposed rule to specify less detailed, current or complete SRU monitoring requirements for EPN 34I1 and EPN 43I1. Therefore, no changes were made in response to this comment.

Comment

For the flares covered in §112.233(c), Phillips 66 stated that EPNs 66FL1, 66FL2, 66FL3, and 66FL12 are subject to 40 CFR Part 60, Subpart Ja while EPN 66FL13 is subject to Subpart J and primarily combusts gases from upsets. Because Subpart J does not require sulfur monitoring for EPN 66FL13 but the flare is equipped with a flow meter, process knowledge and flow data are used to determine hourly emissions. Because process vent gas from upsets in two specific units are infrequently burned in EPN 66FL13, Phillips 66 stated that they can develop representative samples of the flare gas from the units and that a one-time representative measurement using an approved test method would be appropriate. Phillips 66 requested that §112.233(c) be changed to require continuous flow rate and sulfur content monitoring under Subpart Ja for EPNs 66FL1, 66FL2, 66FL3, and 66FL12, continuous flow rate monitoring under Subpart Ja for EPN 66FL13 (with a parenthetical clause that it must comply as if it were subject), and determination using either or both an approved test method or Subpart Ja continuous monitoring for sulfur content for the two flare gas streams.

Response

Because the rule must have monitoring requirements sufficient to demonstrate compliance with the emission limits in the rule, Phillip 66 proposed that they submit a permit alteration to reduce the EPN 66FL13 potential-to-emit (PTE) below the 7.8 ug/m^3 significant impact level. TCEQ staff have reviewed the application and verified that the authorized PTE reduction qualifies EPN 66FL13 as an insignificant emission source. Therefore, EPN 66FL13 is removed from the §112.233(c) and the emission CAPs that included EPN 66FL13 have been lowered by EPN 66FL13's contribution to the caps at adoption. In addition, monitoring requirements associated EPN 66FL13 have been removed at adoption.

Comment

Phillips 66 commented that for the facilities covered by §112.233(d) the provision therein is not clear that testing can be done at a point separate from the inlet of each facility and that 40 CFR Part 60, Subparts J and Ja only require monitoring the concentration of H_2S, not total sulfur. Phillips 66 requested that §112.233(d) be changed to require continuous monitoring of fuel consumption and H_2S concentration by volume and either monthly testing with an option for quarterly testing if three

consecutive samples indicate 90% or greater of the total sulfur is H_2S or continuous monitoring for total sulfur content.

Response

In 40 CFR §60.107a(a)(2)(iv), the federal rules cited are clear that monitoring can be at a point other than at the inlet to a combustion facility for facilities using the same source of fuel gas. For facilities using different fuel gases, the commission is not placing any monitoring location restrictions other than what is in the federal rules cited. Because continuous flow rate and H_2S concentration are monitored under this approach and any additional sulfur in the fuel case is accounted for and verified by monthly or quarterly sampling with an approved test method the TCEQ has made changes at adoption consistent with this comment and included equations for converting the H_2S concentration to pounds per hour of SO_2.

§112.235

Comment

Phillips 66 requested that ASTM Method D-6667 (Determination of Total Volatile Sulfur in Gaseous Hydrocarbons) be added as an approved test method in §112.235(d).

Response

The TCEQ evaluated Phillips 66's request and added ASTM D-6667 (Determination of Total Volatile Sulfur in Gaseous Hydrocarbons) as an approved test method under proposed §112.235(a).

Comment

Phillips 66 commented that §112.235(e) should be clarified on the process for EPA approval of alternate test methods because the EPA does not have a streamline process for approvals, only the full SIP revision process. Therefore, §112.235(e) should be changed to the language in the first three sentences of §1152.725(m).

Response

The TCEQ agrees that minor modifications to monitoring methods or test methods should be allowed without rulemaking and a SIP revision. The TCEQ notes that a provision allowing this was approved by the EPA as a SIP revision under 30 TAC 115.725(m). As a result, the TCEQ adopted language consistent with 30 TAC Chapter 115 to allow minor modifications to test methods or monitoring methods if approved by the executive director. In addition, language was added to clarify that increases in the frequency of monitoring and replacement of parametric monitoring with direct emissions monitoring can be approved under this provision.

§112.237

Comment

Phillips 66 requested that the phrase "or fails to meet a required stack parameter" be removed from §112.237(a) and that the phrase "or failure to meet a required stack parameter" be removed from §112.237(a)(1), (2), and (3).

Response

Because dispersion characteristics at allowed emission limits are critical to the attainment demonstration modeling and are directly related to the stack characteristics (exhaust flow rate and temperature and stack height), the requirements for stack parameters in the rules are requirements whose noncompliance needs to be documented in reports to the TCEQ. Even though there are currently no stack parameter requirements in the rule for this site, the language that accommodates them in the recordkeeping section needs to remain in place because the AMOC could generate the need to establish stack parameters. No change to the rules was made in response to this comment.

Comment

Phillips 66 commented that the requirement for a full system audit should be removed from §112.237(c) because it is arbitrary and unreasonable for the executive director to require the audits without have first made a culpability determination based on excess emissions since it should be easy to identify the source causing a finding of failure to attain because the sites are in close proximity Phillips 66 stated that the audit would be an economic burden for the refinery and would not serve the purpose of the contingency measures. Phillips 66 suggested that instead, the contingency measures should be a description of TCEQ's existing enforcement program, as provided in the EPA's 2014 guidance. Phillips 66 stated that the audits might be seen as self-policing by the sites, and it is the responsibility of the state, a federal land manager, or a federal agency to make an exceptional event demonstration. Further, Phillips 66 commented that the EPA can make a finding of failure to attain on based on modeling or Title V deviation reports, so the FSAs could be of questionable value. Phillips 66 also commented that contingency measures should focus only on the identified source. In their oral comments, Phillips 66 stated that performing a full system audit when a failure to attain is caused by another company's emissions events does not seem practical.

Response

The commission proposed the full system audits throughout the rules to receive full information from each site within a nonattainment area after a finding of failure to attain on the conditions at each site that may have contributed to the finding. The commission notes that the rule language triggers the audits from the TCEQ notifying sites of the EPA's finding of failure to attain, not from that finding itself. If it is clear which site(s) caused an exceedance, deviation report, or other factor leading to the EPA's finding, the commission does not intend to trigger the contingency measure for other sites. However, because it may not be clear which site(s) contributed to a monitor exceedance or other factors leading to the EPA's finding, under some circumstances the commission may trigger the audits for all sites in the nonattainment area. At adoption, the wording is changed so that the audits do not require a site to identify an exceptional event but rather any emissions event(s) and the conditions that existed at their site during the relevant period. The commission recognizes that an EPA finding of failure to attain could be based on Title V deviation reports as well as other information but also that the information from the audits may be important for determining if other conditions within the nonattainment area with a potential to affect conditions leading to the EPA's finding were occurring at the same time.

§112.238

Comment

As in §112.208, the EPA commented for §112.238 that it is not clear what schedule is intended for the installation of controls or making reductions and modifications and that a detailed analysis of what is needed to meet each requirement and what constitutes "as expeditiously as practicable" for each requirement.

Response

The TCEQ has evaluated the compliance dates to ensure that compliance is achieved as soon as practicable and compliance dates depend on site specific constraints. At the time the rule is finalized, there will be just over two years before the proposed January 1, 2025 compliance date. Phillips 66 has indicated that they will need to make physical modifications to the refinery flare gas stream which will be scheduled during a turnaround. Turnarounds are scheduled by companies to align with contractor schedules, potential multiple maintenance projects that require coordination, and other relevant issues such as energy demands, weather, etc. The refinery will also have to develop new procedures for complying with monitoring quality assurance requirements and emission limits not currently specified in a permit. Therefore, the refinery cannot commit to compliance before January 1, 2025. Because the soonest practicable date for compliance is January 1, 2025, the term "as soon as practicable" was removed from the provisions at adoption.

Subchapter F Division 5 (Tokai)

§112.240

Comment

Tokai requested the TCEQ delete §112.240(a) and other provisions elsewhere in the rules that require EPA approval. TCEQ does not have authority to promulgate rules that allow TCEQ to enforce after rules are repealed or that require EPA approval to repeal.

Response

The commission disagrees with the commenter's assertion that the agency will enforce rules that are repealed; however, to avoid confusion this language has been removed at adoption. This change does not affect when the rules may no longer apply because their removal from the SIP must be approved by the EPA. The rules are enforceable by the TCEQ alone until the EPA approves and incorporates the rules into the SIP. If the TCEQ removes provisions from the rule, those provisions stop being enforceable by the TCEQ on the effective date of the rule change but remain enforceable by the EPA until they approve the SIP revision for the removal.

§112.242

Comment

The EPA commented that the language in §112.242(e) should be reworded to say that tail gas can only be routed to and combusted in EPNs 119, 121, 122, Flare-1 or New Flare rather than combusted in a source whose emissions are routed to one or more of those EPNs.

Response

The comment does not reflect how the production units operate. Tail gas is burned in the carbon black dryers as well EPNs 119, 121, 122, Flare-1 or New Flare. Making the change requested would prohibit the dryers from burning tail gas, requiring a switch to natural gas and resulting in a slight increase in the SO_2 emissions from the site. No change to the rules was made in response to this comment.

Comment

Tokai requested the TCEQ delete §112.242(f)-(h) which prohibit operation of existing flares and dryer purge stacks following the compliance date and would apply even if the equipment in question did not combust tail gas and have no SO_2 emissions. Although Tokai does not foresee a need to operate the existing flares (except, perhaps, Flare-1) and dryer purge stacks following the compliance date, they stated that TCEQ exceeds its authority by requiring actual cessation of operation, rather than simply prohibiting the combustion of tail gas in the referenced equipment, as it has already done in proposed §112.242(e).

Response

Tokai represented that there would be no SO_2 emissions from these sources in the modeling; consequently, the rule cannot allow SO_2 emissions from these sources. However, to provide the most flexibility possible the TCEQ changed the language to prohibit the routing of sulfur or sulfur containing compounds to the EPNs rather than prohibit their operations.

Comment

The EPA commented that §112.242(i)(2) and (j) should be reworded by changing "may be" to "may only be".

Response

The proposed language in §112.242(i)(2) states that "tail gas may be routed to EPN New Flare (New Flare) only when Boilers 1 and 2 are not operating." The TCEQ believes adding an additional "only" could create confusion and is not necessary to limit use of flares to only those periods when neither boiler is operating. Instead, the language was clarified to state that tail gas may be routed to the flares only when neither Boiler 1 nor Boiler 2 is operating.

§112.243

Comment

The EPA noted that in §112.243 continuous monitoring of the volume of the tail gas stream to each combustion device and that emission estimates in current modeling are based on a 70/30 split of tail gas going to either the boilers (or flare) or to the dryers. EPA commented that the required hourly calculations should be compared to the presumed split and if they differ by more than 5%, additional modeling would be needed to demonstrate attainment. EPA further commented that §112.243 should require continuous monitoring of the total sulfur content of the tail gas if accurate measurements are possible and that use of this data and continuous monitoring of the volume of tail gas to the flare would provide monitoring that is more protective of the NAAQS than the current mass balance approach, which should be used only when the continuous monitor or flow monitor is not operating.

Response

The modeling was not based on an assumed 30/70 split but instead on the emission limits in the rule. In response to this comment the emission calculations were corrected to use the actual split of tail gas from each production unit rather than assume that the split is equal across all units.

Comment

The EPA commented that there is a typographic error that must be corrected in §112.243(h) in that it refers to a paragraph 10 that does not exist in the subsection. The EPA further commented that §112.242(h) is not clear on the method for calculating emissions from the New Flare and should be rewritten to include an equation for the calculation, including the ratios in the subsection.

Response

The commission is unable to find any reference to "paragraph 10" in proposed §112.243(h). The only citation therein is to "subsection (j) of this section," which contains the equation for the calculation. As required by §112.243(d), Tokai must have a totalizing tail gas flow meter for each combustion device burning tail gas that continuously measures the tail gas volumetric flow. The ratios in §112.243(h) are the ratios of the volumetric flow from a production unit to an EPN divided by the total volumetric flow rate from the production unit. Equations for calculating emissions from each EPN were provided to improve clarity.

Comment

The EPA commented for §112.243(j) requires that emissions must be calculated or determined on a one-hour block basis but that because of variability in the sampling and measuring frequency, it is not clear that the test methods and measurements can translate into a block one-hour period standard. The EPA stated that sampling and measurements of greater than one-hour periods would not result in an accurate one-hour calculated emission measurement.

Response

The TCEQ evaluated the use of continuous sulfur analyzers; however, they were determined to be cost prohibitive and potentially difficult to maintain. Tokai estimates that continuous total sulfur analyzers required to determine hourly emissions from each EPN would cost approximately $1.3 million for both of their carbon black sites addressed in this rulemaking. However, additional sampling of carbon black oil was included in the rule to improve the accuracy of the mass balance approach. Stack testing once every five years was also added to the provisions to provide additional information regarding compliance.

§112.245

Comment

Tokai requested the TCEQ explain in §112.245(f) what streamlined process exists for the EPA to approve alternatives to test methods specified in the SIP. Otherwise, TCEQ should revise the provisions such that they only refer to minor modifications to test methods or monitoring methods, which the EPA routinely authorizes States to grant.

Response

In response to this comment, the TCEQ included language consistent with 30 TAC §115.725(m) to allow minor modification to monitoring and test methods approved by the TCEQ in each division. In addition, language was added to clarify that increases in the frequency of monitoring and replacement of parametric monitoring with direct emissions monitoring can be approved under this provision.

§112.247

Comment

Tokai requested TCEQ delete §112.247(c), which requires conducting a "full system audit" as a contingency measure if the EPA determines the Hutchinson County SO_2 nonattainment area fails to achieve attainment, and instead refer to TCEQ's existing enforcement policies. Tokai stated that TCEQ's FSA provision suggests that TCEQ will limit its enforcement of the NAAQS to the required reporting scheme, which may be contrary to what EPA envisioned in issuing its guidance, and that the FSA provisions require Tokai to identify exceptional events under 40 CFR §50.14, but these demonstrations are the responsibility of a State, federal land manager, or other federal agency, not a regulated entity. Tokai also stated that TCEQ's FSA provision implies that the EPA only issues findings of failure to attain when actual air quality does not meet the NAAQS, which is at odds with how the EPA handled recent determinations. Tokai gave as an example, the EPA finding for St. Bernard Parish, LA, which was based on its review of Title V deviation reports, despite the presence of valid monitoring data consistent with a finding of attainment. Tokai further commented that if a similar outcome occurred for Hutchinson County, a systems audit focused on local meteorology and monitoring data would *not* generate any useful data.

Response

The commission proposed the full system audits throughout the rules to receive information from sites within a nonattainment area after a finding of failure to attain on the conditions at each site that may have contributed to the finding. The commission notes that the audits are triggered by notices from the TCEQ, not from the finding itself. If it is clear from available information, (ambient monitoring, modeling, compliance reports, etc.) that a site was not responsible for a failure to attain, the TCEQ would not require a full system audit of that site. However, because it may not be clear which site(s) contributed to the EPA's finding, under some circumstances the commission may require the audits for all sites in the nonattainment area. At adoption, the wording is changed so that sites are not required to identify an exceptional event but rather any emissions event(s) and the conditions that existed at their site during the relevant period. The commission recognizes that an EPA finding of failure to attain could be based on Title V deviation reports as well as other information but also that the information from the audits may be important for determining if other conditions within the nonattainment area with a potential to affect conditions leading to the EPA's finding were occurring at the same time.

§112.248

Comment

As in §112.208, the EPA commented for §112.248 that it is not clear what schedule is intended for the installation of controls or making reductions and modifications and that a detailed analysis of what is needed to meet each requirement and what constitutes "as expeditiously as practicable" for each requirement.

Response

In response to this comment, the TCEQ reevaluated the compliance dates to ensure that compliance is achieved as soon as practicable, depending on site specific constraints. Upon the effective date of the rule there will be just over two years before the compliance date of January 1, 2025. Tokai indicated that they will need to design, construct, and install natural gas duct burners and a new flare and are concerned that supply chain issues my impact the schedule. As a result, they have indicated that they cannot comply before January 1, 2025. Because the soonest practicable date for compliance is January 1, 2025, the term "as soon as practicable" was removed from the provisions at adoption.

Subchapter G (Arcosa)

§112.301

Comment

Arcosa requested TCEQ change definition of Lightweight aggregate to one based on ASTM methods.

Response

The commission agrees with this request, and the change is made at adoption.

Comment

Arcosa requested TCEQ delete definition of pipeline quality natural gas in case BACT or other requirements change in the future.

Response

Because Arcosa committed to installing a CEMS on the stack for the control of the lightweight aggregate kiln, the monitoring of the sulfur content of fuels and other materials is not needed. Therefore, the definition of "pipeline quality natural gas" is not needed and is removed at adoption.

§112.302

Comment

Arcosa stated they will install a wet or dry scrubber or other controls as needed to comply and requested TCEQ change the requirements to the following: minimum stack height of 120 feet; minimum exhaust gas velocity of 42.5 feet per second; emissions from EPN E3-1 not to exceed 222 lb/hr of SO_2; minimum exhaust gas temperature of 117 degrees Fahrenheit; and the stack to be located within the area forming a 20 m (65.6 ft) x 30 m (94.4 ft) rectangle just north of the existing stack (EPN E3-1) location (map provided). Arcosa requested that emission limit of 222 lb/hr of SO_2 replaced the two different emission limits contingent on stack parameters. Arcosa also committed to installing a CEMS to continuously monitor SO_2 emissions from the stack.

Response

The requested stack parameters provided by Arcosa were modeled by the TCEQ. The modeling demonstrates that an emission rate of 222 lb/hr is protective of the NAAQS given the stack parameters provided by Arcosa regardless of where the future stack is built within the rectangular area under consideration for construction. Because the changes from Arcosa are based on the control(s) they committed to install and continue to model attainment, the commission agrees that these changes are appropriate. The requested changes to the rule are made at adoption. The TCEQ welcomes Arcosa's commitment to installing a CEMS.

Comment

The EPA commented that the term "lightweight kiln" in §112.302(b) should be changed to "lightweight aggregate kiln" or defined.

Response

The inadvertent omission of "aggregate" in the rule language is corrected at adoption in this subsection, which was re-lettered at adoption.

Comment

The EPA commented that the 200 lb/hr sulfur in fuel limit in §112.302(f) corresponds to emitting 400 lb/hr by itself and does not account for the sulfur content of the materials processed. The EPA commented further that the provisions of §112.306(7) mean that the sulfur content limits in §112.302 should be half of the emission limits provided.

Response

Because Arcosa committed to installing a CEMS to continuously monitor SO_2 emissions and the rules are changed at adoption to require the CEMS. The rule requirement for monitoring the sulfur content of fuels is no longer necessary because emissions will be directly measured, and the provision is removed at adoption. No change was made to the rule in response to this comment.

Comment

The EPA commented that the specific cutoffs for the transition from startup to normal operations are defined but may be difficult to identify during operations in the physical sense; it may take anywhere from 30 minutes to 24 hours to end the startup mode and begin firing solid fuel. The EPA stated that during these first 24 hours the feed rate might be less than 60% of the maximum feed rate, but as it is described, the kiln is still being heated and fed raw materials. The EPA was concerned that there are unquantified amounts of SO_2 emissions from the raw materials and small amounts of SO_2 from the natural gas firing. The EPA stated these emissions need to be quantified correctly, taking into account all sulfur that is being combusted during this startup mode. The EPA also stated that there may be significantly more SO_2 coming off the raw aggregate during startup than the permitted 0.1 lb/hr. The EPA expects this to be one of the conditions tested and stated that this must be added to the requirements of Chapter 112. The EPA commented that the same can be said for the shutdown period, which begins with the cessation of the kiln firing and the addition of raw materials, but the kiln continues to turn until all the final load of hot aggregate traverses the length of the kiln. Without evidence to the contrary, the EPA must assume that there is more than 0.1 lb/hr of SO_2 being emitted by the hot aggregate in 24 hours, even as it cools, during this shutdown period. The EPA expects this to be another condition tested and added to the requirements of Chapter 112.

Response

The CEMS unit to be added to the stack will measure emissions during startup and shutdown. No other testing or rule changes are needed for these periods. No change to the rules was made in response to this comment.

Comment

The EPA encouraged clarification and examples of what is needed to comply with the dual emission limits provided and the ramifications of noncompliance with any of the stack parameter requirements associated with each emission limit.

Response

Because the changes requested in Arcosa's comments result in the removal of the dual emission limits from the rule, clarification and examples are not needed. The commission notes that noncompliance with any of the adopted rule requirements after the compliance date is subject to enforcement.

§112.303

Comment

Arcosa requested TCEQ delete proposed requirements for monitoring fuels and shale in §112.303(1) - (5).

Response

Because a CEMS is the best option for monitoring SO_2 emissions, the requirements for monitoring the sulfur content of fuels and raw materials are not needed and are removed at adoption.

Comment

The EPA commented that an initial stack test is insufficient as monitoring with a CEMS being more appropriate and the need for a CEMS should be evaluated for this site in particular. The EPA commented further that testing or monitoring of the efficiency of any add on controls is needed.

Response

The rule was revised at adoption to require the use of a CEMS to directly monitor sulfur emissions, which minimizes the need for extensive performance testing; however, an initial performance test as well as relative accuracy audits are required by the rule.

Comment

The EPA commented that the use of the term "monitor" is ambiguous in §112.303(1) and (2) and should be changed to "measure" and that the word "any" in §112.303(1) and (5) should be changed to "every."

Response

Because the specific paragraphs in which the EPA requested these changes are removed at adoption, no change was made in response to this comment.

Comment

The EPA commented that the reference to "natural gas" in §112.303(3) should use the defined term "pipeline quality natural gas." The EPA commented further that the provision allowing use of an analysis supplied by the supplier should require use of such analysis if the rules do not prescribe how Arcosa must conduct such analysis, including any standard analysis or minimum standards.

Response

Because Arcosa committed to installing a CEMS to continuously monitor SO_2 emissions, §112.303(3) is not needed and is removed at adoption. No change was made in response to this comment.

Comment

The EPA commented that allowing periods longer than an hour for monitoring the sulfur content of fuels or raw materials must be justified and supported by Arcosa's historical records, preferably on an hourly basis, that support longer periods. For the provision in §112.303(5) providing for use of vendor data on fuel or raw material sulfur content, the EPA commented that the materials must have the sulfur content measured directly. The EPA stated that §112.303(6) must specify the frequency of continuous monitoring of exhaust temperature and velocity. The EPA commented further that allowing longer periods and the sampling of combined raw materials makes a root cause analysis of any exceedance difficult but that installing a CEMS would remove the need to sample input materials and would satisfy the requirement for continuous. monitoring of exhaust temperature and velocity.

Response

Because Arcosa committed to installing a CEMS to continuously monitor SO_2 emissions, the provisions in §112.303 for periods greater than an hour are not needed and are removed at adoption. No change was made in response to this comment.

Comment

The EPA noted that §112.303 does not provide a limit on the allowed sulfur content but requires measurement thereof and that the records of calculations of sulfur content of materials processed on an hourly basis are required in §112.306(6) and stated that this only works if the sulfur content of fuels and raw materials are tested hourly.

Response

Because Arcosa committed to installing a CEMS to continuously monitor SO_2 emissions, the daily testing provisions in §112.303 are not needed and are removed at adoption. Changes to §112.306 are also made at adoption, as discussed for that rule section, to account for the recordkeeping appropriate for the use of a CEMS. No change was made in response to this comment.

§112.304 and §112.305

Comment

Arcosa requested TCEQ change requirements to be consistent with the

standard federal monitoring and testing requirements for CEMS including 40 CFR §60.8 and §60.13 and 40 CFR Part 60, Appendix B.

Response

The commission agrees that testing requirements and methods appropriate for a CEMS for SO_2 emissions are appropriate in these sections. Changes are made at adoption to provide the testing provisions appropriate for a CEMS. In addition to 40 CFR §60.8 and §60.13, and 40 CFR Part 60, Appendix B, the rule is updated at adoption to include compliance with 40 CFR Part 60, Appendix F, Quality Assurance Procedures

Comment

The EPA commented that because Arcosa is not required to install an SO_2 control device, an initial stack test under in §112.304 is needed prior to the compliance date so there is time to fix any problems that might be found in the testing. The EPA commented further that the testing should be required within 90 days after the effective date of the rules with submission of the report to TCEQ 60 days thereafter because those dates are closer to "as expeditiously as practicable." The EPA requested confirmation that the provisions in §112.304(c) is intended to require a new stack test if there is a change in the blend of raw materials processed during the initial stack test and for clarification of what changes in raw materials or testing would require retesting. The EPA stated that installation of a CEMS would remove the need for such testing. The EPA requested that the manner of enforcing the testing requirements in §112.304 be specified.

Response

Because Arcosa has committed to installing a CEMS consistent with 40 CFR Part 60, Subpart A and Appendix B, the requirements for a performance test need to conform to 40 CFR §60.8. Changes to §112.304 are made at adoption to reflect the testing required for a CEMS. Additional testing, including any triggered by changes in raw materials, are no longer needed because the emissions will be directly monitored with a CEMS.

Comment

For §112.304(d), the EPA commented that the phrase "maximum anticipated sulfur content" must be defined or clarified for EPA to review and determine the meaning and that a methodology for the stack test should be provided.

Response

Because Arcosa committed to installing a CEMS to continuously monitor SO_2 emissions, §112.304(d) is not needed and is removed at adoption. No change was made in response to this comment.

Comment

The EPA commented that §112.304(f) should be clarified on the parameters that should be analyzed for raw materials.

Response

Because Arcosa committed to installing a CEMS to continuously monitor SO_2 emissions, §112.304(f) is not needed and is removed at adoption. No change was made in response to this comment.

Comment

The EPA recommended that §112.305(b) require that a testing protocol must be approved by the EPA and TCEQ 90 days prior to stack testing. The EPA stated that otherwise they would consider the stack test void.

Response

Because Arcosa committed to installing a CEMS for monitoring SO_2 emissions consistent with the EPA's requirements at 40 CFR Part 60, Subpart A and Appendix B, the rules are changed at adoption to be consistent with the use of a CEMS and the EPA's requirements. Because a CEMS will be used to directly monitor emissions additional specifications regarding testing are less significant and approval of a performance testing protocol, is not needed. No change was made in response to this comment.

Comment

The EPA commented that the provision in §112.305(d) stating that testing of raw materials must be done using a method approved by the executive director constitutes and unacceptable and unenforceable executive director's discretion because EPA approval is not also required, which conflicts with long-standing EPA policy.

Response

Because Arcosa committed to installing a CEMS for monitoring SO_2 emissions, the test method for determining the sulfur content of shale is not needed in the rules and are being replaced with the test methods needed for testing a CEMS.

§112.306

Comment

Arcosa requested TCEQ delete §112.306(1) - (4) and (6) - (8) because they are not needed for use of a CEMS.

Response

The recordkeeping associated with monitoring the sulfur content of materials is not needed because Arcosa committed to installing a CEMS for monitoring SO_2 emissions. The provisions related to records of testing needed for providing sulfur content for use in a mass balance calculation of SO_2 emissions are removed at adoption and replaced with the recordkeeping needed for test requirements appropriate for the use of a CEMS.

Comment

The EPA commented that the first use of "sulfur" in §112.306(7) should be "sulfur dioxide."

Response

The lack of the word "dioxide" was an inadvertent omission in §112.306(7). However, because this paragraph is removed at adoption, as discussed for the prior comment, no change is made to the rule in response to this comment.

§112.308

Comment

The EPA commented that a more expeditious schedule for complying with the rule provisions should be provided.

Response

The TCEQ has evaluated the possibility of requiring compliance sooner than January 1, 2025, and determined that an earlier compliance date is not practicable. At the time the rule is finalized, there will be just over two years for Arcosa to complete the control device design and purchase, install, and test the new control device and the monitoring system. Given current uncertainties related to the global supply chain, unexpected setbacks are possible during any one of these phases; therefore, compliance before January 1, 2025, may not be reasonably achievable. Because the soonest practicable date for compliance is January 1, 2025, the term "as soon as practicable" was removed from the provisions at adoption.

SUBCHAPTER E. REQUIREMENTS IN THE HOWARD COUNTY NONATTAINMENT AREA

DIVISION 1. REQUIREMENTS FOR THE ALON USA BIG SPRING REFINERY

30 TAC §§112.100 - 112.108

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling

methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The adopted new sections implement TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017, and 382.021.

§112.100. Applicability.

(a) The requirements in this division apply to affected sources at the Alon USA Big Spring Refinery, which is located at 200 Refinery Road in Big Spring, Texas in the Howard County sulfur dioxide nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes.

(b) Affected sources are designated by the source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. The specific affected sources are as follows:

(1) FCCU ESP Stack (EPN 06ESPPCV) in NSR Permit 49154 dated March 12, 2012;

(2) No. 1 SRU Incinerator Vent (EPN 69TGINC) in NSR Permit 80833 dated October 28, 2020;

(3) No. 2 SRU Incinerator Vent (EPN 71TGINC) in NSR Permit 80833 dated October 28, 2020;

(4) North East Flare (EPN 14NEASTFLR) in NSR Permit 80833 dated October 28, 2020;

(5) Crude Flare (EPN 02CRUDEFLR) in NSR Permit 80833 dated October 28, 2020;

(6) Reformer Flare (EPN 05REFMFLR) in NSR Permit 80833 dated October 28, 2020, and;

(7) South Flare (EPN 16SOUTHFLR) in NSR Permit 80833 dated October 28, 2020.

§112.101. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division, unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour of the day (e.g., from 12:00:00 to 12:59:59).

(2) Continuous Monitoring--Monitoring for which readings are recorded at least once every 15 minutes.

(3) Howard County sulfur dioxide (SO_2) nonattainment area--The portion of Howard County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO_2 National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344.

(4) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

§112.102. Control Requirements.

(a) The FCCU ESP Stack (EPN 06ESPPCV) emissions may not exceed 250.00 pounds per hour (lb/hr) sulfur dioxide (SO_2) on a seven-day rolling average.

(b) The North East Flare (EPN 14NEASTFLR), Crude Flare (EPN 02CRUDEFLR), Reformer Flare (EPN 05REFMFLR), and South Flare (EPN 16SOUTHFLR) may only combust pipeline quality natural gas or combust a refinery gas stream with a maximum sulfur content of 162 parts per million by volume as hydrogen sulfide determined hourly on a three-hour rolling average except as provided for in 40 Code of Federal Regulations §60.103a(h).

(c) North East Flare (EPN 14NEASTFLR) emissions may not exceed 25.00 lb/hr SO_2 during normal operations, and the following limits apply during authorized maintenance, startup, and shutdown (MSS) activities:

(1) emissions may be equal to or greater than 25.01 lb/hr SO_2 but less than 250.01 lb/hr SO_2 in any hour within a calendar day for no more than four calendar days each year;

(2) emissions may be equal to or greater than 250.01 lb/hr SO2 but less than 500.01 lb/hr SO_2 in any hour within a calendar day for no more than six calendar days each year;

(3) emissions may be greater than or equal to 500.01 lb/hr SO_2 but less than 1,500.01 lb /hr SO_2 in any hour within a calendar day for no more than two calendar days each year;

(4) emissions above 1,500.00 lb/hr SO_2 are prohibited; and

(5) if SO_2 emissions that correspond to more than one range specified in paragraphs (1) - (3) of this subsection occur during a calendar day, only the emissions in the highest range will be used in determining which emissions rate range specified in paragraphs (1) - (3) of this subsection applies to that calendar day.

(d) Crude Flare (EPN 02CRUDEFLR) emissions may not exceed 51.80 lb/hr SO_2 during normal operations, and the following limits apply during authorized MSS activities:

(1) emissions may be equal to or greater than 51.81 lb/hr SO_2 but less than 250.01 lb/hr SO_2 in any hour within a calendar day for no more than 14 calendar days each year;

(2) emissions may be equal to or greater than 250.01 lb/hr SO_2 but less than 750.01 lb/hr SO_2 in any hour within a calendar day for no more than three calendar days each year;

(3) emissions above 750.00 lb/hr SO_2 are prohibited; and

(4) if SO_2 emissions that correspond to the ranges in both paragraphs (1) and (2) of this subsection occur during a calendar day, only the range in paragraph (2) of this subsection applies to that calendar day;

(e) Reformer Flare (EPN 05REFMFLR) emissions may not exceed 103.70 lb/hr SO_2 during normal operations, and the following limits apply during authorized MSS activities:

(1) emissions may be equal to or greater than 103.71 lb/hr SO_2 but less than 250.01 lb/hr SO_2 in any hour within a calendar day for no more than four calendar days each year;

(2) emissions may be equal to or greater than 250.01 lb/hr but less than 750.01 lb/hr SO_2 in any hour within a calendar day for no more than five calendar days each year;

(3) emissions above 750.00 lb/hr SO_2 are prohibited; and

(4) if SO_2 emissions that correspond to the ranges in both paragraphs (1) and (2) of this subsection occur during a calendar day, only the range in paragraph (2) of this subsection applies to that calendar day.

(f) South Flare (EPN 16SOUTHFLR) emissions may not exceed 118.70 lb/hr SO_2 during normal operations, and the following limits apply during authorized MSS activities;

(1) emissions may be equal to or greater than 118.71 lb/hr SO_2 but less than 250.01 lb/hr SO_2 in any hour within a calendar day for no more than four calendar days each year;

(2) emissions may be equal to or greater than 250.01 lb/hr SO_2 but less than 500.01 lb/hr SO_2 in any hour within a calendar day for no more than 12 calendar days each year;

(3) emissions may be equal to or greater than 500.01 lb/hr SO_2 but less than 1,696.01 lb/hr SO_2 in any hour within a calendar day for no more than two calendar days each year;

(4) emissions above 1,696.00 lb/hr SO_2 are prohibited; and

(5) if SO_2 emissions that correspond to more than one range specified in paragraphs (1) - (3) of this subsection occur during a calendar day, only the emissions in the highest range will be used in determining which emissions rate range specified in paragraphs (1) - (3) of this subsection applies to that calendar day.

(g) No. 1 SRU Incinerator Vent (EPN 69TGINC) emissions may not exceed 17.03 lb/hr SO_2.

(h) No. 2 SRU Incinerator Vent (EPN 71TGINC) emissions may not exceed 12.78 lb/hr SO_2.

(i) The owner or operator may request an alternate means of control (AMOC) as follows:

(1) Permitting Requirements. Compliance with this subsection does not relieve any owner or operator of the responsibility to comply with the requirements of §116.110 or §116.151 of this title (relating to Applicability and New Major Source or Major Modification in Nonattainment Area Other Than Ozone, respectively) with respect to the new construction or modification of sources that may emit SO_2 into the air of this state.

(2) Availability of AMOC.

(A) The owner or operator of any site subject to a control requirement in this subchapter may request approval of an AMOC plan using the procedures established in this subsection. The executive director shall review a submitted AMOC and may approve the AMOC plan if it is demonstrated that the plan meets all applicable criteria and procedures of this subsection. The owner or operator who submits an AMOC plan not satisfying the requirements of this section may apply for a site-specific state implementation plan revision approved by the executive director and the United States Environmental Protection Agency (EPA).

(B) Application for an AMOC plan does not stay enforcement of regulations in this subchapter.

(C) Any violation of an AMOC plan will be subject to enforcement action as a violation of this subchapter.

(3) Criteria for Approval of AMOC Plans. An AMOC plan may be approved if it meets each of the following criteria, as applicable.

(A) Except as provided for in paragraph (8) of this subsection, all sources covered by the AMOC plan must be and remain at the same site.

(B) If the AMOC plan includes an increase in the lb/hr emission limit for a source subject to the control requirements in this subchapter, the AMOC plan must also include an equivalent decrease in the lb/hr emission limit for one or more sources subject to the control requirements of this subchapter.

(C) The AMOC application must include a demonstration that satisfies the following requirements.

(i) The modeled impacts of all sources affected by the AMOC plan demonstrate no net increase in ground-level concentration, which for purposes of this subparagraph means no net increase in modeled off-property concentration of SO_2, on a highest, first-high basis, at any receptor, *i*, in excess of the lesser of:

(I) $GLC_{crit,i}$, as defined in the following equation; or
Figure 30 TAC §112.102(i)(3)(C)(i)(I)

(II) an applicable significant impact level for the one-hour National Ambient Air Quality Standard for SO_2.

(ii) Except where otherwise provided in this subsection, the demonstration required under this paragraph must be by means of applicable air quality models, databases, and other requirements specified in Appendix W to 40 CFR §51.1 and what was used in the modeling for the corresponding SIP revision.

(D) The AMOC must be implemented and reductions created after the effective date of this rule.

(E) The AMOC plan must establish control requirements and monitoring, testing, recordkeeping, and reporting requirements consistent with and no less stringent than the applicable requirements of this subchapter for all sources in the plan that render the proposed control requirements enforceable.

(4) Procedures for AMOC Plan Submittal.

(A) The owner or operator requesting an AMOC plan shall submit a proposed AMOC plan and demonstration to the executive director; copies of such plan and demonstration must also be submitted to the appropriate regional office, any local air pollution control program with jurisdiction over the site affected by the AMOC plan, and the EPA regional office.

(B) The proposed AMOC plan must include the following information:

(i) the AMOC applicant name with mailing address, site name with physical address, regulated entity number, and contact person including address and telephone number;

(ii) an identification and a description of the sources involved in the AMOC plan including any applicable air permit numbers, plot plans, detailed flow diagrams, emission point numbers (EPNs), and facility identification numbers (FINs); an identification of the provisions of this subchapter that are applicable to such sources; an identification of promulgated provisions of this subchapter that will be applicable to such sources; and a description of normal operating conditions for each source causing emissions;

(iii) control requirements, which must be established for each source to make emission limits enforceable, to be applicable to each source affected by the proposed AMOC plan;

(iv) a demonstration that the AMOC plan satisfies each applicable requirement of paragraph (3) of this subsection;

(v) a list containing the name, address, and telephone number of any air pollution control program with jurisdiction over the site affected by the AMOC plan; and

(vi) any other relevant information necessary to evaluate the merits and enforceability of the AMOC plan, as may be requested by the executive director.

(C) All representations with regard to the AMOC plan, as well as any provisions attached to the AMOC plan, become conditions upon which the subsequent AMOC plan is issued. If the AMOC plan is approved by the executive director and the EPA, the owner or operator may not vary from such representation or provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions. If the AMOC plan is approved by the executive director and the EPA, the owner or operator may not vary from the emission limits, control requirements, monitoring, testing, reporting, or recordkeeping requirements of an approved AMOC plan.

(D) Applications to amend or revise an AMOC plan must be submitted subject to the requirements of this subsection.

(5) Procedures for an AMOC Plan Approval. Upon a preliminary determination to approve or deny the proposed AMOC plan, the executive director shall, in writing, so notify the submitter of the plan, any local air pollution control program with jurisdiction over the site affected by the AMOC plan, and the EPA regional office.

(A) If the executive director makes a preliminary determination to approve the AMOC plan, the notice must include a copy of the AMOC plan as preliminarily approved.

(B) If the executive director makes a determination to deny the AMOC plan, the notice must include a description of the reason(s) for such determination of denial. This determination constitutes a final action of the executive director appealable to the commission as provided in subparagraph (G) of this subsection.

(C) Upon receipt of notice from the executive director that the AMOC plan has received preliminary approval, the AMOC applicant, at the applicant's own expense, shall cause notice of the applicant's intent to obtain an AMOC plan and of the opportunity to submit written comments to be published. The notice must be consistent with paragraph (6) of this subsection.

(D) The executive director shall consider and prepare a written response to all significant and timely written comments filed in connection with an AMOC plan.

(E) In response to the written comments, the executive director may modify the provisions of the AMOC plan, deny the AMOC plan, or approve the AMOC plan without changes.

(F) The executive director shall send written notice of the final determination concerning each AMOC plan to the submitter of the plan, the EPA regional office, any local pollution control program with jurisdiction, and to each person who submitted timely written comments. Such notice must include the final AMOC plan provisions, a copy of the response to comments, and an announcement of the opportunity to appeal the executive director's determination to the Commission. The notice required by this subparagraph must be sent by a means evidencing receipt.

(G) Any person entitled to notice under paragraph (6) of this subsection may, within 15 days of the receipt of such notice, file with the executive director an appeal of the final determination on the AMOC plan. Such appeal may be considered at the next regularly scheduled meeting of the Commission for which adequate notice may be made. Based on arguments submitted to the commission during such appeal, the Commission may remand the AMOC determination to the executive director, deny the AMOC plan, or issue the AMOC plan unchanged.

(H) Within 45 days of final approval of the AMOC plan by the executive director or the Commission for an appeal, the EPA may notify the commission of the EPA's disapproval of the executive director's final decision. Such notification must be in writing and must include a statement of the reason(s) for the disapproval and a specific listing of changes to the AMOC plan needed to overcome the disapproval. Any time prior to the expiration of the 45-day period, the EPA may notify the executive director that no disapproval is forthcoming. Upon receipt of a timely EPA disapproval, the executive director shall void or revise the AMOC plan and reissue the notice as required by paragraph (6) of this subsection.

(I) If no appeal of the executive director's decision to approve the AMOC plan is filed pursuant to subparagraph (G) of this paragraph, the AMOC plan becomes effective upon the acceptance of the plan by the EPA as described in subparagraph (K) of this paragraph.

(J) If an appeal of the executive director's decision is filed, the AMOC plan becomes effective upon the latter of the acceptance of the AMOC plan by the Commission or the acceptance of the AMOC plan by the EPA.

(K) EPA acceptance is defined as explicit approval of the AMOC plan by the EPA, notification by the EPA to the executive director that no EPA disapproval is forthcoming, or failure of the EPA to file notice of disapproval within 45 days after the executive director's final decision to approve the AMOC plan.

(6) Public Notice Format.

(A) Public notice must be published in the public notice section of two successive issues of a newspaper of general circulation in or closest to the municipality in which the site affected by the AMOC plan is located.

(B) Public notice must contain the following information:

(i) the AMOC plan application number assigned by the executive director;

(ii) the AMOC applicant's name;

(iii) the type of source and site;

(iv) a description of the location of the site;

(v) a brief description of the AMOC plan;

(vi) the executive director's preliminary determination to approve the plan;

(vii) the locations and availability of copies of the proposed AMOC plan, related documentation, and the executive director's preliminary analysis of the plan (including the Austin and appropriate regional offices, any local pollution control program with jurisdiction over the site affected by the AMOC plan, and the EPA regional office);

(viii) an announcement of the opportunity to submit written comments on the AMOC plan;

(ix) the length of the public comment period, which extends to at least 30 days after the final publication of the notice;

(x) the procedure for submission of written public comments concerning the proposed AMOC plan; and

(xi) the name, address, and phone number of the agency's regional office to be contacted for further information.

(C) The executive director may not take final action on the AMOC plan until the owner or operator who submitted the AMOC plan has provided proof of adequate notice to the executive director, the EPA, and any local pollution control program with jurisdiction.

(7) Review of Approved AMOC Plans and Termination of AMOC Plans.

(A) For the purposes of this subsection, compliance date means the date by which a source must comply with new or modified sections of this subchapter.

(B) Unless revised to reflect new regulatory requirements, an AMOC plan becomes void on the compliance date specified for a new or modified section of this subchapter affecting a source subject to an AMOC plan.

(C) The holder of an AMOC plan shall comply with the requirements of this subchapter if the AMOC plan becomes void.

(D) Upon final approval of an AMOC plan, the owner or operator of the sources affected by the plan shall keep a copy of the plan on the site affected by the plan and shall make the plan available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction in the area.

(E) Upon request, each holder of an AMOC plan shall submit to the executive director a demonstration that the plan continues to meet all applicable criteria of this subsection.

(F) An AMOC holder is responsible for obtaining a new AMOC plan prior to the compliance date of any new or modified regulation of this subchapter that affects a source subject to an AMOC plan.

(8) Inclusion of Contiguous Properties. Notwithstanding paragraph (3)(A) of this subsection, an AMOC plan may cover multiple sources operated on contiguous properties, provided that separate requests for plan approval are submitted by each owner or operator subject to a control requirement under this subchapter.

§112.103. Monitoring Requirements.

The owner or operator shall continuously monitor equipment subject to sulfur dioxide (SO_2) emission limits or standards in §112.102 of this title (relating to Control Requirements) as follows:

(1) install, operate, calibrate, and maintain a continuous emissions monitoring system (CEMS) as specified in 40 Code of Federal Regulations (CFR) §60.105a(g)(1), (2) and (5) regardless of whether these provisions otherwise apply; use an analyzer with a minimum analyzer accuracy of plus or minus (±) 2.5%, a dedicated totalizing gas flow measurement system with a minimum measurement accuracy of ±5%, and a temperature monitor with a minimum accuracy of ±1%; convert data from all monitoring devices to a common concentration, flow, pressure, and temperature basis, and calculate and record 15-minute and subsequent block one-hour average SO_2 emissions from FCCU ESP Stack (EPN 06ESPPCV);

(2) for the North East Flare (EPN 14NEASTFLR), Crude Flare (EPN 02CRUDEFLR), Reformer Flare (EPN 05REFMFLR), and South Flare (EPN 16SOUTHFLR), install, operate, calibrate, and maintain designated instrumentation according to the manufacturers' specifications to continuously monitor the gas stream flare inlet temperature, the total inlet gas flow rate, and the total sulfur concentration as specified in 40 CFR §60.107a(e) and (f)(1), regardless of whether these provisions otherwise apply or exempt flare activities, as follows:

(A) monitor the total volumetric flow rate of gases routed to each flare using a separate dedicated totalizing gas flow meter with an accuracy of ±5%;

(B) monitor the temperature of gases routed to each flare using a separate temperature measurement device with an accuracy of ±1%; and

(C) monitor the sulfur content of the combined inlet flare gas stream as follows:

(i) using a separate dedicated analyzer capable of accurately measuring and recording total sulfur (including sulfur dioxide (SO_2), hydrogen sulfide (H_2S), and organic sulfur compounds levels) with an accuracy of ±5% on a continuous basis, the sulfur concentration must be determined in accordance 40 CFR §60.107a(e)(1) regardless of whether these requirements are otherwise applicable or exempt the flare, and hourly SO_2 emissions must be determined using the following equation; or

Figure: 30 TAC §112.103(2)(C)(i)

(ii) using a separate dedicated analyzer capable of accurately measuring and recording H_2S to an accuracy of ±5% on a continuous basis, determine the H_2S concentration in the flared gas stream, derive an inlet flare gas total sulfur concentration for each monitored hourly H_2S concentration in accordance with 40 CFR §60.107a(e)(2) methodology regardless of whether these requirements are otherwise applicable or exempt the flare, and calculate the SO_2 emissions for each operating hour using the following equation:

Figure: 30 TAC §112.103(2)(C)(ii)

(3) separately for SRU1 Incinerator Stack (EPN 69TGINC) and SRU2 Incinerator Stack (EPN 71TGINC), install, operate, calibrate, and maintain a CEMS as specified in 40 CFR §60.106a(a), regardless of whether these provisions otherwise apply; use an analyzer with a minimum accuracy of ±2.5%, a dedicated totalizing gas flow measurement system with an accuracy of ±5%, and temperature indicator with an accuracy of ±1% convert data from all monitoring devices to a common concentration, flow, pressure, and temperature basis and calculate and record 15-minute and subsequent block one-hour average SO_2 emissions;

(4) continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize the most accurate data substitution methodology available that is at least equivalent to engineering judgement and replace all missing or invalidated monitoring data for the entire period the monitored emission point has emissions; and

(5) minor modifications to monitoring methods may be approved by the executive director. Monitoring methods other than those specified in this section may be used if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this subsection, substitute "executive director" in each place that Test Method 301 references "administrator." These validation procedures may be waived by the executive director or a different protocol may be granted for site-specific applications. Minor modifications that may be approved under this subsection include increases in the frequency of monitoring and the replacement of parametric monitoring with direct emissions monitoring with a CEMS provided appropriate quality assurance control, accuracy specifications, and data validation requirements are specified and no less stringent than monitoring requirements for a comparable EPN in this division.

§112.104. Testing Requirements.

By the compliance date in §112.108 of this title (relating to Compliance Schedule), the owner or operator shall comply with the following:

(1) perform continuous emissions monitoring system relative accuracy tests for equipment installed to meet the requirements of §112.103 of this title (relating to Monitoring Requirements) in accordance with 40 Code of Federal Regulations (CFR) §60.105a(g)(2) for the FCCU ESP Stack (EPN06ESPPCV) and 40 CFR §60.106a(1)(iii) for the No. 1 SRU Incinerator Vent (EPN 69TGINC) and No. 2 SRU Incinerator Vent (EPN 71TGINC);

(2) perform initial and subsequent testing of monitoring devices required by §112.103 of this title in accordance with the manufacturer's specifications to ensure that the required monitoring instrumentation is properly calibrated and functional. Initial testing must be completed by the applicable compliance date in §112.108 of this title. If a monitoring device was previously tested in accordance with the manufacturer's specifications and a record is available to document proper procedures were followed, then an owner or operator is not required to repeat the initial testing again under these provisions; and

(3) conduct additional performance testing, if requested by the executive director, in compliance with 40 CFR §60.104a to demonstrate compliance with applicable emission limits or standards. The notification requirements of 40 CFR §60.8(d) apply to each initial performance test and to each subsequent performance test required by the executive director, except for performance tests conducted for the purpose of obtaining supplemental data because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments. All performance tests must be conducted using test methods allowed in §112.105 of this title (relating to Approved Test Methods).

§112.105. Approved Test Methods.

(a) Tests required under §112.104 of this title (relating to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in 40 CFR §60.8(b).

(b) Fuel and waste gas sulfur content must be determined using American Society for Testing and Materials (ASTM) Method D6667 (Determination of Total Volatile Sulfur in Gaseous Hydrocarbons), ASTM Method D1945 (Standard Test Method for Analysis of Natural Gas by Gas Chromatography), United States Environmental Protection Agency (EPA) Method 15A or 16A of Appendix A to 40 CFR Part 60, ASTM Method D4468, or ASTM Method D5504 if it is conducted in a manner that analyzes all sulfur-containing compounds present.

(c) Sulfur dioxide (SO_2) in exhaust gases must be determined using EPA Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(d) For flares subject to emissions limitations or standards in §112.102 of this title (relating to Control Requirements), the owner or operator shall use flare test methods and procedures in 40 CFR §60.104a.

(e) Alternate methods as approved by the executive director and the EPA may be used.

§112.106. Recordkeeping Requirements.

The owner or operator shall maintain records in written or electronic format sufficient to demonstrate compliance with this division for a minimum of five years, including, but not limited to, the following:

(1) all monitoring data and sampling analyses, including, but not limited to, continuous emission monitoring system data and sulfur composition data, used to quantify emissions;

(2) the methodology and any associated calculations used to determine compliance;

(3) documentation of any period that emission limits or standards were exceeded and copies of required exceedance reports submitted to the appropriate Texas Commission on Environmental Quality Regional Office; and

(4) copies of required emission test data and records.

§112.107. Reporting Requirements.

(a) If a source subject to an emissions limit in §112.102 of this title (relating to Control Requirements) exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including, but not limited to, the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter, including the specific rule citation from §112.102 of this title;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with either an authorized maintenance, startup, or shutdown activity for, or a malfunction of, an affected source or control system;

(4) a description of the corrective action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each test report for any testing conducted under §112.104 of this title (relating to Testing Requirements) to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Howard County sulfur dioxide (SO_2) nonattainment area has failed to attain the 2010 one-hour SO_2 National Ambient Air Quality Standard or failed to meet reasonable further progress (RFP) pursuant to federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO_2 sources subject to §112.100 of this title (related to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO_2 emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain or failure to meet RFP, including a review and consideration of the following:

(A) for all causes of the determination of failure to attain or failure to meet RFP, at a minimum, hourly mass emissions of SO_2 from each SO_2 source subject to this division; and

(B) for a determination of failure to attain based on ambient air monitor data or modeling data, at a minimum, the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO_2 readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any emissions event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.108. Compliance Schedules.

The owner or operator shall comply with the requirements applicable to FCCU ESP Stack (EPN 06ESPPCV), No. 2 SRU Incinerator Vent (EPN 69TGINC), and No. 1 SRU Incinerator Vent (EPN 71TGINC) no later than November 1, 2023. The owner or operator shall comply with the requirements of this division applicable to all other sources no later than January 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 7, 2022.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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DIVISION 2. REQUIREMENTS FOR THE TOKAI BIG SPRING CARBON BLACK PLANT

30 TAC §§112.110 - 112.118

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The adopted new sections implement TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017, and 382.021.

§112.110. Applicability.

(a) The requirements in this division apply to affected sources at the Tokai Big Spring Carbon Black Plant, which is located at 1211 North Midway Road in Big Spring, Texas, in the Howard County sulfur dioxide nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes.

(b) Affected existing sources are designated by the source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. Applicable control devices to be authorized and constructed are similarly designated by the EPN that the company used to designate the future unit in the attainment demonstration modeling, with an appropriate name also used in the rules. The specific affected sources are as follows:

(1) Incinerator + HRSG (EPN 13A) in NSR Permit 6580 dated November 23, 2021;

(2) Dryer Stack Units Nos. 1 & 2 (EPN 7A) in NSR Permit 6580 dated November 23, 2021;

(3) Dryer Stack Units No. 3 (EPN 12A) in NSR Permit 6580 dated November 23, 2021;

(4) Flare 1 (EPN Flare-1) in NSR Permit 6580 dated November 23, 2021;

(5) Flare 2 (EPN Flare-2) in NSR Permit 6580 dated November 23, 2021;

(6) Flare 3 (EPN Flare-3) in NSR Permit 6580 dated November 23, 2021; and

(7) Flare 4 (EPN FLARE 4) if authorized and constructed to replace the existing three flares for the carbon black reactors (EPN Flare-1, EPN Flare-2, and EPN Flare-3).

§112.111. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour of the day (e.g., from 12:00:00 to 12:59:59).

(2) Continuous Monitoring--Monitoring for which readings are recorded at least once every 15 minutes.

(3) Howard County sulfur dioxide (SO_2) nonattainment area--The portion of Howard County designated by the United States Environmental Protection Agency as nonattainment for the 2010 SO_2 National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344.

(4) Off-line--With respect to a carbon black oil furnace, a period when either:

(A) only natural gas and combustion air are supplied to the furnace burners (no oil is supplied to the furnace burners), and the furnace is not manufacturing carbon black or generating tail gas; or

(B) the oil furnace is not operating.

(5) On-line--Not "off-line," as defined in paragraph (4) of this subsection.

(6) Production unit--The combined equipment used in the manufacture of carbon black, including but not limited to, carbon black oil furnaces or reactors, bag unit filters, cyclones, fans, and carbon black dryers as specified in this rule. Production Units 1 and 2 consist of nine carbon black oil furnaces that produce tail gas and five carbon black dryers that combust tail gas and exhaust emissions through Dryer Stack Units Nos. 1 & 2 (Emission Point Number (EPN) 7A). Production Unit 3 consists of four carbon black oil furnaces that produce tail gas and two carbon black dryers that combust tail gas and exhaust emissions through Dryer Stack Unit No. 3 (EPN 12A). A portion of the tail gas from all of the furnaces is also combusted in the Incinerator + HRSG (EPN 13A) or by Flare 4 (EPN Flare 4).

(7) Tail gas--The exit gaseous stream of a carbon black oil furnace consisting of water vapor, carbon monoxide, hydrogen, pyrolysis by-products, and reduced and organic sulfur compounds as a result of the manufacture of carbon black.

§112.112. Control Requirements.

(a) Production Units 1 and 2 together are prohibited from operating with only one furnace on-line and Production Unit 3 is prohibited from operating with only one furnace on-line. Affected sources in §112.110 of this title (relating to Applicably) may not exceed the following pounds per hour (lb/hr) sulfur dioxide (SO_2) limits based on the number of furnaces on-line in Production Units 1 and 2 and in Production Unit 3:
Figure: 30 TAC §112.112(a)

(b) If during any block one-hour period the number of furnaces on-line changes, the emission limit must be determined by one of the following methods:

(1) the fewest number of furnaces on-line in each production unit during any fraction of the hour; or

(2) the time-weighted average of all limits applying during any fraction of the hour, calculated using the following equation:
Figure: 30 TAC §112.112(b)(2)

(c) The maximum emission rate of SO_2 allowed under this section during any block one-hour period must be determined on a block one-hour average.

(d) The emission cap identified in §112.112(a) of this section is the maximum emission limit that applies to the sum of the emissions from the Incinerator + HRSG (EPN 13A), Flare 4 (EPN Flare 4), Dryer Stack Units Nos. 1 & 2 (EPN 7A), and Dryer Stack Unit No. 1 (EPN 12A), and the subcap identified in §112.112(a) of this section is the maximum emission limit that applies to the sum of the emissions from Dryer Stack Units Nos. 1 & 2 (EPN 7A) and Dryer Stack Units No. 3 (EPN 12A).

(e) Tail gas may only be combusted in sources whose emissions are routed to the Incinerator + HRSG (EPN 13A), Flare 4 (EPN Flare 4), Dryer Stack Units Nos. 1 & 2 (EPN 7A), and Dryer Stack Unit No. 1 (EPN 12A).

(f) Simultaneous operation of the Incinerator + HRSG (EPN 13A) and Flare 4 (EPN FLARE 4) during any block one-hour period is prohibited.

(g) Sulfur or sulfur containing compounds may not be routed to Flare 1 (EPN Flare-1), Flare 2 (EPN Flare-2), or Flare 3 (EPN Flare-3) on or after the compliance date in §112.118 of this title (relating to Compliance Schedule).

(h) After construction and commencement of operation, if authorized, Flare 4 (EPN FLARE 4) must have a stack height of 60.35 meters and must be located at Universal Transverse Mercator (UTM) coordinates UTM East Meters 273185 and UTM North Meters 3573987 in UTM Zone 14.

(i) Incinerator + HRSG (EPN 13A) must have a stack height of 65.00 meters no later than the compliance date in §112.118 of this title (relating to Compliance Schedules).

(j) The owner or operator may request an alternate means of control under the provisions of §112.102(i) of this title (relating to Control Requirements).

§112.113. Monitoring Requirements.

(a) For each block one-hour period of operation, the owner or operator shall calculate total SO_2 emissions generated by each production unit using the following equation.
Figure: 30 TAC §112.113(a)

(b) The owner or operator shall calculate the SO_2 emissions from Incinerator + HRSG (EPN 13A), Dryer Stack Units Numbers 1 and 2 (EPN 7A), Dryer Stack Units Number 3 (EPN 12A), and Flare 4 (EPN FLARE 4) for each block one-hour period of operation during which emissions of SO_2 are emitted from the emission points listed in this subsection, using the following equations.

(1) for the Incinerator + HRSG (EPN 13A), calculate the emission rate using the following equation).
Figure: 30 TAC §112.113(b)(1)

(2) For Dryer Stack Units No. 1 & 2 (EPN 7A), calculate the emission rate using the following equation.
Figure: 30 TAC §112.113(b)(2)

(3) For Flare 4 (EPN Flare 4), calculate the emission rate using the following equation.
Figure: 30 TAC §112.113(b)(3)

(4) For Dryer Stack Unit No. 3 (EPN 12A), calculate the emission limit using the following equation.
Figure: 30 TAC §112.113(b)(4)

(c) The owner or operator shall install, calibrate, maintain, and operate one or more totalizing fuel flow meters, consistent with manufacturer's specifications, with an accuracy of ±5%, to continuously measure the feed rate of carbon black oil feedstock supplied to each carbon black production unit.

(d) The owner or operator shall install, calibrate, maintain, and operate totalizing tail gas flow meters, consistent with manufacturer's specifications, with an accuracy of ±5%, to continuously measure the volumetric flow rate of tail gas to each tail gas combustion device covered under §112.112 of this title (relating to Control Requirements). Tail gas combustion devices include the dryers, Incinerator + HRSG, and Flare 4.

(e) The owner or operator shall use a continuous data acquisition system that continuously measures, calculates, and records the following quantities:

(1) the volumetric flow rate of tail gas to the Incinerator + HRSG (EPN 13A) and Flare 4 (EPN Flare 4) from each production unit;

(2) the volumetric flow rate of tail gas to the carbon black dryers in each production unit;

(3) the total volumetric flow rate of tail gas from each production unit;

(4) for each production unit, the ratio of quantities in paragraphs (1) and (3) of this subsection, identified as "π_{incin}", which is the split coefficient for the Incinerator + HRSG and for Flare 4 used in the calculations in subsection (b) of this section; and

(5) for each production unit, the ratio of quantities in paragraphs (2) and (3) of this subsection, identified as "π_{dryer}", which is the split coefficient for the dryers used in the calculations in subsection (b) of this section.

(f) The owner or operator shall install, calibrate, maintain, and operate the continuous data acquisition system specified in subsection (e) of this section in accordance with the manufacturer's recommended procedures.

(g) The owner or operator shall measure twice daily (at least four hours apart) the sulfur content by weight of the carbon black oil in the feed to each production unit according to the requirements of §112.115(b) of this title (relating to Approved Test Methods).

(h) For each grade of carbon black produced, the owner or operator shall measure daily the sulfur content by weight of the carbon black produced by each carbon black production unit in accordance with §112.115(c) of this title.

(i) The owner or operator shall determine the amount of each grade of carbon black produced by each carbon black production unit each hour.

(j) In lieu of the monitoring requirements of §112.113(a) - (i) of this section, the owner or operator may install, calibrate, and maintain a continuous emissions monitoring system to monitor exhaust sulfur dioxide (SO_2) from Incinerator + HRSG (EPN 13A), Dryer Stack Units Nos. 1 & 2 (EPN 7A), or Dryer Stack Units No. 3 (EPN 12A) in accordance with the requirements of 40 Code of Federal Regulations (CFR) §60.13, 40 CFR Part 60, Appendix B, Performance Specification 2 and 6, for SO_2, and 40 CFR Part 60, Appendix F, quality assurance procedures. If a CEMS is not used to monitor the emissions from all three EPNs, monitoring requirements in §112.113(a) - (i) continue to apply for EPNs without a CEMS.

(k) Continuous monitoring data collected in accordance with requirements in this section must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

(l) Minor modifications to monitoring methods may be approved by the executive director. Monitoring methods other than those specified in this section may be used if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this subsection, substitute "executive director" in each place that Test Method 301 references "administrator." These validation procedures may be waived by the executive director or a different protocol may be granted for site-specific applications. Minor modifications that may be approved under this subsection include increases in the frequency of monitoring provided appropriate quality assurance control, accuracy specifications, and data validation requirements are specified and no less stringent than monitoring requirements for a comparable EPN in this subchapter.

§112.114. Testing Requirements.

(a) The owner or operator shall perform an initial demonstration of compliance test on the emission points specified in §112.112 of this title (relating to Control Requirements) for sulfur dioxide, except for flares, while the associated sources are firing tail gas, by the compliance date in §112.118 of this of this title (relating to Compliance Schedules). The owner or operator shall perform additional performance tests at least every five years.

(b) The owner or operator shall use the methods provided in §112.115 of this title (relating to Approved Test Methods) for the initial demonstration of compliance test required under subsection (a) of this section.

(c) During performance testing the owner or operation shall operate the source at the maximum rated capacity, or as near thereto as practicable.

(d) The owner or operator shall conduct additional performance testing, if requested by the executive director. All performance tests must be conducted using test methods allowed in §112.115 of this title.

(e) If a CEMS is installed, operated, calibrated, and maintained, in accordance with the requirements in this division, to monitor emissions from any EPN subject to this division, the requirement to conduct performance testing once every 5 years no longer applies to that EPN.

§112.115. Approved Test Methods.

(a) Tests required under §112.114 of this title (relating to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in 40 CFR §60.8(b).

(b) Sulfur content of fuels and carbon black oil must be determined using American Society for Testing and Materials (ASTM) Method D4294.

(c) Sulfur content of carbon black must be determined using ASTM Method D1619.

(d) Sulfur dioxide in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(e) For flares subject to emissions limitations or standards in §112.112 of this title (relating to Control Requirements), the owner or operator shall use flare test methods and procedures in 40 CFR §60.104a as if the federal rules apply to carbon black plants.

(f) Alternate methods as approved by the executive director and the EPA may be used.

§112.116. Recordkeeping Requirements.

The owner or operator shall maintain records in written or electronic format sufficient to demonstrate compliance with each applicable requirement for a minimum of five years, including but not limited to the following:

(1) records, in units of pounds per hour, of production of carbon black for each grade of carbon black from each carbon black production unit;

(2) twice-daily records of sulfur content by weight of the carbon black oil feedstock;

(3) daily records of sulfur content by weight of the carbon black produced for each grade of carbon black produced by each carbon black production unit;

(4) records of continuous carbon black oil feedstock flow rates for each carbon black production unit;

(5) records of continuous tail gas volumetric flow rates to each tail gas combustion device covered by §112.112 of this title (relating to Control Requirements); and

(6) for each block one-hour period of operation of a carbon black production unit:

(A) records of the identification of each furnace on-line each minute of each block one-hour period;

(B) records of the applicable emission limit of sulfur dioxide (SO_2) as determined by §112.112 of this title during the block one-hour period, including any calculations conducted under §112.112(b) of this title;

(C) records of all information identified in §112.113 of this title (relating to Monitoring Requirements) and the required mass balance calculations of emissions of SO_2 for each emission point number with SO_2 emissions during the block one-hour period;

(7) documentation of any period that emission limits or standards were exceeded, and copies of exceedance reports submitted to the appropriate Texas Commission on Environmental Quality regional office; and

(8) copies of test reports for tests conducted in accordance with §112.114 of this title and associated records.

§112.117. Reporting Requirements.

(a) If a source that is subject to an emissions limit in §112.112 of this title (relating to Control Requirements) exceeds the applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including but not limited to the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with either an authorized maintenance, startup, or shutdown activity for, or a malfunction of, an affected source or control system;

(4) a description of the corrective action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each test report for any testing conducted under §112.114 of this title (relating to Testing Requirements) to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the United States Environmental Protection Agency (EPA) that the Howard County sulfur dioxide (SO_2) nonattainment area has failed to attain the 2010 one-hour SO_2 National Ambient Air Quality Standard or failed to meet reasonable further progress (RFP) pursuant to federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO_2 sources subject to §112.110 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO_2 emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain or failure to meet RFP, including a review and consideration of the following:

(A) for all causes of the determination of failure to attain or failure to meet RFP, at a minimum, hourly mass emissions of SO_2 from each SO_2 source subject to this division; and

(B) for a determination of failure to attain based on ambient air monitor data or modeling data, at a minimum, the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO_2 readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any emissions event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.118. Compliance Schedules.

The owner or operator of an affected source subject to §112.110 of this title (relating to Applicability) shall comply with the requirements of this division no later than January 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 7, 2022.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER F. REQUIREMENTS IN THE HUTCHINSON COUNTY NONATTAINMENT AREA

DIVISION 1. REQUIREMENTS FOR THE CHEVRON PHILLIPS CHEMICAL BORGER PLANT

30 TAC §§112.200 - 112.203, 112.206 - 112.208

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules,

which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The adopted new sections implement TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017 and 382.021.

§112.200. Applicability.

(a) The requirements in this division apply to affected sources at the Chevron Phillips Chemical Borger Plant, which is located in Borger, Texas at latitude 35.696666 and longitude -101.359722 in the Hutchinson County sulfur dioxide nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes.

(b) Affected sources are designated by the source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. The affected sources are as follows:

(1) Sulfolene Handling Area (EPN F-M2A) in NSR Permit 21918 dated February 5, 2019;

(2) North Flare (EPN FL-1) in NSR Permit 21918 dated February 5, 2019; and

(3) South Flare, (EPN FL-2) in NSR Permit 21918 dated February 5, 2019.

§112.201. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Continuous Monitoring--Monitoring for which readings are recorded at least once every 15 minutes.

(3) Hutchinson County sulfur dioxide (SO_2) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency as nonattainment for the 2010 SO_2 National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344.

§112.202. Control Requirements.

(a) Sulfolene Handling Area (EPN F-M2A) emissions may not exceed the following:

(1) the emissions from the sulfolene building and trailer(s) at that location (EPN F-M2A_1 in the attainment demonstration modeling) may not exceed 0.98 pound per hour (lb/hr) sulfur dioxide (SO_2); and

(2) the emissions from the parking/storage area for trailer(s) with sulfolene (EPN F-M2A_2 in the attainment demonstration modeling) may not exceed 1.00 lb/hr SO_2.

(b) The combined emissions from the North Flare (EPN FL-1) and South Flare (EPN FL-2) may not exceed 430.00 lb/hr SO_2.

(c) The owner or operator may request an alternate means of control under the provisions of §112.232(k) of this title (relating to Control Requirements).

§112.203. Monitoring Requirements.

(a) For the Sulfolene Handling Area (EPN F-M2A), the owner or operator shall track hourly the weight of sulfolene stored and shall monitor the temperature on an hourly basis inside the sulfolene handling building and each trailer containing sulfolene. The emissions from EPN F-M2A must be calculated as follows:

(1) for the sulfolene handling building and each trailer storing sulfolene, enter the hourly measured weight of sulfolene stored into the following equation;
Figure: 30 TAC §112.203(a)(1)

(2) enter into the equation in §112.203(a)(1) the decomposition factor corresponding to the measured temperature for that hour in the sulfolene handling building or trailer, as appropriate, calculated using the following equation;
Figure: 30 TAC §112.203(a)(2)

(3) calculate the emissions for the specific trailer or the sulfolene handling building;

(4) sum the emissions for the sulfolene handling building and all trailers at location F-M2A_1; and

(5) sum the emissions for all trailers at location F-M2A_2.

(b) The owner or operator shall monitor the sulfur content of gases routed to North Flare (EPN FL-1) and to South Flare (EPN FL-2) by using separate analyzers that are installed, calibrated, maintained, and operated according to the manufacturer's specifications, which are capable of accurately measuring and recording hydrogen sulfide and organic sulfur compounds levels on a continuous basis with an accuracy of ±2.5% of full scale for concentrations greater than 50 parts per million. To account for the *de minimis* levels of sulfur dioxide in the gases sent to the South Flare, the owner or operator shall add 0.015 pound per hour of SO_2 to each hourly calculation of SO_2 emissions from the South Flare.

(c) The owner or operator shall monitor the volumetric flow rate of gases routed to the North Flare (EPN FL-1) and to the South Flare (EPN FL-2) using separate totalizing gas flow meters with an

accuracy of ±5% that are installed, calibrated, maintained, and operated according to the manufacturer's specifications.

(d) The owner or operator shall calculate the SO_2 emissions from North Flare (EPN FL-1) South Flare (EPN FL-2) using the following equation with the addition of 0.015 pound per hour of SO_2 to each hourly calculation of SO_2 emissions from the South Flare:
Figure: 30 TAC §112.203(d)

(e) Continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

(f) Minor modifications to monitoring methods may be approved by the executive director. Monitoring methods other than those specified in this section may be used if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this subsection, substitute "executive director" in each place that Test Method 301 references "administrator." These validation procedures may be waived by the executive director or a different protocol may be granted for site-specific applications. Minor modifications that may be approved under this subsection include increases in the frequency of monitoring and the replacement of parametric monitoring with direct emissions monitoring with a continuous emissions monitoring system provided appropriate quality assurance control, accuracy specifications, and data validation requirements are specified and no less stringent than monitoring requirements for a comparable EPN in this division.

§112.206. Recordkeeping Requirements.

The owner or operator shall maintain records in written or electronic format of the following continuous monitoring parameters for a minimum of five years:

(1) for sulfolene handling areas (EPN F-M2A), hourly records of the following:

(A) the temperature inside the sulfolene handling building (part of EPN F-M2A_1 in the attainment demonstration modeling) and each storage trailer holding sulfolene;

(B) the amount of sulfolene stored in the sulfolene handling building and each trailer during each hour, the time and weight of each amount of sulfolene bagged and kept in the sulfolene handling building for more than an hour, and the time and weight of each amount of sulfolene placed in each trailer;

(C) whether each storage trailer is located near the sulfolene handling building (EPN F-M2A_1 in the attainment demonstration modeling) or in the trailer parking area (EPN F-M2A_2 in the attainment demonstration modeling);

(D) the calculated SO_2 emissions from the sulfolene handling building and each storage trailer;

(E) the sum of SO_2 emissions from the sulfolene handling building and the adjacent trailers; and

(F) the sum of SO_2 emissions from the trailer parking area;

(2) the sulfur content and flow rate of gases routed to the North Flare (EPN FL-1) and to the South Flare (EPN FL-2) and the emission rate calculations from this monitoring, as well as the specific time periods that each flare was in use; and

(3) documentation of any period that emission limits or standards were exceeded and copies of required exceedance reports submitted to the appropriate Texas Commission on Environmental Quality Regional Office.

§112.207. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.202 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with a maintenance, startup, or shutdown period for, or malfunction of, an affected source or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) After the effective date of a determination by the United States Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO_2) nonattainment area has failed to attain the 2010 one-hour SO_2 National Ambient Air Quality Standard or failed to meet reasonable further progress (RFP) pursuant to federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO_2 sources subject to §112.200 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO_2 emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain or failure to meet RFP, including a review and consideration of the following:

(A) for all causes of the determination of failure to attain or failure to meet RFP, at a minimum, hourly mass emissions of SO_2 from each SO_2 source subject to this division; and

(B) for a determination of failure to attain based on ambient air monitor data or modeling data, at a minimum, the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO_2 readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any emissions event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred

during the time period that the EPA evaluated in making the failure to attain determination.

§112.208. Compliance Schedules.

The owner or operator of a source subject to §112.200 of this title (relating to Applicability) shall comply with the requirements of this division no later than January 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 7, 2022.

TRD-202204013
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: April 29, 2022
For further information, please call: (512) 239-2678

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DIVISION 2. REQUIREMENTS FOR THE IACX ROCK CREEK GAS PLANT

30 TAC §§112.210 - 112.213, 112.216 - 112.218

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The adopted new sections implement TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017 and 382.021.

§112.210. Applicability.

(a) The requirements in this division apply to affected sources at the IACX Rock Creek Gas Plant, which is located at 1000 West Tenth Street in Borger, Texas in the Hutchinson County sulfur dioxide nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes.

(b) Affected sources are designated by the source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. The specific affected sources are as follows:

(1) Acid Gas Flare (EPN FLR1) in NSR Permit 3131A dated July 12, 2011; and

(2) Acid Gas Incinerator (EPN INCIN1) in NSR Permit 3131A dated July 12, 2011.

§112.211. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Continuous Monitoring--Monitoring for which readings are recorded at least once every 15 minutes.

(3) Hutchinson County sulfur dioxide (SO_2) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO_2 National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344.

§112.212. Control Requirements.

(a) Acid Gas Flare (EPN FLR1) and Acid Gas Incinerator (EPN INCIN1) may not operate simultaneously.

(b) Acid Gas Flare (EPN FLR1) emissions may not exceed 140.00 lb/hr sulfur dioxide (SO_2).

(c) Acid Gas Incinerator (EPN INCIN1) emissions may not exceed 140.00 lb/hr SO_2.

(d) The owner or operator may request an alternate means of control under the provisions of §112.232(k) of this title (relating to Control Requirements).

§112.213. Monitoring and Testing Requirements

(a) Monitoring requirements. The owner or operator shall continuously monitor, at a point prior to the manifold that directs gases to the Acid Gas Flare (EPN FLR1) or Acid Gas incinerator (EPN INCIN1), the gases routed to Acid Gas Flare (EPN FLR1) or Acid Gas Incinerator (EPN INCIN1) by using the following:

(1) monitor at a point the sulfur content of the gas stream as follows:

(A) using a separate dedicated analyzer capable of accurately measuring and recording total sulfur (including sulfur dioxide (SO_2), hydrogen sulfide (H_2S), and organic sulfur compounds levels) with an accuracy of ±5% on a continuous basis, the sulfur concentration must be determined in accordance 40 Code of Federal Regulations (CFR) §60.107a(e)(1) regardless of whether these requirements

are otherwise applicable or exempt the flare or incinerator, and hourly SO_2 emissions must be determined using the following equation; or
Figure: 30 TAC §112.213(a)(1)(A)

(B) using a separate dedicated analyzer capable of accurately measuring and recording H_2S to an accuracy of ±5% on a continuous basis, determine the H_2S concentration in the flared gas stream, derive an inlet flare or incinerator gas total sulfur concentration for each monitored hourly H_2S concentration in accordance 40 CFR §60.107a(e)(2) methodology regardless of whether these requirements are otherwise applicable or exempt the flare or incinerator, and calculate the SO_2 emissions from the flare and the incinerator for each operating hour that either is operated using the following equation:
Figure: 30 TAC §112.213(a)(1)(B)

(C) a totalizing gas flow meter with an accuracy of ±5% that is installed, calibrated, maintained, and operated according to per the manufacturer's specifications directions to continuously measure and record the volume of gas directed to the Acid Gas Flare (EPN FLR1) or Acid Gas Incinerator (EPN INCIN1); and

(D) monitor the temperature of gases routed to the flare or incinerator using a temperature measurement device with an accuracy of ±1%; the inlet flare gas temperature measurement device must be installed, calibrated, maintained, and operated according to the manufacturer's recommendations and specifications.

(2) In lieu of the monitoring requirements of §112.213(a)(1) of this subsection, the owner or operator may install, calibrate, and maintain a continuous emissions monitoring system to monitor exhaust SO_2 from the Acid Gas Incinerator (EPN INCIN1) in accordance with the requirements of 40 CFR §60.13, 40 CFR Part 60, Appendix B, Performance Specification 2 and 6, for SO_2, and 40 CFR Part 60, Appendix F, quality assurance procedures;

(3) Continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgment, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

(4) Minor modifications to monitoring methods may be approved by the executive director. Monitoring methods other than those specified in this section may be used if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this subsection, substitute "executive director" in each place that Test Method 301 references "administrator." These validation procedures may be waived by the executive director or a different protocol may be granted for site-specific applications. Minor modifications that may be approved under this subsection include increases in the frequency of monitoring provided appropriate quality assurance control, accuracy specifications, and data validation requirements are specified and no less stringent than monitoring requirements for a comparable EPN in this subchapter.

(b) Testing requirements.

(1) The owner of operator shall perform initial testing for monitoring devices required by subsection (a) of this section if documentation is not available to demonstrate initial tests have been conducted, as well as all subsequent testing, in accordance with the manufacturer's specifications to ensure that the required monitors are calibrated and function properly by the compliance date in §112.218 of this title (relating to Compliance Schedules).

(2) The owner or operator shall conduct initial performance testing by the compliance date in §112.218 of this title. During performance testing, the owner or operator shall operate the source at the maximum rated capacity, or as near thereto as practicable. The owner or operator shall conduct additional performance tests on the incinerator at least every five years after the compliance date to ensure the accuracy of the monitors for the gas stream sent to the incinerator or flare.

(3) The owner or operator shall conduct additional performance testing, if requested by the executive director, in compliance with 40 CFR §60.104a to demonstrate compliance with applicable emission limits or standards. The notification requirements of 40 CFR §60.8(d) apply to each initial performance test and to each subsequent performance test required by the executive director.

(4) All performance tests must be conducted using test methods allowed in §112.213(c).

(c) Approved test methods.

(1) Tests required under paragraph (b) of this section must be conducted using the test methods in 40 CFR Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in §60.8(b).

(2) Sulfur dioxide in exhaust gases from the incinerator during testing must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(3) Alternate test methods as approved by the executive director and the EPA may be used.

§112.216. Recordkeeping Requirements.
The owner or operator shall maintain records in written or electronic format for a minimum of five years of the continuous monitoring of the sulfur content and flow rate of gases routed to either the flare or the incinerator as well as which control device was in use and of all monitoring data and emission calculations required under §112.213 of this title (relating to Monitoring Requirements). The owner or operator shall maintain records for a minimum of five years of all testing done for monitors and copies of each performance test conducted. The owner or operator shall maintain documentation for a minimum of five years of any period that emission limits or standards were exceeded and copies of required exceedance reports submitted to the appropriate Texas Commission on Environmental Quality Regional Office.

§112.217. Reporting Requirements.
(a) For a source that is subject to an emissions limit in §112.212 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with a maintenance, startup, or shutdown period for, or malfunction of, an affected source or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each performance test report to the appropriate TCEQ regional office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO_2) nonattainment area has failed to attain the 2010 one-hour SO_2 National Ambient Air Quality Standard or failed to meet reasonable further progress (RFP) pursuant to federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO_2 sources subject to §112.210 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO_2 emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain or failure to meet RFP, including a review and consideration of the following:

(A) for all causes of the determination of failure to attain or failure to meet RFP, at a minimum, hourly mass emissions of SO_2 from each SO_2 source subject to this division; and

(B) for a determination of failure to attain based on ambient air monitor data or modeling data, at a minimum, the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO_2 readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any emissions event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.218. Compliance Schedules.

The owner or operator of a source subject to §112.210 of this title (relating to Applicability) shall comply with the requirements of this division no later than October 1, 2023.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 7, 2022.

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Charmaine Backens
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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DIVISION 3. REQUIREMENTS FOR THE ORION BORGER CARBON BLACK PLANT

30 TAC §§112.220 - 112.228

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The adopted new sections implement TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017 and 382.021.

§112.220. Applicability.

(a) The requirements in this division apply to affected sources at the Orion Borger Carbon Black Plant, which is located at latitude 35.668055 and longitude -101.432777 in the Hutchinson County sulfur dioxide nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes.

(b) Affected existing sources are designated by source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date, except for one waste heat boiler that is designated by its source name and EPN in the applicable Pollution Control Project Standard Permit. Applicable control devices to be authorized and constructed are similarly designated by the EPN that the company used to designate the future unit in the attainment demonstration modeling, with an appropriate name also used in the rules. The specific affected sources are as follows:

(1) Waste Heat Boiler - CDS Stack (EPN E-6BN) in the Final Action letter for Pollution Control Project Standard Permit 164021 dated March 3, 2021;

(2) Unit 1 Reactor/Flare (EPN E-10FL) in NSR Permit 8780 dated March 24, 2015;

(3) Unit 2 Reactor/Flare (EPN E-20FL) in NSR Permit 8780 dated March 24, 2015;

(4) Unit 4 Reactor/Flare (EPN E-40FL) in NSR Permit 8780 dated March 24, 2015; and

(5) Combined Flare (EPN CFL) if authorized and constructed.

§112.221. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Continuous Monitoring--Monitoring for which readings are recorded at least once every 15 minutes.

(3) Hutchinson County sulfur dioxide (SO_2) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO_2 National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344.

(4) Production unit--The carbon black oil furnace or group of carbon black oil furnaces, dryers or groups of dryers, and any ancillary units used in the manufacture of carbon black and producing tail gas.

(5) Tail gas--The exit gaseous stream of a carbon black oil furnace consisting of water vapor, carbon monoxide, hydrogen, pyrolysis by-products, and reduced and organic sulfur compounds as a result of the manufacture of carbon black.

§112.222. Control Requirements.

(a) Hourly mass emissions of sulfur dioxide (SO_2), on a block one-hour average, may not exceed the following:

(1) 144.11 lb/hr SO_2, for the Waste Heat Boiler - CDS Stack (EPN E-6BN); and

(2) 750.05 lb/hr SO_2, for the Combined Flare (EPN CFL).

(b) Tail gas may only be combusted in a source whose emissions are routed to Waste Heat Boiler - CDS Stack (EPN E-6BN) or Combined Flare (EPN CFL).

(c) The Unit 1 Reactor/Flare Unit 1 Reactor/Flare (EPN E-10FL), Unit 2 Reactor/Flare (EPN E-20FL), and Unit 4 Reactor/Flare (EPN E-40FL) may not operate on or after the compliance date in §112.228 of this title (relating to Compliance Schedules).

(d) If the Combined Flare (EPN CFL) is not authorized and constructed by the compliance date in §112.228 of this title, no flaring is allowed until EPN CFL is authorized, constructed, and operating.

(e) After construction and commencement of operation, the Combined Flare (EPN CFL) must meet the following parameters:

(1) only receive tail gas when Waste Heat Boiler - CDS Stack (EPN E-6BN) is not operating; and

(2) be constructed with a stack height of 65.00 meters and must be located at Universal Transverse Mercator (UTM) coordinates UTM East Meters 279745.85 and UTM North Meters 3949549.50 in UTM Zone 14.

(f) The owner or operator may request an alternate means of control under the provisions of §112.232(k) of this title (relating to Control Requirements).

§112.223. Monitoring Requirements.

(a) The owner or operator shall install, calibrate, and maintain a continuous emissions monitoring system (CEMS) to continuously monitor the exhaust sulfur dioxide (SO_2) emissions from Waste Heat Boiler - CDS Stack (EPN E-6BN) in accordance with the requirements of 40 Code of Federal Regulations (CFR) §60.13, 40 CFR Part 60, Appendix B, Performance Specification 2 and 6, for SO_2, and 40 CFR Part 60, Appendix F, quality assurance procedures.

(b) For days when EPN CFL (Combined Flare) is used to combust tail gas, the owner or operator shall monitor the sulfur content of the carbon black oil feedstock and produced carbon black, as well as the production rate of the carbon black, as follows:

(1) measure twice per day at least four hours apart the sulfur content by weight of the carbon black oil in the feed to each production unit according to the requirements of §112.225 of this title (relating to Approved Test Methods);

(2) unless the sulfur content of the carbon black produced is assumed to be zero in the calculation of SO_2 emissions from the flare, for each grade of carbon black produced, measure daily the sulfur content by weight of the carbon black produced by each carbon black production unit according to the requirements of §112.225 of this title; and

(3) determine hourly the amount of each grade of carbon black produced by each carbon black production unit.

(c) The owner or operator shall install, calibrate, maintain, and operate one or more totalizing fuel flow meters, with an accuracy of ±5%, to continuously measure the feed rate of carbon black oil feedstock supplied to each carbon black production unit.

(d) The owner or operator shall install, calibrate, maintain, and operate totalizing tail gas flow meters, with an accuracy of ±5%, to continuously measure the volumetric flow rate of tail gas to EPN CFL (Combined Flare).

(e) Continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

(f) The owner or operator shall calculate SO_2 emissions from EPN CFL (Combined Flare) from all production units using the equation below to demonstrate compliance with the emission requirements of §112.222 of this title (relating to Control Requirements).
Figure: 30 TAC §112.223(f)

(g) Emissions of SO_2 from each EPN specified under §112.222 of this title during any block one-hour period must be calculated on a block one-hour average.

(h) The owner or operator shall calculate SO_2 emissions generated by each production unit using the following equation.
Figure: 30 TAC §112.223(h)

(i) Minor modifications to monitoring methods may be approved by the executive director. Monitoring methods other than those specified in this section may be used if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this subsection, substitute "executive director" in each place that Test Method 301 references "administrator." These validation procedures may be waived by the executive director or a different protocol may be granted for site-specific applications. Minor modifications that may be approved under this subsection include increases in the frequency of monitoring and the replacement of parametric monitoring with direct emissions monitoring with a CEMS provided appropriate quality assurance control, accuracy specifications, and data validation requirements are specified and no less stringent than monitoring requirements for a comparable EPN in this division.

§112.224. Testing Requirements.

(a) During performance testing, the owner or operator shall operate the source at the maximum rated capacity, or as near thereto as practicable.

(b) The owner or operator shall conduct additional performance testing requested by the executive director using test methods allowed in §112.225 of this title (relating to Approved Test Methods).

(c) When analysis of produced carbon black, carbon black oil, and fuels, including but not limited to tail gas, is required for monitoring under §112.223 of this title (relating to Monitoring Requirements), the owner or operator shall use a test method in §112.225 of this title for the analysis.

§112.225. Approved Test Methods.

(a) Tests required under §112.224 of this title (relating to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in 40 CFR §60.8(b).

(b) Sulfur dioxide in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(c) For flares subject to emissions limitations or standards in §112.222 of this title (relating to Control Requirements), the owner or operator shall use flare test methods and procedures in 40 CFR §60.104a as if the federal rules apply to carbon black plants.

(d) Sulfur content of fuels and carbon black oil must be determined using American Society for Testing and Materials (ASTM) Method D4294 for fuel composition.

(e) Sulfur content of carbon black must be determined using ASTM Test Method D1619.

(f) Alternate test methods as approved by the executive director and the EPA may be used.

§112.226. Recordkeeping Requirements.

The owner or operator shall maintain records in written or electronic format sufficient to demonstrate compliance with each applicable requirement for a minimum of five years, including but not limited to the following:

(1) records in units of pounds per hour (lb/hr) of production of carbon black for each grade of carbon black from each carbon black production unit;

(2) daily records of sulfur content by weight of the carbon black oil feedstock;

(3) daily records of sulfur content by weight of the carbon black produced for each grade of carbon black produced by each carbon black production unit;

(4) records of continuous carbon black oil feedstock flow rates for each carbon black production unit;

(5) records of continuous tail gas volumetric flow rates to each tail gas combustion device covered by §112.222 of this title (relating to Control Requirements);

(6) for each block one-hour period of operation of a carbon black production unit, the required mass balance calculations of emissions of sulfur dioxide (SO_2) from each emission point number (EPN) for those sources in operation without a continuous emissions monitoring system for SO_2;

(7) the continuous SO_2 emissions monitoring data for each EPN in operation with a CEMS for SO_2;

(8) documentation of any period that emission limits or standards were exceeded, and copies of exceedance reports submitted to the appropriate Texas Commission on Environmental Quality regional office; and

(9) copies of test reports for tests conducted in accordance with §112.225 and associated records.

§112.227. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.222 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with a maintenance, startup, or shutdown period for, or malfunction of, an affected source or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each performance test report to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO_2) nonattainment area has failed to attain the 2010 one-hour SO_2 National Ambient Air Quality Standard or failed to meet reasonable further progress (RFP) pursuant to Federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO_2 sources subject to §112.220 of this title (related to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO_2 emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain or failure to meet RFP, including a review and consideration of the following:

(A) for all causes of the determination of failure to attain or failure to meet RFP, at a minimum, hourly mass emissions of SO_2 from each SO_2 source subject to this division; and

(B) for a determination of failure to attain based on ambient air monitor data or modeling data, at a minimum, the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO_2 readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any emissions event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.228. Compliance Schedules.

(a) The owner or operator of a source subject to §112.220 of this title (relating to Applicability) shall comply with the requirements of this division no later than June 30, 2023, except for §112.222(a)(2), (b) - (e), §112.223(b), (d), (f), (h), and §112.226(1) - (6).

(b) The owner or operator of a source subject to §112.220 of this title shall comply with §112.222(a)(2),

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 7, 2022.

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Charmaine Backens
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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DIVISION 4. REQUIREMENTS FOR THE PHILLIPS 66 BORGER REFINERY

30 TAC §§112.230 - 112.238

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The adopted new sections implement TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017 and 382.021.

§112.230. Applicability.

(a) The requirements in this division apply to affected sources at the Phillips 66 Refinery, which is located in Borger, Texas at coordinates latitude 35.700000 and longitude -101.366666 in the Hutchinson County sulfur dioxide nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes.

(b) Affected existing sources are designated by the source name (when possible) and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. The specific affected sources are as follows:

(1) Unit 29 FCCU Stack (EPN 29P1) in NSR Permit 9868A dated September 17, 2021;

(2) Unit 40 FCCU Stack (EPN 40P1) in NSR Permit 9868A dated September 17, 2021;

(3) SRU Incinerator (EPN 34I1) in NSR Permit 9868A dated September 17, 2021;

(4) SCOT Unit Incinerator (EPN 43I1) in NSR Permit 9868A dated September 17, 2021 (emissions from this source during authorized maintenance, startup, and shutdown activities are included as EPN SRU_MS_CAP in the attainment demonstration modeling);

(5) EPN 66FL1, EPN 66FL2, EPN 66FL3, and EPN 66FL12 in NSR Permit 80799 dated October 1, 2020 (emissions from these sources are included as EPN FLARE_R_CAP and EPN FLARE_MS_CAP in the attainment demonstration modeling);

(6) EPN 12E1, EPN 12E2, EPN 12E3, EPN 12E4, EPN 12E5, EPN 12E6, EPN 12E7, EPN 7E1, EPN 7E2, EPN 7E3, EPN 7E4, EPN 7E5, EPN 7E6, EPN 10H1, EPN 19B1/19H1, EPN 19B1/19H2, EPN 19H3, EPN 19B2/19H4, EPN 19H5, EPN 19H6, EPN 2H1, EPN 2H2, EPN 22H1, EPN 26H1, EPN 28H1, EPN 29H4, EPN 34I1, EPN 36H1, EPN 40H1, EPN 4H2, EPN 42H1, EPN 42H2, EPN 43I1, EPN 50H1, EPN 5H1, EPN 6H1, EPN 7H1-4, EPN 9H1, EPN 93E1, EPN 93E2, EPN 98H1, EPN 51H1, EPN 4H1, EPN 6H3, EPN 12H1, and EPN 41H1 in NSR Permit 9868A dated September 17, 2021 (these

sources included as EPN FLEX_R_CAP in the attainment demonstration modeling); and

(7) EPN 12E1, EPN 12E2, EPN 12E3, EPN 12E4, EPN 12E5, EPN 12E6, EPN 12E7, EPN 7E1, EPN 7E2, EPN 7E3, EPN 7E4, EPN 7E5, EPN 7E6, EPN 10H1, EPN 19B1/19H1, EPN 19B1/19H2, EPN 19H3, EPN 19B2/19H4, EPN 19H5, EPN 19H6, EPN 2H1, EPN 2H2, EPN 22H1, EPN 26H1, EPN 28H1, EPN 29H4, EPN 36H1, EPN 40H1, EPN 4H2, EPN 42H1, EPN 42H2, EPN 50H1, EPN 5H1, EPN 6H1, EPN 7H1-4, EPN 9H1, EPN 93E1, EPN 93E2, EPN 98H1, EPN 51H1, EPN 4H1, EPN 6H3, EPN 12H1, and EPN 41H1 in NSR Permit 9868A dated September 17, 2021 (these sources are included as EPN FLEX_MS_CAP in the attainment demonstration modeling).

§112.231. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Continuous Monitoring--Monitoring for which readings are recorded at least once every 15 minutes.

(3) Hutchinson County sulfur dioxide (SO_2) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO_2 National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344.

(4) Pipeline quality natural gas--Natural gas containing no more than 0.25 grain of hydrogen sulfide and 5 grains of total sulfur per 100 dry standard cubic feet.

§112.232. Control Requirements.

(a)) SRU Incinerator (EPN 34I1) emissions may not exceed 44.82 pounds per hour (lb/hr) sulfur dioxide (SO_2) during normal operations;

(b) SCOT Unit Incinerator (EPN 43I1) emissions may not exceed 37.00 lb/hr SO_2 during normal operations.

(c) During authorized maintenance, startup, and shutdown (MSS) activities, SRU Incinerator (EPN 34I1) and SCOT Unit Incinerator (EPN 43I1) may not operate simultaneously and the combined emissions from these sources may not exceed 94.00 lb/hr SO_2.

(d) EPN 66FL1, EPN 66FL2, EPN 66FL3, and EPN 66FL12, may only combust pipeline quality natural gas or a refinery gas stream with a maximum sulfur content of 162 parts per million by volume as hydrogen sulfide determined hourly on a three-hour rolling average basis except as provided for in 40 CFR §60.103a(h).

(e) The combined emissions from EPN 66FL1, EPN 66FL2, EPN 66FL3, and EPN 66FL12 may not exceed 100.14 lb/hr SO_2 during normal operations and 850.00 lb/hr SO_2 during authorized MSS activities.

(f) The combined emissions from EPNs listed in §112.230(b)(6) of this title may not exceed 172.09 lb/hr SO_2 during normal operations.

(g) The combined emissions from EPNs listed in §112.230(b)(7) of this title may not exceed 92.45 lb/hr SO_2 during authorized MSS activities.

(h) Unit 29 FCCU Stack (EPN 29P1) emissions may not exceed 97.37 lb/hr SO_2 on a seven-day rolling average.

(i) EPN 40P1 (Unit 40 FCCU Stack (EPN 40P1) emissions may not exceed 101.37 lb/hr SO_2 on a seven-day rolling average.

(j) Unless otherwise specified, compliance with the emission limits in this section must be calculated on a block one-hour average basis.

(k) The owner or operator may request an alternate means of control (AMOC) as follows.

(1) Permitting Requirements. Compliance with this subsection does not relieve any owner or operator of the responsibility to comply with the requirements of §116.110 or §116.151 of this title (relating to Applicability and New Major Source or Major Modification in Nonattainment Area Other Than Ozone, respectively) with respect to the new construction or modification of sources that may emit SO_2 into the air of this state.

(2) Availability of AMOC.

(A) The owner or operator of any site subject to a control requirement in this subchapter may request approval of an AMOC plan using the procedures established in this subsection. The executive director shall review a submitted AMOC and may approve the AMOC plan if it is demonstrated that the plan meets all applicable criteria and procedures of this subsection. The owner or operator who submits an AMOC plan not satisfying the requirements of this section may apply for a site-specific state implementation plan revision approved by the executive director and the United States Environmental Protection Agency (EPA).

(B) Application for an AMOC plan does not stay enforcement of regulations in this subchapter.

(C) Any violation of an AMOC plan will be subject to enforcement action as a violation of this subchapter.

(3) Criteria for Approval of AMOC Plans. An AMOC plan may be approved if it meets each of the following criteria, as applicable.

(A) Except as provided for in paragraph (8) of this subsection, all sources covered by the AMOC plan must be and remain at the same site.

(B) If the AMOC plan includes an increase in the lb/hr emission limit for a source subject to the control requirements in this subchapter, the AMOC plan must also include an equivalent decrease in the lb/hr emission limit for one or more sources subject to the control of this subchapter.

(C) The AMOC application must include a demonstration that satisfies the following requirements.

(i) The modeled impacts of all sources affected by the AMOC plan demonstrate no net increase in ground-level concentration, which for purposes of this subparagraph means no net increase in modeled off-property concentration of SO_2, on a highest, first-high basis, at any receptor, *i,* in excess of the lesser of:

(I) $GLC_{crit,i}$, as defined in the following equation; or

Figure 30 TAC §112.232(k)(3)(C)(i)(I)

(II) an applicable significant impact level for the one-hour National Ambient Air Quality Standard for SO_2

(ii) Except where otherwise provided in this section, the demonstration required under this paragraph must be by means of applicable air quality models, databases, and other requirements speci-

fied in Appendix W to 40 CFR §51.1 and what was used in the modeling for the corresponding SIP revision.

(D) The AMOC must be implemented and reductions created after the effective date of this rule.

(E) The AMOC plan must establish control requirements and monitoring, testing, recordkeeping and reporting requirements consistent with and no less stringent than the applicable requirements of this subchapter for all sources in the plan that render the proposed control requirements enforceable.

(4) Procedures for AMOC Plan Submittal.

(A) The owner or operator requesting an AMOC plan shall submit a proposed AMOC plan and demonstration to the executive director; copies of such plan and demonstration must also be submitted to the appropriate regional office, any local air pollution control program with jurisdiction over the site affected by the AMOC plan, and to the EPA regional office.

(B) The proposed AMOC plan must include the following information:

(i) the AMOC applicant name with mailing address, site name with physical address, regulated entity number, and contact person including address and telephone number;

(ii) an identification and a description of the sources involved in the AMOC plan including any applicable air permit numbers, plot plans, detailed flow diagrams, emission point numbers (EPNs), and facility identification numbers (FINs); an identification of the provisions of this subchapter that are applicable to such sources; and an identification of promulgated provisions of this subchapter that will be applicable to such sources; and a description of normal operating conditions for each source causing emissions;

(iii) control requirements, which must be established for each source to make emission limits enforceable, to be applicable to each source affected by the proposed AMOC plan;

(iv) a demonstration that the AMOC plan satisfies each applicable requirement of paragraph (3) of this subsection;

(v) a list containing the name, address, and telephone number of any air pollution control program with jurisdiction over the site affected by the AMOC plan; and

(vi) any other relevant information necessary to evaluate the merits and enforceability of the AMOC plan, as may be requested by the executive director.

(C) All representations with regard to the AMOC plan, as well as any provisions attached to the AMOC plan, become conditions upon which the subsequent AMOC plan is issued. If the AMOC plan is approved by the executive director and the EPA, the owner or operator may not vary from such representation or provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions. If the AMOC plan is approved by the executive director and the EPA, the owner or operator may not vary from the emission limits, control requirements, monitoring, testing, reporting, or recordkeeping requirements of an approved AMOC plan.

(D) Applications to amend or revise an AMOC plan must be submitted subject to the requirements of this subsection.

(5) Procedures for an AMOC Plan Approval. Upon a preliminary determination to approve or deny the proposed AMOC plan, the executive director shall, in writing, so notify the submitter of the plan, any local air pollution control program with jurisdiction over the site affected by the AMOC plan, and the EPA regional office.

(A) If the executive director makes a preliminary determination to approve the AMOC plan, the notice must include a copy of the AMOC plan as preliminarily approved.

(B) If the executive director makes a determination to deny the AMOC plan, the notice must include a description of the reasons for such determination of denial. This determination constitutes a final action of the executive director appealable to the Commission as provided in subparagraph (G) of this subsection.

(C) Upon receipt of notice from the executive director that the AMOC plan has received preliminary approval, the AMOC applicant, at the applicant's own expense, shall cause notice of the applicant's intent to obtain an AMOC plan and of the opportunity to submit written comments to be published. The notice must be consistent with paragraph (6) of this subsection.

(D) The executive director shall consider and prepare a written response to all significant and timely written comments filed in connection with an AMOC plan.

(E) In response to the written comments, the executive director may modify the provisions of the AMOC plan, deny the AMOC plan, or approve the AMOC plan without changes.

(F) The executive director shall send written notice of the final determination concerning each AMOC plan to the submitter of the plan, the EPA regional office, any local pollution control program with jurisdiction, and to each person who submitted timely written comments. Such notice must include the final AMOC plan provisions, a copy of the response to comments, and an announcement of the opportunity to appeal the executive director's determination to the Commission. The notice required by this subparagraph must be sent by a means evidencing receipt.

(G) Any person entitled to notice under paragraph (6) of this subsection may, within 15 days of the receipt of such notice, file with the executive director an appeal of the final determination on the AMOC plan. Such appeal may be considered at the next regularly scheduled meeting of the Commission for which adequate notice may be made. Based on arguments submitted to the commission during such appeal, the Commission may remand the AMOC determination to the executive director, deny the AMOC plan, or issue the AMOC plan unchanged.

(H) Within 45 days of final approval of the AMOC plan by the executive director or the Commission for an appeal, the EPA may notify the commission of the EPA's disapproval of the executive director's final decision. Such notification must be in writing and must include a statement of the reason(s) for the disapproval and a specific listing of changes to the AMOC plan needed to overcome the disapproval. Any time prior to the expiration of the 45-day period, the EPA may notify the executive director that no disapproval is forthcoming. Upon receipt of a timely EPA disapproval, the executive director shall void or revise the AMOC plan and reissue the notice as required by paragraph (6) of this subsection.

(I) If no appeal of the executive director's decision to approve the AMOC plan is filed pursuant to subparagraph (G) of this paragraph, the AMOC plan becomes effective upon the acceptance of the plan by the EPA as described in subparagraph (K) of this paragraph.

(J) If an appeal of the executive director's decision is filed, the AMOC plan becomes effective upon the latter of the acceptance of the AMOC plan by the Commission or the acceptance of the AMOC plan by the EPA.

(K) EPA acceptance is defined as explicit approval of the AMOC plan by the EPA, notification by the EPA to the executive director that no EPA disapproval is forthcoming, or failure of the EPA to file notice of disapproval within 45 days after the executive director's final decision to approve the AMOC plan.

(6) Public Notice Format.

(A) Public notice must be published in the public notice section of two successive issues of a newspaper of general circulation in or closest to the municipality in which the site affected by the AMOC plan is located.

(B) Public notice must contain the following information:

(i) the AMOC plan application number assigned by the executive director;

(ii) the AMOC applicant's name;

(iii) the type of source and site;

(iv) a description of the location of the site;

(v) a brief description of the AMOC plan;

(vi) the executive director's preliminary determination to approve the plan;

(vii) the locations and availability of copies of the proposed AMOC plan, related documentation, and the executive director's preliminary analysis of the plan (including the Austin and appropriate regional offices, any local pollution control program with jurisdiction over the site affected by the AMOC plan, and the EPA regional office);

(viii) an announcement of the opportunity to submit written comments on the AMOC plan;

(ix) the length of the public comment period, which extends to at least 30 days after the final publication of the notice;

(x) the procedure for submission of written public comments concerning the proposed AMOC plan; and

(xi) the name, address, and phone number of the Agency's regional office to be contacted for further information.

(C) The executive director may not take final action on the AMOC plan until the owner or operator who submitted the AMOC plan has provided proof of adequate notice to the executive director, the EPA, and any local pollution control program with jurisdiction.

(7) Review of Approved AMOC Plans and Termination of AMOC Plans.

(A) For the purposes of this subsection, compliance date means the date by which a source must comply with new or modified sections of this subchapter.

(B) Unless revised to reflect new regulatory requirements, an AMOC plan becomes void on the compliance date specified for a new or modified section of this subchapter affecting a source subject to an AMOC plan.

(C) The holder of an AMOC plan shall comply with the requirements of this subchapter if the AMOC plan becomes void.

(D) Upon final approval of an AMOC plan, the owner or operator of the sources affected by the plan shall keep a copy of the plan on the site affected by the plan and shall make the plan available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction in the area.

(E) Upon request, each holder of an AMOC plan shall submit to the executive director a demonstration that the plan continues to meet all applicable criteria of this subsection.

(F) An AMOC holder is responsible for obtaining a new AMOC plan prior to the compliance date of any new or modified regulation of this subchapter that affects a source subject to an AMOC plan.

(8) Inclusion of Contiguous Properties. Notwithstanding paragraph (3)(A) of this subsection, an AMOC plan may cover multiple sources operated on contiguous properties, provided that separate requests for plan approval are submitted by each owner or operator subject to a control requirement under this subchapter.

§112.233. Monitoring Requirements.

(a) Separately for 29 FCCU Stack (EPN 29P1) and 40 FCCU Stack (EPN 40P1), the owner or operator shall install, operate, calibrate, and maintain a continuous emissions monitoring system (CEMS) as specified in 40 Code of Federal Regulations (CFR) §60.105a(g)(1), (2) and (5) regardless of whether these provisions otherwise apply or provide exemptions for certain activities; use an analyzer with a minimum analyzer accuracy of plus or minus (±)2.5%, a dedicated totalizing gas flow measurement system with a minimum measurement accuracy of ±5%, and temperature monitor with a minimum accuracy of ±1%; convert data from all monitoring devices to a common concentration, flow, pressure, and temperature measurement basis and calculate and record 15-minute and subsequent block one-hour average sulfur dioxide (SO_2) emissions.

(b) Separately for SRU Incinerator (EPN 34I1) and SCOT Unit Incinerator (EPN 43I1), the owner or operator shall install, operate, calibrate, and maintain a CEMS as specified in 40 Code of Federal Regulations (CFR) §60.106a(a), regardless of whether these provisions otherwise apply; use an analyzer with an accuracy of plus or minus (±)2.5%, a dedicated totalizing gas flow measurement system with an accuracy of ±5%, and temperature monitor with an accuracy of ±1%; convert data from all monitoring devices to a common concentration, flow, pressure, and temperature measurement basis and calculate and record 15-minute and subsequent block one-hour average SO_2 emissions.

(c) The owner or operator shall install, operate, calibrate, and maintain dedicated instrumentation according to the manufacturers' specifications to continuously and separately monitor the flow rate and the total sulfur concentration of the inlet gas streams of EPN 66FL1, EPN 66FL2, EPN 66FL3, and EPN 66FL12, in accordance with the 40 CFR §60.107a(e) and (f)(1), regardless of whether these provisions otherwise apply or provide an exemption for any flare activities, as follows:

(1) monitor the total volumetric flow rate of gases routed to each flare using a separate dedicated totalizing gas flow meter with an accuracy of ±5%;

(2) monitor the temperature of gases routed to each flare using a separate temperature measurement device with an accuracy of ±1%; and

(3) monitor the sulfur content of the combined inlet flare gas stream as follows:

(A) using a separate dedicated analyzer capable of accurately measuring and recording total sulfur (including SO_2, hydrogen sulfide (H_2S), and organic sulfur compounds levels) with an accuracy of ±5% on a continuous basis, the sulfur concentration must be determined in accordance 40 CFR §60.107a(e)(1) regardless of applicability or exemptions, and determine hourly SO_2 emissions using the following equation; or

Figure: 30 TAC §112.233(c)(3)(A)

(B) using a separate dedicated analyzer capable of accurately measuring and recording H_2S to an accuracy of ±5% on a continuous basis, determine the H_2S concentration in the flared gas stream, derive an inlet flare gas total sulfur concentration for each monitored hourly H_2S concentration in accordance 40 CFR §60.107a(e)(2) methodology regardless of applicability or exemptions, and calculate the SO_2 emissions from each flare for each operating hour using the following equation:
Figure: 30 TAC §112.233(c)(3)(B)

(d) The owner or operator shall continuously monitor the flow rate, temperature, and total sulfur or H_2S concentration in the gases combusted by each affected EPN listed in §112.230(b)(6) and (7) of this title (relating to Applicability), in accordance with 40 CFR §60.107a(a), (e) and (f)(1), except for the SRU Incinerator (EPN 34I1) and SCOT SRU Incinerator (EPN 43I1) that must be monitored under §112.233(b), as follows:

(1) monitor the total volumetric fuel flow to each combustion device using a separate dedicated totalizing gas flow meter with an accuracy of ±5%; each fuel flow meter must be installed, calibrated, maintained, and operated per the manufacturer's recommendations and specifications;

(2) monitor the fuel temperature using a separate dedicated temperature monitor with an accuracy of ±1%; that is installed, calibrated, maintained, and operated according to the manufacturer's recommendations and specifications; if the fuel temperature does not vary by more than ±1% throughout a common fuel supply system, the fuel temperature for each affected source supplied by the fuel supply system may be monitored at a single location; and

(3) monitor the fuel sulfur content either directly with a total sulfur analyzer or by monitoring the surrogate H_2S concentration as follows:

(A) if a total sulfur analyzer is used, calculate the emissions using the following equation; or
Figure: 30 TAC §112.233(d)(3)(A)

(B) if the H_2S concentration is monitored as a surrogate for the total sulfur content, calculate the SO_2 emissions as follows:

(i) collect at least one sample each month; the frequency of sampling may be reduced to no less than one time per calendar quarter if three consecutive monthly samples indicate that H_2S makes up 90.0 mole % or more of the total sulfur compounds in the fuel gas sample, and shall revert from quarterly to monthly when quarterly sample sulfur compounds consist of less than 90.0 mole % H_2S;

(ii) have the samples analyzed for total sulfur and H_2S concentrations;

(iii) use the following equation to calculate total SO_2 emissions.
Figure: 30 TAC §112.233(d)(3)(B)(iii)

(iv) sum the emissions for each affected source in §112.230(b)(6) of this title as calculated in §112.233(b) and (d) of this section to determine compliance with the total EPN FLEX_R_CAP SO_2 hourly emission limit; and

(v) sum the emissions for each affected source in §112.230(b)(7) of this title as calculated in §112.233(d) of this title to determine compliance with the total EPN FLEX_MS_CAP SO_2 hourly emissions limit.

(e) Continuous monitoring data collected in accordance with requirements in this section must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

(f) Minor modifications to monitoring methods may be approved by the executive director. Monitoring methods other than those specified in this section may be used if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this subsection, substitute "executive director" in each place that Test Method 301 references "administrator." These validation procedures may be waived by the executive director or a different protocol may be granted for site-specific applications. Minor modifications that may be approved under this subsection include increases in the frequency of monitoring and the replacement of parametric monitoring with direct emissions monitoring with a CEMS provided appropriate quality assurance control, accuracy specifications, and data validation requirements are specified and no less stringent than monitoring requirements for a comparable EPN in this division.

§112.234. Testing Requirements.

(a) Perform continuous emissions monitoring system (CEMS) relative accuracy tests in accordance with 40 Code of Federal Regulations (CFR) §60.105a(g)(2) for the Unit 29 FCCU Stack (EPN 29P1) and the Unit 40 FCCU Stack (EPN 40P1) and 40 CFR §60.106a(1)(iii) for the SRU Incinerator (EPN 34I1) and the SCOT SRU Incinerator (EPN 43I1).

(b) Perform initial and subsequent testing of monitoring devices required by §112.233 of this title (relating to Monitoring Requirements) in accordance with the manufacturer's specifications to ensure that the required monitoring instrumentation is calibrated and functional. Initial testing must be completed by the compliance date in §112.238 of this title (relating to Compliance Schedules). If a monitoring device has been previously tested in accordance with the manufacturer's specifications and a record is available to document proper procedures were followed, then an owner or operator is not required to repeat the initial testing again under §112.234(b) provisions.

(c) Conduct additional performance testing, if requested by the executive director, in compliance with 40 CFR §60.104a to demonstrate compliance with applicable emission limits or standards. The notification requirements of 40 CFR §60.8(d) apply to each initial performance test and to each subsequent performance test required by the executive director, except for performance tests conducted for the purpose of obtaining supplemental data because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments. All performance tests must be conducted using test methods allowed in §112.235 of this title (relating to Approved Test Methods).

(d) When analysis of fuels, including but not limited to refinery gas, is required under §112.233 of this title, the owner or operator shall use a test method in §112.235 of this title for the analysis.

§112.235. Approved Test Methods.

(a) Tests required under §112.234 of this title (related to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in 40 CFR §60.8(b).

(b) Sulfur dioxide in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(c) For flares subject to emissions limitations or standards in §112.232 of this title (relating to Control Requirements), the owner or operator shall use flare test methods and procedures in 40 CFR §60.104a.

(d) Fuel and waste gas sulfur content must be determined using American Society for Testing and Materials (ASTM) Method D6667 (Determination of Total Volatile Sulfur in Gaseous Hydrocarbons), ASTM Method D1945 (Standard Test Method for Analysis of Natural Gas by Gas Chromatography), EPA Method 15A or 16A of Appendix A to 40 CFR Part 60, ASTM Method D4468, or ASTM Method D5504 if it is conducted in a manner that analyzes all sulfur-containing compounds present.

(e) Alternate test methods as approved by the executive director and the EPA may be used.

§112.236. Recordkeeping Requirements.

The owner or operator shall maintain records in written or electronic format sufficient to demonstrate compliance with each applicable requirement for a minimum of five years, including but not limited to:

(1) all monitoring data and sampling analyses, including but not limited to continuous emissions monitoring system flow rate and sulfur composition data, used to quantify emissions;

(2) the methodology and any associated calculations employed to determine compliance;

(3) documentation of any period that emission limits or standards were exceeded, and exceedance reports submitted to the appropriate Texas Commission on Environmental Quality regional office; and

(4) copies of test reports for tests conducted in accordance with §112.235 and associated records.

§112.237. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.232 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with a maintenance, startup, or shutdown period for, or malfunction of, an affected source or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each performance test report to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO_2) nonattainment area has failed to attain the 2010 one-hour SO_2 National Ambient Air Quality Standard or failed to meet reasonable further progress (RFP) pursuant to Federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO_2 sources subject to §112.230 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO_2 emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain or failure to meet RFP, including a review and consideration of the following:

(A) for all causes of the determination of failure to attain or failure to meet RFP, at a minimum, hourly mass emissions of SO_2 from each SO_2 source subject to this division; and

(B) for a determination of failure to attain based on ambient air monitor data or modeling data, at a minimum, the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO_2 readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any emissions event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.238. Compliance Schedules.

The owner or operator of a source subject to §112.230 of this title (relating to Applicability) shall comply with the requirements of this division no later than January 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 7, 2022.

TRD-202204016
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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DIVISION 5. REQUIREMENTS FOR THE TOKAI BORGER CARBON BLACK PLANT

30 TAC §§112.240 - 112.248

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The adopted new sections implement TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017 and 382.021.

§112.240. Applicability.

(a) The requirements in this division apply to affected sources at the Tokai Borger Carbon Black Plant site, which is located at 9455 FM 1559 in Borger, Texas in the Hutchinson County sulfur dioxide nonattainment area. Affected sources will remain subject to this division regardless of ownership, operational control, or other documentation changes.

(b) Affected existing sources are designated by the source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. Applicable control devices to be authorized and constructed are similarly designated by the EPN that the company used to designate the future unit in the attainment demonstration modeling, with an appropriate name also used in the rules. The specific affected sources are as follows:

(1) Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) in NSR Permit 1867A dated July 21, 2020;

(2) Plant 1 Dryer Stack (EPN 121) designated in NSR Permit 1867A dated July 21, 2020;

(3) Plant 2 Dryer Stack (EPN 122) in NSR Permit 1867A dated July 21, 2020;

(4) Plant 1 Number 1 and Number 2 Dryer Purge Stack (EPN 1) in NSR Permit 1867A dated July 21, 2020;

(5) Plant 1 Number 3 and Number 4 Dryer Purge Stack (EPN 3) in NSR Permit 1867A dated July 21, 2020;

(6) EPN Flare-1, EPN Flare-2, EPN Flare-3 and EPN Flare-4, which are the four flares for the carbon black reactors, designated in NSR Permit 1867A dated July 21, 2020; and

(7) New Flare (EPN New Flare) if authorized and constructed to replace all existing flares (EPN Flare-1, EPN Flare-2, EPN Flare-3, and EPN Flare-4) for the carbon black reactors.

§112.241. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour (e.g., from 12:00:00 to 12:59:59).

(2) Continuous Monitoring--Monitoring for which readings are recorded at least once every 15 minutes.

(3) Hutchinson County sulfur dioxide (SO_2) nonattainment area--The portion of Hutchinson County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO_2 National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344, as published on March 26, 2021.

(4) Production unit--The carbon black oil furnace or group of carbon black oil furnaces, dryers or groups of dryers, and any ancillary units used in the manufacture of carbon black and producing tail gas.

(5) Tail gas--The exit gaseous stream of a carbon black oil furnace consisting of water vapor, carbon monoxide, hydrogen, pyrolysis by-products, and reduced and organic sulfur compounds as a result of the manufacture of carbon black.

§112.242. Control Requirements.

(a) Hourly mass emissions of sulfur dioxide (SO_2), on a block one-hour average, may not exceed the following when Boilers 1 or 2, singly or together, are operating:

(1) 109.10 lb/hr SO_2 for Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119);

(2) 441.40 lb/hr SO_2 for Plant 1 Dryer Stack (EPN 121); and

(3) 595.60 lb/hr SO_2 for Plant 2 Dryer Stack (EPN 122).

(b) If the new flare (EPN New Flare) is not authorized, constructed, and operated, hourly mass emissions of SO_2, on a block one-hour average, may not exceed the following when neither Boiler 1 nor 2 is operating:

(1) 420.00 lb/hr SO_2 for Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1);

(2) 0.00 lb/hr SO_2 for Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119);

(3) 250.00 lb/hr SO_2 for Plant 1 Dryer Stack (EPN 121); and

(4) 400.00 lb/hr SO_2 for Plant 2 Dryer Stack (EPN 122).

(c) If New Flare (EPN New Flare) is authorized, constructed, and operated, hourly mass emissions of SO_2, on a block one-hour average, may not exceed the following when neither Boiler 1 nor 2 is operating:

(1) 806.60 lb/hr SO_2 for New Flare (EPN New Flare);

(2) 0.00 lb/hr SO_2 for the Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119);

(3) 272.50 lb/hr SO_2 for Plant 1 Dryer Stack (EPN 121); and

(4) 436.00 lb/hr SO_2 for Plant 2 Dryer Stack (EPN 122).

(d) Tail gas may only be combusted in a source whose emissions are routed to the Boiler 1 and 2 Common Stack (EPN 119), Plant 1 Dryer Stack (EPN 121), Plant 2 Dryer Stack (EPN 122), Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1), or New Flare (EPN New Flare).

(e) Sulfur or sulfur containing compounds may not be routed to EPN Flare-2, EPN Flare-3, and EPN Flare-4 on or after the compliance date in §112.248 of this title (relating to Compliance Schedules).

(f) If New Flare (EPN New Flare) is authorized, constructed, and operated, sulfur or sulfur containing compounds may not be routed to the Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1) on or after the compliance date in §112.248 of this title.

(g) Sulfur or sulfur containing compounds may not be routed to the Plant 1 Number 1 and Number 2 Dryer Purge Stack (EPN 1) and Plant 1 Number 3 and Number 4 Dryer Purge Stack (EPN 3) on or after the compliance date in §112.248 of this title.

(h) If the New Flare (EPN New Flare) is authorized, constructed, and operated, it must meet the following parameters:

(1) tail gas may be routed to the New Flare (EPN New Flare) only when neither Boiler 1 nor 2 is operating; and

(2) The New Flare (EPN New Flare) must be constructed with a stack height of 60.35 meters and must be located at Universal Transverse Mercator (UTM) coordinates UTM East Meters 279488 and UTM North Meters 3949627 in UTM Zone 14.

(i) If the New Flare (EPN New Flare) is not authorized, constructed, and operated, tail gas may be routed to the Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1) only when neither Boiler 1 nor 2 is operating.

(j) The owner or operator may request an alternate means of control under the provisions of §112.232(k) of this title (relating to Control Requirements).

§112.243. Monitoring Requirements.

(a) The owner or operator shall install, calibrate, and maintain a continuous emissions monitoring system (CEMS) to monitor exhaust sulfur dioxide (SO_2) from the Boiler Stacks, Boiler 1 and 2 Common Stack (EPN 119) in accordance with the requirements of 40 Code of Federal Regulations (CFR) §60.13, 40 CFR Part 60, Appendix B, Performance Specification 2 and 6, for SO_2, and 40 CFR Part 60, Appendix F, quality assurance procedures.

(b) The owner or operator shall monitor the sulfur content of the carbon black oil feedstock and produced carbon black, as well as the production rate of the carbon black, as follows:

(1) measure twice daily at least four hours apart the sulfur content by weight of the carbon black oil in the feed to each production unit according to the requirements of §112.245 of this title (relating to Approved Test Methods);

(2) for each grade of carbon black produced, measure daily the sulfur content by weight of the carbon black produced by each carbon black production unit according to the requirements of §112.245 of this title; and

(3) determine hourly the amount of each grade of carbon black produced by each carbon black production unit.

(c) The owner or operator shall install, calibrate, maintain, and operate one or more totalizing fuel flow meters, with an accuracy of ±5%, to continuously measure the feed rate of carbon black oil feedstock supplied to each carbon black production unit.

(d) The owner or operator shall install, calibrate, maintain, and operate totalizing tail gas flow meters, with an accuracy of ±5%, to continuously measure the volumetric flow rate of tail gas to each tail gas combustion device covered under §112.242 of this title (relating to Control Requirements).

(e) Continuous monitoring data collected in accordance with requirements in this subsection must undergo an appropriate quality assurance and quality control process and be validated for at least 95% of the time that the monitored emission point has emissions; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgment, to obtain all missing or invalidated monitoring data for the remaining period the monitored emission point has emissions.

(f) The owner or operator shall calculate hourly SO_2 emissions from the Plant 1 Dryer Stack (EPN 121) using the following equation. Figure: 30 TAC §112.243(f)

(g) The owner or operator shall calculate hourly SO_2 emissions from the Plant 2 Dryer Stack (EPN 122) using the following equation. Figure: 30 TAC §112.243(g)

(h) The owner or operator shall calculate hourly SO_2 emissions from the New Flare (EPN New Flare) or Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare-1), as applicable using the following equation. Figure: 30 TAC §112.243(h)

(i) Emissions of SO_2 from each EPN specified under §112.242 of this title during any block one-hour period must be determined on a block one-hour average.

(j) The owner or operator shall calculate total SO_2 emissions generated by each production unit using the following equation. Figure: 30 TAC §112.243(j)

(k) In lieu of the monitoring requirements of §112.243(b) - (d) of this section and §112.243(f) - (j) of this section, the owner or operator may install, operate, calibrate, and maintain a continuous emissions monitoring system to monitor exhaust sulfur dioxide (SO_2) from Plant 1 Dryer Stack (EPN 121) or Plant 2 Dryer Stack (EPN 122) in accordance with the requirements of 40 Code of Federal Regulations (CFR) §60.13, 40 CFR Part 60, Appendix B, Performance Specification 2 and 6, for SO_2, and 40 CFR Part 60, Appendix F, quality assurance procedures. If a CEMS is not used to monitor the emissions from both EPNs, monitoring requirements in §112.243(b) - (d) of this section and §112.243(f) - (j) of this section continue to apply to EPNs without a CEMS.

(l) Minor modifications to monitoring methods may be approved by the executive director. Monitoring methods other than those specified in this section may be used if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this subsection, substitute "executive director" in each place that Test Method 301 references "administrator." These validation procedures may be waived by the executive director or a different protocol may be granted for site-specific applications. Minor modifications that may be approved under this subsection include increases in the frequency of monitoring provided appropriate quality assurance control, accuracy specifications, and data validation requirements are specified and no less stringent than monitoring requirements for a comparable EPN in this division.

§112.244. Testing Requirements.

(a) The owner or operator shall perform an initial demonstration of compliance test on the emission points specified in §112.242(a) - (c) of this title (relating to Control Requirements) for sulfur dioxide, while the associated sources are firing tail gas, except for flares, by

the compliance date in §112.248 of this title (relating to Compliance Schedules).

(b) The owner or operator shall use the methods provided in §112.245 of this title (relating to Approved Test Methods) for the initial demonstration of compliance test required under subsection (a) of this section.

(c) During performance testing, the owner or operator shall operate the source at the maximum rated capacity, or as near thereto as practicable.

(d) The owner or operator shall conduct additional performance testing at least every five years and when requested by the executive director using test methods allowed in §112.245 of this title.

(e) When analysis of produced carbon black, carbon black oil, and fuels, including but not limited to tail gas, is required for monitoring under §112.243 of this title (relating to Monitoring Requirements), the owner or operator shall use a test method in §112.245 of this title for the analysis.

§112.245. Approved Test Methods.

(a) Tests required under §112.244 of this title (relating to Testing Requirements) must be conducted using the test methods in 40 Code of Federal Regulations (CFR) Part 60, Appendices A-1 through A-8 and Appendix B or other methods as specified in this section, except as provided in §60.8(b).

(b) Sulfur dioxide in exhaust gases must be determined using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR, Part 60, Appendix A).

(c) For flares subject to emissions limitations or standards in §112.242 of this title (relating to Control Requirements), the owner or operator shall use flare test methods and procedures in 40 CFR §60.104a as if the federal rules apply to carbon black plants.

(d) Sulfur content of fuels and carbon black oil must be determined using American Society for Testing and Materials (ASTM) Method D4294 for fuel composition.

(e) Sulfur content of carbon black must be determined using ASTM Test Method D1619.

(f) Alternate test methods as approved by the executive director and the EPA may be used.

§112.246. Recordkeeping Requirements.

The owner or operator shall maintain records in written or electronic format sufficient to demonstrate compliance with each applicable requirement for a minimum of five years, including but not limited to:

(1) records in units of pounds per hour (lb/hr) of production of carbon black for each grade of carbon black from each carbon black production unit;

(2) twice daily records of sulfur content by weight of the carbon black oil feedstock;

(3) daily records of sulfur content by weight of the carbon black produced for each grade of carbon black produced by each carbon black production unit;

(4) records of continuous carbon black oil feedstock flow rates for each carbon black production unit;

(5) records of continuous tail gas volumetric flow rates to each tail gas combustion device from each production unit covered by §112.242 of this title (relating to Control Requirements);

(6) for each block one-hour period of operation of a carbon black production unit, the required mass balance calculations of emissions of sulfur dioxide (SO_2) from each EPN for those sources in operation without a continuous emissions monitoring system (CEMS) for SO_2;

(7) the continuous emissions monitoring data of emissions of SO_2 for each EPN in operation with a CEMS for SO_2;

(8) documentation of any period that emission limits or standards were exceeded, and copies of exceedance reports submitted to the appropriate Texas Commission on Environmental Quality regional office; and

(9) copies of test reports for tests conducted in accordance with §112.244 of this title (relating to Testing Requirements) and associated records.

§112.247. Reporting Requirements.

(a) For a source that is subject to an emissions limit in §112.242 of this title (relating to Control Requirements) and that exceeds an applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with an authorized maintenance, startup, or shutdown activity for, or malfunction of, an affected source or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each performance test report to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the Environmental Protection Agency (EPA) that the Hutchinson County sulfur dioxide (SO_2) nonattainment area has failed to attain the 2010 one-hour SO_2 National Ambient Air Quality Standard or failed to meet reasonable further progress (RFP) pursuant to federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received from the TCEQ, the owner or operator shall perform a full system audit (FSA) of all SO_2 sources subject to §112.240 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO_2 emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain or failure to meet RFP, including a review and consideration of the following:

(A) for all causes of the determination of failure to attain or failure to meet RFP, at a minimum, hourly mass emissions of SO_2 from each SO_2 source subject to this division; and

(B) for a determination of failure to attain based on ambient air monitor data or modeling data, at a minimum, the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO_2 readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any emissions event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.248. Compliance Schedules.

The owner or operator of a source subject to §112.240 of this title (relating to Applicability) shall comply with the requirements of this division no later than January 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 7, 2022.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER G. REQUIREMENTS IN THE NAVARRO COUNTY NONATTAINMENT AREA

30 TAC §§112.300 - 112.308

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require companies whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; and THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and procedures to be used in determining compliance.

The adopted new sections implement TWC, §5.103 and §5.105 and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017, and 382.021.

§112.300. Applicability.

(a) The requirements in this subchapter apply to affected sources at the Arcosa LWS LLC Lightweight Streetman plant, which is located at 14885 South Interstate Highway 45 East in Streetman, Texas in the Navarro County sulfur dioxide (SO_2) nonattainment area. Affected sources will remain subject to this subchapter regardless of ownership, operational control, or other documentation changes.

(b) The affected source is designated by source name and emission point number (EPN) used in the site's New Source Review (NSR) permit as issued on the specified date. The affected source is Kiln Scrubber Stack (EPN E3-1) in New Source Review Permit 5337 dated May 29, 2020. This designation must continue to be used as the EPN for the lightweight aggregate kiln or any control device for SO_2 regardless of any changes made to the lightweight aggregate kiln or its control system.

§112.301. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in §101.1 or §112.1 of this title (relating to Definitions, respectively), the terms in this subchapter have the meanings commonly used in the field of air pollution control. The following meanings apply in this subchapter unless the context clearly indicates otherwise.

(1) Continuous Monitoring--Monitoring for which readings are recorded at least once every 15 minutes.

(2) Lightweight aggregate kiln--A rotary kiln used to produce lightweight aggregate material. Any calciner or other associated devices used with the kiln for production are included as part of the kiln.

(3) Lightweight aggregate material--A manufactured aggregate produced by expanding or pelletizing shale, clay, or slate in a rotary kiln that meets the standards of ASTM Cl25, ASTM C330, and/or other similar industry association standards and definitions.

(4) Navarro County sulfur dioxide (SO_2) nonattainment area--The portion of Navarro County designated by the United States Environmental Protection Agency (EPA) as nonattainment for the 2010 SO_2 National Ambient Air Quality Standard, 40 Code of Federal Regulations §81.344.

§112.302. Control Requirements.

(a) The Kiln Scrubber Stack (EPN E3-1) and the associated lightweight aggregate kiln must emit all exhaust gases through a stack that is at least 36.576 meters tall and must be located within a rectangle designated as having its corners at Universal Transverse Mercator (UTM) coordinates UTM East Meters 750646.0 and UTM North Meters 3533975.0, UTM East Meters 750676.0 and UTM North Meters 3533975.0, UTM East Meters 750646.0 and UTM North Meters 3533955.0, and UTM East Meters 750676.0 and UTM North Meters 3533955.0, in UTM Zone 14. A bypass to the lightweight aggregate

kiln or its control device may not be installed unless it vents through this stack.

(b) Emissions from the Kiln Scrubber Stack (EPN E3-1) may not exceed 222.00 pounds per hour (lb/hr) sulfur dioxide, the temperature of the exhaust gas exiting from the stack may not fall below 117 degrees Fahrenheit, and the velocity of the exhaust gas exiting from the stack may not drop below 42.5 feet per second.

(c) The owner or operator may request an alternate means of control (AMOC) as follows:

(1) Permitting Requirements. Compliance with this subsection does not relieve any owner or operator of the responsibility to comply with the requirements of §116.110 or §116.151 of this title (relating to Applicability and New Major Source or Major Modification in Nonattainment Area Other Than Ozone, respectively) with respect to the new construction or modification of sources that may emit SO_2 into the air of this state.

(2) Availability of AMOC.

(A) The owner or operator of any site subject to a control requirement in this subchapter may request approval of an AMOC plan using the procedures established in this subsection. The executive director shall review a submitted AMOC and may approve the AMOC plan if it is demonstrated that the plan meets all applicable criteria and procedures of this subsection. The owner or operator who submits an AMOC plan not satisfying the requirements of this section may apply for a site-specific state implementation plan revision approved by the executive director and the United States Environmental Protection Agency (EPA).

(B) Application for an AMOC plan does not stay enforcement of regulations in this subchapter.

(C) Any violation of an AMOC plan will be subject to enforcement action as a violation of this subchapter.

(3) Criteria for Approval of AMOC Plans. An AMOC plan may be approved if it meets each of the following criteria, as applicable.

(A) Except as provided for in paragraph (8) of this subsection, all sources covered by the AMOC plan must be and remain at the same site.

(B) If the AMOC plan includes an increase in the lb/hr emission limit for a source subject to the control requirements in this subchapter, the AMOC plan must also include an equivalent decrease in the lb/hr emission limit for one or more sources subject to the control of this subchapter.

(C) The AMOC application must include a demonstration that satisfies the following requirements.

(i) The modeled impacts of all sources affected by the AMOC plan demonstrate no net increase in ground-level concentration, which for purposes of this subparagraph means no net increase in modeled off-property concentration of SO_2, on a highest, first-high basis, at any receptor, *i*, in excess of the lesser of:

(I) $GLC_{crit,i}$, as defined in the following equation; or

Figure 30 TAC §112.302(c)(3)(C)(i)(I)

(II) an applicable significant impact level for the one-hour National Ambient Air Quality Standard for SO_2.

(ii) Except where otherwise provided in this subsection, the demonstration required under this paragraph must be by means of applicable air quality models, databases, and other requirements specified in Appendix W to 40 CFR §51.1 and what was used in the modeling for the corresponding SIP revision.

(D) The AMOC must be implemented and reductions created after the effective date of this rule.

(E) The AMOC plan must establish control requirements and monitoring, testing, recordkeeping, and reporting requirements consistent with and no less stringent than the applicable requirements of this subchapter for all sources in the plan that render the proposed control requirements enforceable.

(4) Procedures for AMOC Plan Submittal.

(A) The owner or operator requesting an AMOC plan shall submit a proposed AMOC plan and demonstration to the executive director; copies of such plan and demonstration must also be submitted to the appropriate regional office, any local air pollution control program with jurisdiction over the site affected by the AMOC plan, and copies to the EPA regional office.

(B) The proposed AMOC plan must include the following information:

(i) the AMOC applicant name with mailing address, site name with physical address, regulated entity number, and contact person including address and telephone number;

(ii) an identification and a description of the sources involved in the AMOC plan including any applicable air permit numbers, plot plans, detailed flow diagrams, emission point numbers (EPNs), and facility identification numbers (FINs); an identification of the provisions of this subchapter that are applicable to such sources; an identification of promulgated provisions of this subchapter that will be applicable to such sources; and a description of normal operating conditions for each source causing emissions;

(iii) control requirements, which must be established for each source to make emission limits enforceable, to be applicable to each source affected by the proposed AMOC plan;

(iv) a demonstration that the AMOC plan satisfies each applicable requirement of paragraph (3) of this subsection;

(v) a list containing the name, address, and telephone number of any air pollution control program with jurisdiction over the site affected by the AMOC plan; and

(vi) any other relevant information necessary to evaluate the merits and enforceability of the AMOC plan, as may be requested by the executive director.

(C) All representations with regard to the AMOC plan, as well as any provisions attached to the AMOC plan, become conditions upon which the subsequent AMOC plan is issued. If the AMOC plan is approved by the executive director and the EPA, the owner or operator may not vary from such representation or provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions. If the AMOC plan is approved by the executive director and the EPA, the owner or operator may not vary from the emission limits, control requirements, monitoring, testing, reporting, or recordkeeping requirements of an approved AMOC plan.

(D) Applications to amend or revise an AMOC plan must be submitted subject to the requirements of this subsection.

(5) Procedures for an AMOC Plan Approval. Upon a preliminary determination to approve or deny the proposed AMOC plan, the executive director shall, in writing, so notify the submitter of the

plan, any local air pollution control program with jurisdiction over the site affected by the AMOC plan, and the EPA regional office.

(A) If the executive director makes a preliminary determination to approve the AMOC plan, the notice must include a copy of the AMOC plan as preliminarily approved.

(B) If the executive director makes a determination to deny the AMOC plan, the notice must include a description of the reason(s) for such determination of denial. This determination constitutes a final action of the executive director appealable to the Commission as provided in subparagraph (G) of this paragraph.

(C) Upon receipt of notice from the executive director that the AMOC plan has received preliminary approval, the AMOC applicant, at the applicant's own expense, shall cause notice of the applicant's intent to obtain an AMOC plan and of the opportunity to submit written comments to be published. The notice must be consistent with paragraph (6) of this subsection.

(D) The executive director shall consider and prepare a written response to all significant and timely written comments filed in connection with an AMOC plan.

(E) In response to the written comments, the executive director may modify the provisions of the AMOC plan, deny the AMOC plan, or approve the AMOC plan without changes.

(F) The executive director shall send written notice of the final determination concerning each AMOC plan to the submitter of the plan, the EPA regional office, any local pollution control program with jurisdiction, and to each person who submitted timely written comments. Such notice must include the final AMOC plan provisions, a copy of the response to comments, and an announcement of the opportunity to appeal the executive director's determination to the Commission. The notice required by this subparagraph must be sent by a means evidencing receipt.

(G) Any person entitled to notice under paragraph (6) of this subsection may, within 15 days of the receipt of such notice, file with the executive director an appeal of the final determination on the AMOC plan. Such appeal may be considered at the next regularly scheduled meeting of the Commission for which adequate notice may be made. Based on arguments submitted to the commission during such appeal, the Commission may remand the AMOC determination to the executive director, deny the AMOC plan, or issue the AMOC plan unchanged.

(H) Within 45 days of final approval of the AMOC plan by the executive director or the Commission for an appeal, the EPA may notify the commission of the EPA's disapproval of the executive director's final decision. Such notification must be in writing and must include a statement of the reason(s) for the disapproval and a specific listing of changes to the AMOC plan needed to overcome the disapproval. Any time prior to the expiration of the 45-day period, the EPA may notify the executive director that no disapproval is forthcoming. Upon receipt of a timely EPA disapproval, the executive director shall void or revise the AMOC plan and reissue the notice as required by paragraph (6) of this subsection.

(I) If no appeal of the executive director's decision to approve the AMOC plan is filed pursuant to paragraph (8) of this subsection, the AMOC plan becomes effective upon the acceptance of the plan by the EPA as described in subparagraph (K) of this paragraph.

(J) If an appeal of the executive director's decision is filed, the AMOC plan becomes effective upon the latter of the acceptance of the AMOC plan by the Commission or the acceptance of the AMOC plan by the EPA.

(K) EPA acceptance is defined as explicit approval of the AMOC plan by the EPA, notification by the EPA to the executive director that no EPA disapproval is forthcoming, or failure of the EPA to file notice of disapproval within 45 days after the executive director's final decision to approve the AMOC plan.

(6) Public Notice Format.

(A) Public notice must be published in the public notice section of two successive issues of a newspaper of general circulation in or closest to the municipality in which the site affected by the AMOC plan is located.

(B) Public notice must contain the following information:

(i) the AMOC plan application number assigned by the executive director;

(ii) the AMOC applicant's name;

(iii) the type of source and site;

(iv) a description of the location of the site;

(v) a brief description of the AMOC plan;

(vi) the executive director's preliminary determination to approve the plan;

(vii) the locations and availability of copies of the proposed AMOC plan, related documentation, and the executive director's preliminary analysis of the plan (including the Austin and appropriate regional offices, any local pollution control program with jurisdiction over the site affected by the AMOC plan, and the EPA regional office);

(viii) an announcement of the opportunity to submit written comments on the AMOC plan;

(ix) the length of the public comment period, which extends to at least 30 days after the final publication of the notice;

(x) the procedure for submission of written public comments concerning the proposed AMOC plan; and

(xi) the name, address, and phone number of the Agency's regional office to be contacted for further information.

(C) The executive director may not take final action on the AMOC plan until the owner or operator who submitted the AMOC plan has provided proof of adequate notice to the executive director, the EPA, and any local pollution control program with jurisdiction.

(7) Review of Approved AMOC Plans and Termination of AMOC Plans.

(A) For the purposes of this subsection, compliance date means the date by which a source must comply with new or modified sections of this subchapter.

(B) Unless revised to reflect new regulatory requirements, an AMOC plan becomes void on the compliance date specified for a new or modified section of this subchapter affecting a source subject to an AMOC plan.

(C) The holder of an AMOC plan shall comply with the requirements of this subchapter if the AMOC plan becomes void.

(D) Upon final approval of an AMOC plan, the owner or operator of the sources affected by the plan shall keep a copy of the plan on the site affected by the plan and shall make the plan available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction in the area.

(E) Upon request, each holder of an AMOC plan shall submit to the executive director a demonstration that the plan continues to meet all applicable criteria of this subsection.

(F) An AMOC holder is responsible for obtaining a new AMOC plan prior to the compliance date of any new or modified regulation of this subchapter that affects a source subject to an AMOC plan.

(8) Inclusion of Contiguous Properties. Notwithstanding paragraph (3)(A) of this subsection, an AMOC plan may cover multiple sources operated on contiguous properties, provided that separate requests for plan approval are submitted by each owner or operator subject to a control requirement under this subchapter.

§112.303. Monitoring Requirements.

The owner or operator shall install, operate, calibrate, and maintain a continuous emissions monitoring system (CEMS) according to the manufacturer's specifications to continuously monitor the sulfur dioxide (SO_2) emissions in accordance with the requirements of 40 CFR §60.13, 40 CFR 60, Appendix B, Performance Specification 2 and 6, for SO_2, and Appendix F, quality assurance procedures:

(1) monitor the pounds per hour of SO_2 emitted from Kiln Scrubber Stack (EPN E-3);

(2) monitor continuously the temperature and velocity of exhaust gases at the outlet of the stack;

(3) provide an appropriate quality assurance and quality control process for all continuous monitoring data collected in accordance with requirements in this subsection that is validated for at least 95% of the time that the monitored emission source operates; an owner or operator must utilize an appropriate data substitution process based on the most accurate methodology available, which is at least equivalent to engineering judgement, to obtain all missing or invalidated monitoring data for the remaining period the monitored source is in operation; and

(4) minor modifications to monitoring methods may be approved by the executive director. Monitoring methods other than those specified in this section may be used if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this subsection, substitute "executive director" in each place that Test Method 301 references "administrator." These validation procedures may be waived by the executive director or a different protocol may be granted for site-specific applications. Minor modifications that may be approved under this subsection include increases in the frequency of monitoring and the replacement of parametric monitoring with direct emissions monitoring with a CEMS provided appropriate quality assurance control, accuracy specifications, and data validation requirements are specified and no less stringent than monitoring requirements for a comparable EPN in this subchapter.

§112.304. Testing Requirements.

(a) Within 60 days of installation of a continuous emissions monitoring system (CEMS), the owner or operator shall conduct a performance test to determine the current emission rate from the lightweight aggregate kiln to be used in calibrating the CEMS.

(b) The owner or operator shall conduct additional performance testing, if requested by the executive director. All performance tests must be conducted using test methods allowed in §112.305 of this title (relating to Approved Test Methods).

§112.305. Approved Test Methods.

(a) The initial performance test after installation of the continuous emissions monitoring system (CEMS) for sulfur dioxide in exhaust gases and the relative accuracy test audits required by 40 Code of Federal Regulations (CFR) Part 60, Appendix F must be conducted using United States Environmental Protection Agency (EPA) Test Method 6 or 6C (40 CFR Part 60, Appendix A).

(b) Performance tests and relative accuracy test audits must be conducted using a method in subsection (a) and EPA Test Method 2 (40 CFR Part 60, Appendix A) for exhaust gas flow and following the measurement site criteria of EPA Test Method 1, §11.1 (40 CFR Part 60, Appendix A), or EPA Test Method 19 (40 CFR Part 60, Appendix A) for exhaust gas flow in conjunction with the measurement site criteria of Performance Specification 2, §8.1.3 (40 CFR Part 60, Appendix B).

(c) Alternate methods as approved by the executive director and the EPA may be used.

§112.306. Recordkeeping Requirements.

The owner or operator shall maintain, for a minimum of five years, records in written or electronic format sufficient to demonstrate compliance with all applicable requirements in this subchapter, including but not limited to:

(1) records of the continuous monitoring of exhaust gas sulfur content, temperature, and velocity from the appropriate stack;

(2) documentation of any period that emission limits or standards were exceeded, and copies of exceedance reports submitted to the appropriate Texas Commission on Environmental Quality regional office; and

(3) a copy of each performance test and relative accuracy test audit conducted and associated records.

§112.307. Reporting Requirements.

(a) If an affected source exceeds the applicable emission limit or fails to meet a required stack parameter, the owner or operator shall submit to the Texas Commission on Environmental Quality (TCEQ) Regional Office for the area where the plant is located a report by March 31 of the year after an exceedance occurs documenting the excess emissions during the preceding calendar year, including at least the following:

(1) the date that each exceedance or failure to meet a required stack parameter occurred;

(2) an explanation of the exceedance or failure to meet a required stack parameter;

(3) a statement of whether the exceedance or failure to meet a required stack parameter was concurrent with an authorized maintenance, startup, or shutdown activity for, or malfunction of, an affected source or control system;

(4) a description of the action taken, if any; and

(5) a written statement, signed by the owner or operator, certifying the accuracy and completeness of the information contained in the report.

(b) The owner or operator shall submit a copy of each performance test report to the TCEQ Regional Office and any local air pollution control agency having jurisdiction for the area where the plant is located within 60 days after completion of the test.

(c) After the effective date of a determination by the United States Environmental Protection Agency (EPA) that the Navarro County sulfur dioxide (SO_2) nonattainment area has failed to attain the 2010 one-hour SO_2 National Ambient Air Quality Standard or failed to meet reasonable further progress (RFP) pursuant to federal Clean Air Act §179(c), 42 United States Code §7509(c), the TCEQ will notify the owner or operator of the failure to attain and that the contingency measures in this subsection are triggered. Once notification is received

from the TCEQ, the owner or operator shall perform a full system audit (FSA) of the SO_2 sources subject to §112.300 of this title (relating to Applicability).

(1) Within 90 calendar days after the date of the notification, the owner or operator shall submit the FSA, including recommended provisional SO_2 emission control strategies as necessary, to the executive director of the TCEQ.

(2) As part of the FSA, the owner or operator shall conduct a root cause analysis of the circumstances surrounding the cause of the determination of failure to attain or failure to meet RFP, including a review and consideration of the following:

(A) for all causes of the determination of failure to attain or failure to meet RFP, at a minimum, hourly mass emissions of SO_2 from each SO_2 source subject to this subchapter; and

(B) for a determination of failure to attain based on ambient air monitor data or modeling data, at a minimum, the meteorological conditions recorded at the monitor or other relevant meteorological data, including the frequency distribution of wind direction temporally correlated with SO_2 readings greater than 75 parts per billion at the monitor for which the EPA's determination of failure to attain was made; and any emissions event that may have occurred. The root cause analysis and associated records used to conduct the audit must consider information on the days that monitored exceedances occurred during the time period that the EPA evaluated in making the failure to attain determination.

§112.308. Compliance Schedules.

The owner or operator of the Arcosa LWS LLC Lightweight Streetman plant shall comply with the requirements of this subchapter no later than January 1, 2025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 7, 2022.

TRD-202204018
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 27, 2022
Proposal publication date: April 29, 2022
For further information, please call: (512) 239-2678

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER F. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 1. STATE SUPPORT SERVICES - MAIL AND PRINTING

34 TAC §20.381

The Comptroller of Public Accounts adopts an amendment to §20.381, concerning mail and messenger services, without changes to the proposed text as published in the August 5, 2022, issue of the *Texas Register* (47 TexReg 4664). The rule will not be republished.

This amendment provides that mail equipment or private entity service contracts $10,000 in value are subject to the same requirements as those under $10,000 in value. Under current §20.381(f)(1), for mail equipment or private entity service contracts under $10,000, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received. Likewise, the current §20.381(f)(2) provides that for mail equipment or private service contracts over $10,000, a state agency shall submit a detailed life-cycle cost benefit analysis to the comptroller that includes all expected costs and benefits over the life of the equipment or service. However, §20.381(f) does not currently prescribe the information a state agency must submit to the comptroller for mail equipment or private entity service contracts that are precisely $10,000. The amendment provides that, for mail equipment or private entity service contracts $10,000 and under, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received.

The comptroller did not receive any comments regarding adoption of the amendment.

This rule amendment is adopted under Government Code, §2176.110, which requires the comptroller to adopt rules for state agencies to implement Government Code, Chapter 2176.

The amendment implements Government Code, §2176.003 and §2176.104.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2022.

TRD-202203998
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Effective date: October 25, 2022
Proposal publication date: August 5, 2022
For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 610. FUNDING SOUNDNESS RESTORATION PLANS

40 TAC §§610.11, 610.13 - 610.15, 610.20 - 610.22, 610.30 - 610.32

Introduction

The Texas Pension Review Board (PRB) adopts new 40 TAC Chapter 610, concerning Funding Soundness Restoration Plans (FSRPs).

BACKGROUND AND PURPOSE

The PRB adopts new 40 TAC Chapter 610, concerning Funding Soundness Restoration Plans to implement the new statutory requirements following the 87th Legislative Session in 2021. Sections 610.11, 610.13, 610.14, 610.15, 610.20, 610.21, 610.22, 610.30, 610.31, and 610.32 are adopted without changes to the text as published in the July 29, 2022, issue of the *Texas Register* (47 TexReg 4450). The rules will not be republished.

The PRB has been approaching the rule process with three primary goals:

To provide guidance and clarify reporting requirements for FSRPs after the changes took effect.

To preserve the work of public retirement systems and their sponsors that have previously submitted effective FSRPs and are committed to following their plans to achieve full funding.

To support retirement systems in unusual situations due to when they became subject to the new FSRP requirement and provide guidance as they navigate the new statutory requirements.

The original FSRP requirement was put in place during the 2015 Legislative Session to bring Texas public retirement systems in line with the PRB's *Guidelines for Actuarial Soundness* and improve the funding conditions of retirement systems with amortization periods exceeding 40 years. As systems submitted their FSRPs and began the 10-year process of completing their plans, it became clear that several aspects of the requirement needed refinement to ensure effectiveness. Additionally, the PRB revised the *Guidelines for Actuarial Soundness,* now *Pension Funding Guidelines,* in 2017 to ensure they were more consistent with current actuarial standards and best practices.

For these reasons, the PRB's 2020 Recommendations to the 87th Legislature included several potential changes to FSRP statute, most of which were eventually incorporated into House Bill 3898 (87R), which took effect on September 1, 2021. These recommendations were developed over the course of a year based on stakeholder feedback at board and committee meetings and other opportunities for public input. Many of the areas of improvement were identified based on recommendations from systems that were preparing FSRPs and research on best practices from other states. Additionally, the PRB has implemented the new law through educational materials and presentations about the new law, further engagement with stakeholders, and several calls for public comment and participation throughout development of the rule language.

While preparing these recommendations to the legislature, the PRB frequently stated the desire to balance ensuring the FSRP requirements were effective in improving the funding conditions of Texas public retirement systems while with preserving the work of systems and associated governmental entities that implemented effective FSRPs under the previous statute. The PRB wished to ensure that systems adhering to their existing FSRPs were able to finish the term of their existing plans without having to start over due to the updated requirements. This intent applies to the current rulemaking process as one of the goals established to guide the development of the rules.

Additionally, because the new statutory requirements are different from the previous statute in a variety of ways, the rules are intended to clarify different aspects of the documentation and reporting requirements while still maintaining the flexibility needed for systems and sponsors to create an effective FSRP based on their unique situation. This approach allows for the centralized oversight and local accountability the statute while acknowledging the variety of statutes and plan provisions governing retirement systems in Texas.

The adopted rules also clarify an existing statutory requirement that a public retirement system notify its members if the system's financing arrangement is inadequate. The existing disclosure requirement under Texas Government Code §802.106(d) was established in Texas law in 1981 during the 67th Legislative Session, first called session. Since then, some systems have submitted actuarial valuations to the PRB with a note from their actuary that the system's funding arrangement is considered inadequate. However, since the FSRP requirement requires a system to make a plan sufficient to amortize the unfunded actuarial accrued liability within 30 years, it follows that triggering the FSRP requirement is an indication that a system's funding arrangement is inadequate. Further, transparency and membership education are important to the health of a system, and many systems will require participation from their members through elections to modify benefits or contributions to successfully create an effective FSRP. Therefore, this rule is necessary to clarify existing statutory requirements for communication with system members in the context of the laws that now include the FSRP process.

Summary of Public Comments

The agency did not receive any comments on the proposed rules during the public comment period.

Statutory Authority

The adopted rules are authorized by the Texas Government Code §802.201(a), which grants specific authority to the board to adopt rules for the conduct of its business; and §§802.2015(h) and 802.2016(h), which allow the PRB to adopt rules necessary to implement requirements related to funding soundness restoration plans.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2022

TRD-202204009
Amy Cardona
Executive Director
State Pension Review Board
Effective date: October 26, 2022
Proposal publication date: July 29, 2022
For further information, please call: (512) 463-1736

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 146, Revocation of Parole or Mandatory Supervision; Chapter 147, Hearings; and Chapter 149, Mandatory Supervision.

The Board undertakes its review pursuant to Government Code, §2001.039. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Any proposed changes to the rules within Chapters 146, 147, and 149 as a result of the rule review will be published in the Proposed Rules section of a subsequent issue of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should, for the next 30-day comment period, be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by email to Bettie.Wells@tdcj.texas.gov.

TRD-202204003
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: October 6, 2022

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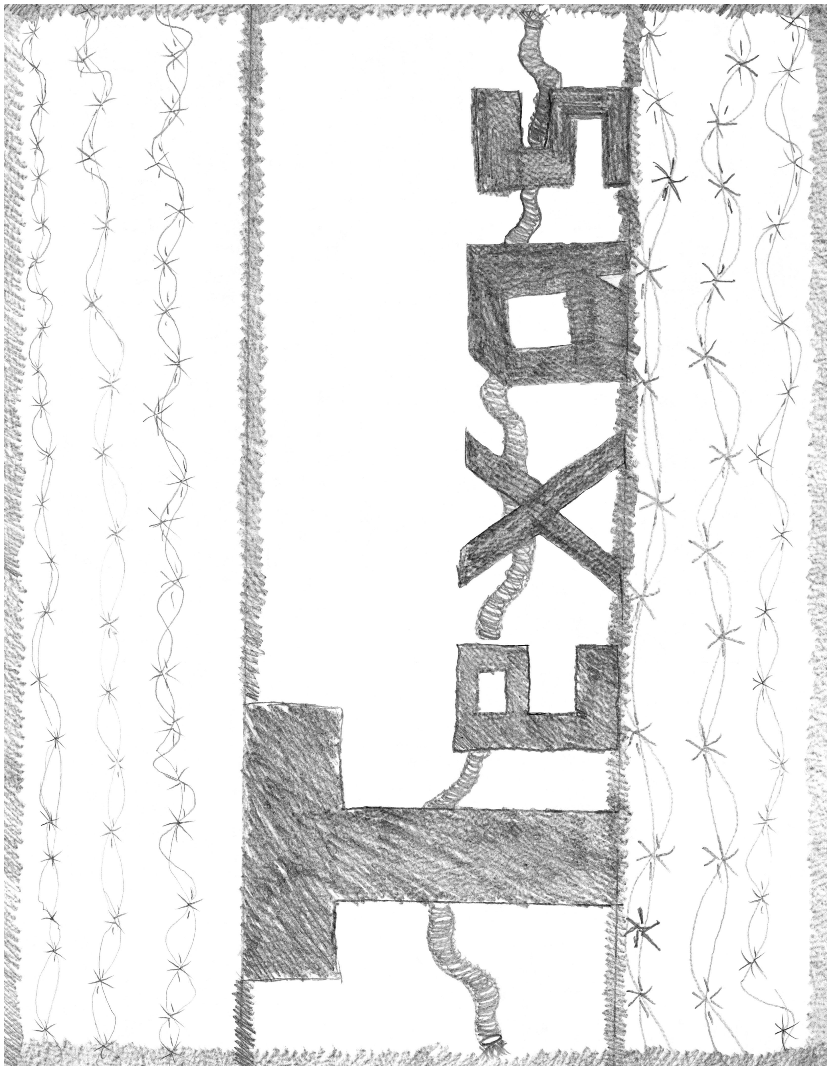

TEXAS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §112.102(i)(3)(C)(i)(I)

$$GLC_{\text{crit,i}} = 0.5 \times (196.4\ {}^{\mu g}/_{m^3} - DV_{AD,i}) - (DV - DV_{AD,i})$$

Where:

$GLC_{crit,i}$ = The value for each receptor *i* that the modeled concentration in an AMOC demonstration cannot exceed.

$DV_{AD,i}$ = The maximum design value in any modeled scenario approved by the Environmental Protection Agency under 40 Code of Federal Regulations §51.112(a) for receptor *i*; and

DV = The design value specified by the Executive Director under this section, which, on the effective date of this section, equals DVA_o; and may subsequently be no less than DVA_o.

DVA_o = The design value based on the attainment demonstration modeling for the Howard County SO_2 nonattainment area.

Figure: 30 TAC §112.103(2)(C)(i)

$$SO_2 = Scc \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = flare sulfur dioxide emissions in pounds per hour;

Scc = inlet sulfur compound concentration in in units of cubic feet of flare gas inlet stream sulfur compounds per 1,000,000 cubic feet of flare gas;

FFa = inlet flare gas stream flow in actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = flare inlet actual stream temperature in degrees Rankin.

Figure: 30 TAC §112.103(2)(C)(ii)

$$SO_2 = H_2Smc \times \frac{Scc}{H_2Ssc} \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = flare sulfur dioxide emissions in pounds per hour;

H_2Smc = monitored combined inlet flare stream hydrogen sulfide (H_2S) concentration in units of cubic feet of H_2S per 1,000,000 cubic feet of flow;

Scc = sampled composite inlet flare stream total sulfur compound concentration in units of cubic feet of total sulfur per 1,000,000 cubic feet of sample;

H_2Ssc = sampled composite H_2S concentration in units of cubic feet of H_2S per 1,000,000 cubic feet of sample;

FFa = inlet gas stream flare flow in units of actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = FFa measurement temperature in degrees Rankin.

Figure: 30 TAC §112.112(a)

Production Units 1 and 2 Furnaces On-line	Production Unit 3 Furnaces On-line	SO_2 Emission Limit Cap (lb/hr) for EPN 13A, Flare 4, EPN 7A, and EPN 12A	SO_2 Emission Limit (lb/hr) for EPN 13A or Flare 4	SO_2 Emission Limit Subcap (lb/hr) for EPN 7A and EPN 12A	SO_2 Emission Limit (lb/hr) for EPN 12A
9	4	1,355.00	1,138.00	407.00	146.00
9	3	1,253.38	1,052.65	376.48	109.50
9	2	1,151.75	967.30	345.95	73.00
9	0	948.50	796.60	284.90	0.00
8	4	1,249.61	1,049.49	375.34	146.00
8	3	1,147.99	964.14	344.82	109.50
8	2	1,046.36	878.79	314.29	73.00
8	0	843.11	708.09	253.24	0.00
7	4	1,144.22	960.98	343.69	146.00
7	3	1,042.60	875.63	313.16	109.50
7	2	940.97	790.28	282.64	73.00
7	0	737.72	619.58	221.59	0.00
6	4	1,038.83	872.47	312.03	146.00
6	3	937.21	787.12	281.51	109.50
6	2	835.58	701.77	250.98	73.00
6	0	632.33	531.07	189.93	0.00
5	4	933.44	783.96	280.38	146.00
5	3	831.82	698.61	249.85	109.50
5	2	730.19	613.26	219.33	73.00
5	0	526.94	442.56	158.28	0.00
4	4	828.06	695.44	248.72	146.00
4	3	726.43	610.09	218.20	109.50
4	2	624.81	524.74	187.67	73.00
4	0	421.56	354.04	126.62	0.00
3	4	722.67	606.93	217.07	146.00
3	3	621.04	521.58	186.54	109.50
3	2	519.42	436.23	156.02	73.00
3	0	316.17	265.53	94.97	0.00
2	4	617.28	518.42	185.41	146.00
2	3	515.65	433.07	154.89	109.50
2	2	414.03	347.72	124.36	73.00
2	0	210.78	177.02	63.31	0.00
0	4	406.50	341.40	122.10	146.00
0	3	304.88	256.05	91.58	109.50
0	2	203.25	170.70	61.05	73.00

Figure: 30 TAC §112.112(b)(2)

$$L_{EPN,1-hr} = \frac{1}{60}\sum_{t=1}^{60} L_{EPN,t}$$

Where

$L_{EPN,\ 1hr}$ = the time-weighted average of all limits applying during any fraction of the particular one-hour block period, i.e., one sixtieth of the sum of the limits applying during each one-minute fraction of the particular one-hour block period; and

$L_{EPN,t}$ limits applying during each one-minute fraction of an hour.

Figure: 30 TAC §112.113(a)

$$\sigma_i = \left[\left(S_{oil} \times D_{oil} \times F_{oil}\right) - \left(S_p \times P_p\right)\right] \times 2$$

Where:

σ_i = emissions of sulfur dioxide (SO_2) generated by each production unit in units of pounds per hour;

i = the carbon black production unit;

S_{oil} = weight of sulfur in carbon black oil in units of pound of sulfur per pound of carbon black oil;

D_{oil} = density of carbon black oil in pounds per gallon, determined at a temperature consistent with the carbon black oil feed;

F_{oil} = feed rate of oil to carbon black production unit in gallons per hour;

S_p = sulfur content of carbon black product as determined in units of pound of sulfur per pound of product;

P_p = production rate of carbon black product in units of pounds per hour; and

2 = the molecular weight ratio of SO_2 to sulfur.

Figure: 30 TAC §112.113(b)(1)

$$SO_{2,EPN13A} = \sum_{i=1}^{3} \pi_{incin,i} \times \sigma_i$$

Where:

$SO_{2,EPN13A}$ = emissions of sulfur dioxide (SO_2) expressed in units of pounds per hour (lb/hr) for EPN 13A;

$\pi_{incin,i}$ = the split coefficients from §112.113(e)(4) of this section indicating the fraction of tail gas combusted in the Incinerator + HRSG from each production unit to the total tail gas generated by each production unit *i*, determined through continuous monitoring as required in this subsection;

i = the carbon black production unit; and

σ_i = emissions of SO_2 expressed in units of lb/hr calculated using the equation in §112.113(a) of this section.

Figure: 30 TAC §112.113(b)(2)

$$SO_{2,EPN7A} = \sum_{i=1}^{2} \pi_{dryer,i} \times \sigma_i$$

Where:

$SO_{2,EPN7A}$ = emissions of sulfur dioxide (SO_2) expressed in units of pounds per hour (lb/hr) for EPN 7A;

$\pi_{dryer,i}$ = the split coefficients from §112.113(e)(5) of this section indicating the fraction of tail gas combusted in the dryers from each production unit to the total tail gas generated by each production unit *i*, determined through continuous monitoring as required in this subsection;

i = the carbon black production unit; and

σ_i = emissions of SO_2 expressed in units of lb/hr calculated using the equation in §112.113(a) of this section.

Figure: 30 TAC §112.113(b)(3)

$$SO_{2,EPNFlare4} = \sum_{i=1}^{3} \pi_{incin,i} \times \sigma_i$$

Where:

$SO_{2,EPNFLARE4}$ = emissions of sulfur dioxide (SO_2) expressed in units of pounds per hour (lb/hr) for EPN Flare 4;

$\pi_{incin,i}$ = the split coefficients from §112.113(e)(4) of this section indicating the fraction of tail gas combusted in the flare from each production unit to the total tail gas generated by each production unit *i*, determined through continuous monitoring as required in this subsection.

i = the carbon black production unit;

σ_i = emissions of SO_2 expressed in units of lb/hr calculated using the equation in §112.113(a) of this section.

Figure: 30 TAC §112.113(b)(4)

$$SO_{2,EPN12A} = \pi_{dryer,3} \times \sigma_3$$

Where:

$SO_{2,EPN12A}$ = emissions of sulfur dioxide (SO_2) expressed in units of pounds per hour for EPN 12A;

$\pi_{dryer,3}$ = the split coefficient from §112.113(e)(5) of this section indicating the fraction of tail gas combusted in the in the dryers from Production Unit 3, determined through continuous monitoring as required in this subsection;

i = the carbon black production unit; and

σ_3 = emissions of SO_2 expressed in units of pounds per hour calculated using the equation in §112.113(a) of this section.

Figure: 30 TAC §112.203(a)(1)

$$SO_2 = Wt \times Dec\%_{sulfolene}$$

Where:

SO_2 = sulfur dioxide emissions in units of pounds per hour;

Wt = weight of sulfolene in storage during the hour in units of pounds; and

$Dec\%_{sulfolene}$ = decomposition factor for sulfolene calculated using the equation in §112.203(a)(2) of this subsection.

Figure: 30 TAC §112.203(a)(2)

$$Dec\,\%_{sulfolene} = \frac{8.821921}{[(1 + e^{12.429479+(0.007527\times time)}) \times (1 + e^{8.743395-(0.071099\times temp)})]}$$

Where

$Dec\%_{sulfolene}$ = the percentage of the weight of sulfolene that decomposes;

e = Euler's number, which is a mathematical constant approximately equal to 2.71828;

time = the number of hours that the sulfolene has been at the monitored temperature; and

temp = the monitored temperature in degrees Fahrenheit.

Figure: 30 TAC §112.203(d)

$$SO_2 = Scc \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = Sulfur dioxide emissions in units of pounds per hour;

Scc = inlet sulfur compound concentration in cubic feet per 1,000,000 cubic feet of waste gas;

FFa = inlet waste gas stream flow in actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = inlet actual stream temperature in degrees Rankin.

Figure: 30 TAC §112.213(a)(1)(A)

$$SO_2 = Scc \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = Sulfur dioxide emissions in units of pounds per hour;

Scc = inlet sulfur compound concentration in cubic feet per 1,000,000 cubic feet of waste gas;

FFa = inlet waste gas stream flow in actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = inlet actual stream temperature in degrees Rankin

Figure: 30 TAC §112.213(a)(1)(B)

$$SO_2 = H_2Smc \times \frac{Scc}{H_2Ssc} \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = Sulfur dioxide emissions in units of pounds per hour;

H_2Smc = monitored inlet hydrogen sulfide (H_2S) concentration in units of cubic feet of flare gas inlet stream sulfur compounds per 1,000,000 cubic feet of waste gas;

Scc = inlet sulfur compound concentration in units of cubic feet of waste gas inlet stream sulfur compounds per 1,000,000 cubic feet of flare gas derived in accordance with 40 CFR §60.107a(e)(2) methodology regardless of whether these requirements are otherwise applicable;

H_2Ssc = sampled H_2S concentration in units of cubic feet of waste gas inlet stream sulfur compounds per 1,000,000 cubic feet of flare gas;

FFa = inlet gas stream flow in units of actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = inlet stream actual temperature in degrees Rankin (the Tsc/Ta factor is used to convert FFa actual cubic feet to FFa standard cubic feet).

Figure: 30 TAC §112.223(f)

$$SO_{2,CFL} = \sum_{i=1}^{\tau} \sigma_i$$

Where:

$SO_{2,CFL}$= Emissions of sulfur dioxide (SO_2) expressed in units of pounds per hour (lb/hr) from EPN CFL;

i= the carbon black production unit;

τ = the number of carbon black production units contributing carbon black oil furnace tail gas to EPN CFL; and

σ_i = emissions of SO_2 expressed in units of lb/hr calculated by §112.223(h) of this section generated by each production unit.

Figure: 30 TAC §112.223(h)

$$\sigma_i = \left[(S_{oil} \times D_{oil} \times F_{oil}) - (S_p \times P_p)\right] \times 2$$

Where:

σ_i = emissions of sulfur dioxide generated by each production unit in units of pounds per hour;

i = the carbon black production unit;

S_{oil} = weight of sulfur in carbon black oil in units of pounds of sulfur per pound of carbon black oil;

D_{oil} = density of carbon black oil in pounds per gallon determined at a temperature consistent with the carbon black oil feed;

F_{oil} = feed rate of oil to carbon black production unit in gallons per hour;

S_p = sulfur content of carbon black product as determined in units of pound of sulfur per pound of product;

P_p = production rate of carbon black product in units of pounds per hour; and

2 = the molecular weight ratio of SO_2 to sulfur.

Figure: 30 TAC §112.232(k)(3)(C)(i)(I)

$$GLC_{crit,i} = 0.5 \times (196.4\ {}^{\mu g}/_{m^3} - DV_{AD,i}) - (DV - DV_{AD,i})$$

Where:

$GLC_{crit,i}$ = The value for each receptor *i* that the modeled concentration in an AMOC demonstration cannot exceed;

$DV_{AD,i}$ = The maximum design value in any modeled scenario approved by the Environmental Protection Agency under 40 Code of Federal Regulations §51.112(a) for receptor *i*;

DV = The design value specified by the Executive Director under this section, which, on the effective date of this section, equals DVA_o; and may subsequently be no less than DVA_o; and

DVA_o = The design value based on the attainment demonstration modeling for the Hutchinson County SO_2 nonattainment area.

Figure: 30 TAC §112.233(c)(3)(A)

$$SO_2 = Scc \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = flare sulfur dioxide emissions in pounds per hour;

Scc = combined inlet flare stream total sulfur compound concentration in units of cubic feet of total inlet stream sulfur compounds per 1,000,000 cubic feet of total inlet stream flow;

FFa = combined inlet flare gas stream flow in actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = FFa measurement temperature in degrees Rankin.

Figure: 30 TAC §112.233(c)(3)(B)

$$SO_2 = H_2Smc \times \frac{Scc}{H_2Ssc} \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = flare sulfur dioxide emissions in pounds per hour;

H_2Smc = monitored combined inlet flare stream hydrogen sulfide (H_2S) concentration in units of H_2S per 1,000,000 cubic feet of flow;

Scc = sampled composite inlet flare stream total sulfur compound concentration in units of cubic feet of total sulfur compounds per 1,000,000 cubic feet of flare gas;

H_2Ssc = sampled composite H_2S concentration in units of cubic feet of H_2S per 1,000,000 cubic feet of sample;

FFa = inlet gas stream flare flow in units of actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = FFa measurement temperature in degrees Rankin.

Figure: 30 TAC §112.233(d)(3)(A)

$$SO_2 = Fsc \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = affected combustion equipment sulfur dioxide emissions in pounds per hour;

Fsc = fuel total sulfur concentration in cubic feet per 1,000,000 cubic feet of flared gas;

FFa = fuel flow in actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = fuel temperature in degrees Rankin.

Figure: 30 TAC §112.233(d)(3)(B)(iii)

$$SO_2 = H_2Sfc \times \frac{Fsc}{H_2Ssc} \times FFa \times \frac{Tsc}{Ta} \times \frac{Pa}{Psc} \times \frac{lb\ mole}{385.27\ scf} \times \frac{64.06\ lb\ SO_2}{lb\ mole}$$

Where:

SO_2 = affected combustion equipment SO_2 emissions in lb/hr;

H_2Sfc = fuel hydrogen sulfide (H_2S) concentration in units of actual cubic feet of H_2S per 1,000,000 actual cubic feet of fuel from the analysis in 112.233(d)(3)(B)(ii);

Fsc = total fuel sulfur compounds concentration in cubic feet per 1,000,000 cubic feet fuel gas from the analysis in 112.233(d)(3)(B)(ii) of this section;

H_2Ssc = sampled H_2S concentration in cubic feet per 1,000,000 cubic feet fuel gas;

FFa = fuel flow in actual cubic feet per hour;

Psc = regulatory standard condition pressure of 14.7 pounds per square inch (psia);

Pa = FFa measurement pressure in units of psia;

Tsc = regulatory standard condition temperature of 528 degrees Rankin; and

Ta = fuel temperature in degrees Rankin.

Figure: 30 TAC §112.243(f)

$$SO_{2,121} = \sum_{i=1}^{\tau} (\pi_{121} \times \sigma_i)$$

Where:

$SO_{2,121}$ = Emissions of SO_2 expressed in units of pounds per hour from EPN 121;

i = the carbon black production units;

τ = the number of carbon black production units contributing carbon black oil furnace tail gas to EPN 121;

σ_i = emissions of SO_2 expressed in units of pounds per hour calculated by §112.243(j) of this title for each production unit contributing carbon black oil furnace tail gas to EPN 121; and

π_{121} = the split coefficient determined by dividing the volumetric flow of tail gas to EPN 121 by the total volumetric flow of tail gas generated by each carbon black production unit contributing carbon black oil furnace tail gas to EPN 121.

Figure: 30 TAC §112.243(g)

$$SO_{2,122} = \sum_{i=1}^{\tau} (\pi_{122} \times \sigma_i)$$

Where:

$SO_{2,122}$ = Emissions of SO_2 expressed in units of lb/hr from the Plant 2 Dryer Stack (EPN 122);

i = the carbon black production units;

τ = the number of carbon black production units contributing carbon black oil furnace tail gas to the Plant 2 Dryer Stack (EPN 122);

σ_i = emissions of SO_2 expressed in units of pounds per hour calculated by §112.243(j) of this section for each production unit contributing carbon black oil furnace tail gas to the Plant 2 Dryer Stack (EPN 122); and

π_{121} = the split coefficient determined by dividing the volumetric flow of tail gas to the Plant 2 Dryer Stack (EPN 122) by the total volumetric flow of tail gas generated by each carbon black production unit contributing carbon black oil furnace tail gas to the Plant 2 Dryer Stack (EPN 122).

Figure: 30 TAC §112.243(h)

$$SO_{2,\text{Flare}} = \sum_{i=1}^{\tau} (\pi_{Flare} \times \sigma_i)$$

Where:

$SO_{2,Flare}$ = Emissions of SO_2 expressed in units of pounds per hour from the Plant 1, Unit 1 Primary Bag Filter Flare (EPN Flare 1) or New Flare (EPN New Flare) as applicable;

i= the carbon black production units;

τ = the number of carbon black production units contributing carbon black oil furnace tail gas to the flare;

σ_i = emissions of SO_2 expressed in units of pounds per hour calculated by 30 TAC §112.243(j) for each production unit contributing carbon black oil furnace tail gas to the flare; and

π_{Flare} = the split coefficient determined by dividing the volumetric flow of tail gas to the flare by the total volumetric flow of tail gas generated by each carbon black production unit contributing carbon black oil furnace tail gas to the flare.

Figure: 30 TAC §112.243(j)

$$\sigma_i = \left[\left(S_{oil} \times D_{oil} \times F_{oil}\right) - \left(S_p \times P_p\right)\right] \times 2$$

Where:

σ_i = emissions of SO_2 generated by each production unit in units of pounds per hour;

i = the carbon black production unit;

S_{oil} = weight of sulfur in carbon black oil in units of pounds of sulfur per pound of carbon black oil;

D_{oil} = density of carbon black oil in pounds per gallon determined at a temperature consistent with the carbon black oil feed;

F_{oil} = feed rate of oil to carbon black production unit in gallons per hour;

S_p = sulfur content of carbon black product as determined in units of pound of sulfur per pound of product;

P_p = production rate of carbon black product in units of pounds per hour; and

2 = the molecular weight ratio of SO_2 to sulfur.

Figure: 30 TAC §112.302(c)(3)(C)(i)(I)

$$\mathrm{GLC}_{crit,i} = 0.5 \times \left(196.4\ {}^{\mu g}/_{m^3} - DV_{AD,i}\right) - \left(DV - DV_{AD,i}\right)$$

Where:

$\mathrm{GLC}_{crit,i}$ = The value for each receptor i that the modeled concentration in an AMOC demonstration cannot exceed.

$DV_{AD,i}$ = The maximum design value in any modeled scenario approved by the Environmental Protection Agency under 40 Code of Federal Regulations §51.112(a) for receptor i; and

DV = The design value specified by the Executive Director under this section, which, on the effective date of this section, equals DVA_o; and may subsequently be no less than DVA_o.

DVA_o = The design value based on the attainment demonstration modeling for the Navarro County SO_2 nonattainment area.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - September 2022

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period September 2022 is $68.62 per barrel for the three-month period beginning on June 1, 2022, and ending August 31, 2022. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of September 2022, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period September 2022 is $5.25 per mcf for the three-month period beginning on June 1, 2022, and ending August 31, 2022. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2022, from a qualified low-producing well, is not eligible for credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of September 2022 is $83.80 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of September 2022, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of September 2022 is $7.76 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from gas produced during the month of September 2022, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

Issued in Austin, Texas, on October 11, 2022.

TRD-202204054
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: October 11, 2022

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/17/22 - 10/23/22 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/17/22 - 10/23/22 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202204071
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 11, 2022

♦ ♦ ♦

Court of Criminal Appeals

Preliminary Approval of Amendments to Texas Rule of Appellate Procedure 39.7

Court of Criminal Appeals of Texas

Misc. Docket No. 22-007

Preliminary Approval of Amendments to Texas Rule of Appellate Procedure 39.7

ORDERED that:

1. The Court invites public comments on the proposed amendments to Texas Rule of Appellate Procedure 39.7 set forth in this Order.

2. Any person may submit written comments to the Court of Criminal Appeals by January 1, 2023 at txccarulescomments@txcourt.gov or by mail to the Clerk of the Court of Criminal Appeals at P.O. Box 12308, Austin, Texas 78711.

3. The Court will issue an order finalizing the amendments after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the final amendments to take effect on February 1, 2023.

4. The Clerk is directed to:

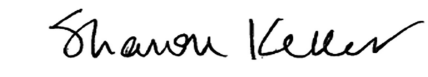
   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

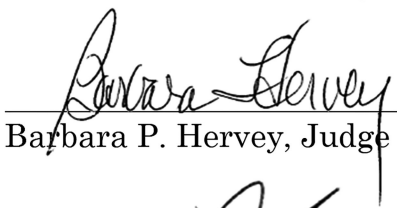
   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

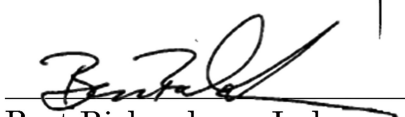
Dated: October 4, 2022.



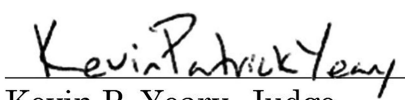
Sharon Keller, Presiding Judge



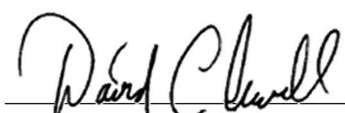
Barbara P. Hervey, Judge



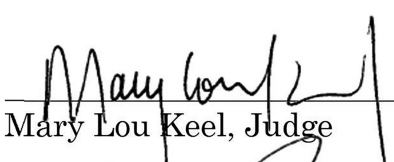
Bert Richardson, Judge



Kevin P. Yeary, Judge



David Newell, Judge



Mary Lou Keel, Judge

Scott Walker, Judge

Michelle Slaughter, Judge

Jesse F. McClure, Judge

Texas Rules of Appellate Procedure

Rule 39. Oral Argument; Decision Without Argument (Redline Version)

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39.7. Request ~~and Waiver~~

A party desiring oral argument must note that request on the front cover of the party's brief. ~~A party's failure to request oral argument waives the party's right to argue.~~If the court sets the case for oral argument, then all parties that filed a brief are entitled to participate in the oral argument, even if a party did not request oral argument on the cover of the party's brief. ~~But even if a party has waived oral argument, t~~The court may direct ~~the~~a party that has not requested argument to appear and argue.

***

Rule 39. Oral Argument; Decision Without Argument (Clean Version)

***

39.7. Request

A party desiring oral argument must note that request on the front cover of the party's brief. If the court sets the case for oral argument, then all parties that filed a brief are entitled to participate in the oral argument, even if a party did not request oral argument on the cover of the party's brief. The court may direct a party that has not requested argument to appear and argue.

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TRD-202204001
Deana Williamson
Clerk of the Court
Court of Criminal Appeals
Filed: October 5, 2022

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, 2022.** TWC, §7.075,

also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **November 22, 2022.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ALVARADO CUMMINGS LLC dba Lucky Mart; DOCKET NUMBER: 2022-0500-PST-E; IDENTIFIER: RN101636421; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Kendleton; DOCKET NUMBER: 2021-1147-MWD-E; IDENTIFIER: RN102844412; LOCATION: Kendleton, Fort Bend County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.6(d) and §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0010996001, Operational Requirements Number 8.b, by failing to submit a summary transmittal letter to the Executive Director and a copy to the appropriate regional office for each collection system project; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2022-0027-PWS-E; IDENTIFIER: RN101244960; LOCATION: Sealy, Austin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(h)(3) and (j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) in writing as to the completion of a water works project and attest to the fact that the completed work is substantially in accordance with the plans and specifications on file with the commission; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; and 30 TAC §290.46(k), by failing to obtain approval from the ED for the use of interconnections; PENALTY: $11,000; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Dalton S. Tabor; DOCKET NUMBER: 2022-0637-PST-E; IDENTIFIER: RN102469822; LOCATION: Aspermont, Stonewall County; TYPE OF FACILITY: temporarily out-of-service; RULES VIOLATED: 30 TAC §334.49(e), §334.54(b)(3) and (e)(5) and TWC, §26.3475(d), by failing to perform a site check and any necessary corrective actions for a temporarily out-of-service underground storage tank (UST) system in order to meet financial assurance exemption requirements, and failing to provide adequate corrosion protection for the UST system; PENALTY: $3,937; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Energy Transfer Marketing and Terminals L.P. fka Sunoco Partners Marketing and Terminals L.P.; DOCKET NUMBER: 2021-1122-IWD-E; IDENTIFIER: RN100214626; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: marine petroleum handling facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001151000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $29,100; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Grizzly Pines, LLC; DOCKET NUMBER: 2022-0008-PWS-E; IDENTIFIER: RN111055521; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $2,187; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Halyard Energy Henderson, LLC; DOCKET NUMBER: 2021-1296-AIR-E; IDENTIFIER: RN107670341; LOCATION: Larue, Henderson County; TYPE OF FACILITY: fossil fuel electric power generation plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1)(B) and (2), Federal Operating Permit Number O3873, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §328.085(b), by failing to certify compliance after the voidance of an issued permit covering the period from the date of the last certification to the date the permit is voided, and failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: HUBERT-WATSON SUBDIVISION WATER SUPPLY, INCORPORATED; DOCKET NUMBER: 2022-0713-PWS-E; IDENTIFIER: RN101455384; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $1,437; SUP-

PLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $718; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Hudson Water Supply Corporation; DOCKET NUMBER: 2022-0621-PWS-E; IDENTIFIER: RN101455954; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $4,050; ENFORCEMENT COORDINATOR: Daniel Brill, (512) 239-2564; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: LINDSAY PURE WATER COMPANY; DOCKET NUMBER: 2022-0127-PWS-E; IDENTIFIER: RN101216646; LOCATION: Lindsay, Cooke County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), and (B)(iii) and (v), by failing to maintain water works operation and maintenance records and make them readily available for review by the Exective Director upon request; PENALTY: $50; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: North Runnels Water Supply Corporation; DOCKET NUMBER: 2022-0095-PWS-E; IDENTIFIER: RN101222081; LOCATION: Winters, Runnels County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notice to customers of the facility within 24 hours of a low pressure event or water outage using the prescribed notification format as specified in 30 TAC §290.47(c); PENALTY: $1,589; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: South Frankford Commercial Park, L.L.C.; DOCKET NUMBER: 2022-0016-PWS-E; IDENTIFIER: RN111377891; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(13) COMPANY: Southwestern Bell Telephone Company; DOCKET NUMBER: 2022-0349-PST-E; IDENTIFIERS: RN102392420, RN102392875, and RN102398351; LOCATIONS: Dallas, Dallas County and Houston and Channelview, Harris County; TYPE OF FACILITIES: emergency generators; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.50(b)(1)(A) and (2)(B) and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the suction piping associated with the UST system; PENALTY: $11,576; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,630; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Targa Downstream LLC; DOCKET NUMBER: 2021-1230-AIR-E; IDENTIFIER: RN100222900; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: bulk liquid natural gas storage tank terminal; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 22088, Special Conditions Number 1, Federal Operating Permit Number O615, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.08, by failing to prevent unauthorized emissions; PENALTY: $25,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,000; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Verner Middleton; DOCKET NUMBER: 2022-0554-MLM-E; IDENTIFIER: RN101868339; LOCATION: Center, Shelby County; TYPE OF FACILITY: fleet refueling; RULES VIOLATED: 30 TAC §328.23(a) and (b), by failing to ensure that used oil filters are stored, processed, or disposed of in a manner that does not result in the discharge of oil into soil or water; 30 TAC §334.7(d)(1)(A) and (B), and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; 30 TAC §§334.47(a)(2), 334.49(e), 334.54(b)(3) and (e)(5), and TWC, §26.3475(d), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and failing to provide adequate corrosion protection for the UST system, and also, failing to provide financial assurance to conduct a site check and perform any necessary correcitve actions for a temporarily out-of-service UST system in order to meet financial assurance exemption requirements; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C for the facility; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202204051
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 11, 2022

♦ ♦ ♦

Correction of Error

The Texas Commission on Environmental Quality (commission) proposed the repeal of 30 TAC §§36.1 - 36.8 in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6559).

Due to an error as submitted by the commission, the following sentence in the preamble was published incorrectly: "Texas Farm Bureau was

among those with rights junior to TDCC's that were suspended under the ED's orders; and in response, Texas Farm Bureau, and other individual plaintiffs, filed a lawsuit against the TCEQ challenging the validity of TCEQ's drought rules found in 30 TAC Chapter 36." The sentence should have been published as follows: "Members of the Texas Farm Bureau were among those with rights junior to TDCC's that were suspended under the ED's orders; and in response, Texas Farm Bureau, and other individual plaintiffs, filed a lawsuit against the TCEQ challenging the validity of TCEQ's drought rules found in 30 TAC Chapter 36."

TRD-202204050

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, 2022.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 22, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: BEN-HUR ENTERPRISES, LTD.; DOCKET NUMBER: 2019-0802-WQ-E; TCEQ ID NUMBER: RN105283139; LOCATION: approximately six miles west-northwest of Puente de Las Americas Bridge, Laredo and 1.16 miles south of Farm-to-Market Road 1472, Webb County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of silt material into or adjacent to any water in the state; PENALTY: $33,750; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: UVM INVESTMENT INC dba Conoco Express; DOCKET NUMBER: 2020-0570-PST-E; TCEQ ID NUMBER: RN101570091; LOCATION: 2930 West Irving Boulevard, Irving, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,500; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202204052
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 11, 2022

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 22, 2022.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 22, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Schenck Builders LLC; DOCKET NUMBER: 2021-0036-WQ-E; TCEQ ID NUMBER: RN111123576; LOCATION: 5815 North Ossineke Drive, Spring, Montgomery County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: TWC, §26.121, 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $2,779; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392;

REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Stan Stanford dba USA Trucks; DOCKET NUMBER: 2019-1235-PST-E; TCEQ ID NUMBER: RN102235587; LOCATION: 8801 County Road 2500, Lubbock, Lubbock County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition or within 30 days from the date on which the owner or operator first became aware of the change or addition; and 30 TAC §334.602(a), by failing to designate, train, and certify one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: $2,500; STAFF ATTORNEY: Benjamin Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202204053
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 11, 2022

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Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill: Proposed Permit No. 62046 Aviso de Oportunidad para Solicitar una Reunión Pública para una Solicitud de Permiso de Desarrollo para la Construcción de un Vertedero Cerrado de Desechos Sólidos Municipales: Permiso Propuesto No. 62046

Application. PBI International, LLC, P.O. Box 58356, Webster, Texas, 77598 has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62046). The proposed development concerns a tract of land of approximately 34.85 acres located at 2122 Genoa Red Bluff Road, Houston, Texas and consists of an enclosed 1-story office/warehouse building, with a total footprint of about 20,000 square feet, and associated driveways, storage and parking areas, and support utilities. The development permit application is available for viewing and copying at Deer Park Public Library, 3009 Center Street, Deer Park, Texas, 77536 and may be viewed online at https://www.dropbox.com/sh/vlsq2hhlckekr0m/AADSkMhTP8c8hj6LFNbkgJhNa?dl=0. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/0LDqnO. For exact location, refer to application.

Alternative Language Notice. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. La notificación en otro idioma en español está disponible en www.tceq.texas.gov/goto/mswapps.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at http://www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Further information may also be obtained from PBI International, LLC at the address stated above or by calling Mr. Bryson Hancock at (281) 559-2141.

Solicitud. PBI International, LLC, P.O. Box 58356, Webster, Texas, 77598 ha solicitado a la Comisión de Calidad Ambiental de Texas (TCEQ, por sus siglas en inglés) un permiso de desarrollo para la construcción de un vertedero cerrado de desechos sólidos municipales (Permiso propuesto N.º 62046). El desarrollo propuesto se refiere a una extensión de suelo de aproximadamente 34.85 acres ubicado en 2122 Genoa Red Bluff Road, Houston, Texas y consiste en un edificio de oficinas / almacenes de uno piso, con una huella total de aproximadamente 20,000 pies cuadrados, y entradas asociadas, áreas de almacenamiento y estacionamiento, y servicios públicos de apoyo. La solicitud de permiso de desarrollo está disponible para ver y copiar en Deer Park Public Library, 3009 Center Street, Deer Park, Texas, 77536, y se puede ver en línea en https://www.dropbox.com/sh/vlsq2hhlckekr0m/AADSkMhTP8c8hj6LFNbkgJhNa?dl=0. El siguiente enlace a un mapa electrónico de la ubicación general del sitio o instalación se proporciona como cortesía pública y no forma parte de la solicitud o aviso: https://arcg.is/0LDqnO. Para conocer la ubicación exacta, consulte la solicitud.

Comentario Público/Reunión Pública. Puede enviar comentarios públicos o solicitar una reunión pública sobre esta solicitud a la Oficina del Secretario Oficial en la dirección incluida en la sección de información a continuación. La TCEQ convocará una reunión pública si el director ejecutivo determina que existe un grado significativo de interés público en la solicitud o si lo solicita un legislador local. El propósito de la reunión pública es para que el público proporcione información para su consideración por la comisión, y que el solicitante y el personal de la comisión proporcionen información al público. Una

reunión pública no es una audiencia de caso impugnado. El periodo de comentarios comenzará en la fecha en que se publique este aviso y finalizará 30 días calendario después de la publicación de este aviso. El periodo de comentarios se ampliará hasta la clausura de cualquier reunión pública. El director ejecutivo no está obligado a presentar una respuesta a los comentarios.

Si se va a convocar una reunión pública, se publicará un aviso público en un periódico que generalmente circula en el condado en el que se encuentra el desarrollo propuesto. Todas las personas que figuren en la lista de propietarios de tierras adyacentes también serán notificadas al menos 15 días naturales antes de la reunión.

Director Ejecutivo Acción. El director ejecutivo, después de la revisión de la solicitud, emitirá su decisión de aprobar o negar la solicitud de permiso de desarrollo. La notificación de la decisión se enviará por correo al propietario y a cada persona que solicite la notificación de la decisión del director ejecutivo.

Información Disponible en Línea.Para obtener detalles sobre el estado de la solicitud, visite la Base de Datos Integrada de Comisionados (CID, por sus siglas en inglés) en www.tceq.texas.gov/goto/cid. Una vez que tenga acceso al CID utilizando el enlace anterior, ingrese el número de permiso para esta solicitud, que se proporciona en la parte superior de este aviso.

Contactos e informacion de la agencia. Todos los comentarios, solicitudes y peticiones públicas deben enviarse electrónicamente a http://www14.tceq.texas.gov/epic/eComment/ o por escrito a Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711- 3087. Tenga en cuenta que cualquier información de contacto que proporcione, incluido su nombre, número de teléfono, dirección de correo electrónico y dirección física, se convertirá en parte del registro público de la agencia. Para obtener más información sobre esta solicitud de permiso o el proceso de permisos, llame al Programa de Educación Pública de la TCEQ, sin cargo, al (800) 687-4040 o visite su sitio web en www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Puede encontrar información general sobre la TCEQ en nuestro sitio web en www.tceq.texas.gov. También se puede obtener más información de PBI International, LLC en la dirección indicada anteriormente o llamando a Mr. Bryson Hancock a (281) 559-2141.

TRD-202204027
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 7, 2022

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Notice of Water Quality Application

The following revised notices were issued on October 06, 2022:

The following revised notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE NOTICE BEING PUBLISHED IN THE *TEXAS REGISTER.*

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0012078001, issued to Renn Road Municipal Utility District, c/o Allen Boone Humphries & Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027, recently renewed on October 22, 2021, to correct typographical errors in the Lethal WET limits and in the dilution series. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 9535 Sugarland-Howell Road, in Fort Bend County, Texas 77083.

The following revised notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0011139001, issued to Moscow Water Supply Corporation, P.O. Box 250, Moscow, Texas 75960, recently renewed on February 14, 2022, to correct typographical errors in the Measurement Frequency of Total Dissolved Solids to one/month. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 16372 U.S. Highway 59 North, in the City of Moscow, Polk County, Texas 75960.

TRD-202204004
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 6, 2022

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Notice of Water Rights Application

Notice Issued October 10, 2022

APPLICATION NO. 14-2634A; Gridiron Creek Ranch - River Bluff, Ltd., P.O. Box 758, Spicewood, Texas 78669, Applicant, seeks to change the purpose of use, add a place of use, and add a diversion reach along the Colorado River (Lake Travis), Colorado River Basin in Burnet County. More information on the application and how to participate in the permitting process is given below.

The application and fees were received on June 30, 2022. Additional information was received on August 9, 2022. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 19, 2022.

The Executive Director has prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, installing screens at any new diversion structure. The application and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments can be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by October 28, 2022.

In accordance with TWC §11.122 (b-3) the application may not be referred to the State Office of Administrative Hearings for a contested case hearing.

Written public comments can be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087

or electronically at https://www14.tceq.texas.gov/epic/eComment/_by entering ADJ 2634 in the search field. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202204029
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 10, 2022

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Aidan Shaughnessy at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2022

William A. Clark, 6714 Sahara Dr., Corpus Christi, Texas 78412

Robert Collier, 9659 N. Sam Houston Pkwy. E, Ste. 150 #300, Humble, Texas 77396

Sean Kizer, 9800 Northwest Fwy #307, Houston, Texas 77092

George A. Coats, P.O. Box 130246, The Woodlands, Texas 77393

Tiffany Reed-Villarreal, 202 FM 5, Aledo, Texas 76008

Sally Martinez, P.O. Box 377, Von Ormy, Texas 78703

Kathy C. Flores, 2606 Purdue, Lubbock, Texas 79415

Peggy A. McCarty, 728 Hawthorne Dr., Garland, Texas 75041

Carla S. Porter, P.O. Box 293, Palo Pinto, Texas 76484

Mark J. Hayes, 2720 E. Seeton Rd., Grand Prairie, Texas 75054

Sabrina Renteria, 1818 E. Vaggett Ave., Fort Worth, Texas 76104

Dawn Ann Larios, 317 Lexington Ave., Apt 331, San Antonio, Texas 78215

Lydia Meeks, P.O. Box 123766, Fort Worth, Texas 76121

Ashley E. Maxwell, 219 Sardius Blvd., Granbury, Texas 76049

Daniel J. Chupe-O'Hanlon, 3701 W. Slaughter Lane #130-232, Austin, Texas 78749

Kent A. Kallmeyer, 1925 Berrybrook Dr., Fort Worth, Texas 76134

Adrian Flores Jr., 426 Craig, San Antonio, Texas 78212

Nicole Webb, P.O. Box 6063, Dallas, Texas 75260

Carol Adams, 6125 Luther Ln., Ste. 245, Dallas, Texas 75225

Sarah M. Dougherty, 13359 N. Hwy 183 #406-143, Austin, Texas 78750

Lamontry S. Lott, 2448 Tan Oak Dr., Dallas, Texas 75212

Michael Oakley, 2121 Lakeridge Dr., Grapevine, Texas 76051

Benjamin Coffin, 1101 Dexford Dr., Austin, Texas 78753

Gilbert Enriquez, 3025 S. Sugar Road, Edinburg, Texas 78539

Cindy Krause, P.O. Box 1277, Port Lavaca, Texas 77979

Sharon Saunders, 110 Tamworth, San Antonio, Texas 78213

Phillip W. Carpenter, 1702 Woodsboro Ct., Allen, Texas 75013

Tasha D. Dennis, 2400 South Loop West, Apt 413, Houston, Texas 77054

Denise Hutter, P.O. Box 519, Anahuac, Texas 77514

Marshall R. Escamilla, 1001 Oak Meadow Dr., Dripping Springs, Texas 78620

Daniela Villarreal, 515 San Felipe St., Suite 320-102, Houston, Texas 77506

Amanda Elise Salas, 512 E. Upas Ave., Apt 3, McAllen, Texas 78501

Brandon Keith, 9077 Loving Branch, Lantana, Texas 76226

Ted A. Waterston, 3924 Kimbrough Ln., Plano, Texas 75025

Randolph L. DeLay, 1122 Colorado Street, Ste 100, Austin, Texas 78701

Mary Ann Neely, 1908 Barton Pkwy., Austin, Texas 78704

Antron D. Johnson, 1034 Saulnier Street, Houston, Texas 77019

William A. Lumpkin, 2033 Southgate Blvd., Houston, Texas 77030

William T. Jones, P.O. Box 571422, Houston, Texas 77257

Bruce L. Owdley, 5330 Griggs Road #43 St. A112, Houston, Texas 77021

Gerardo Maldonado, 2715 E. Del Marr Blvd. Suite F2, Laredo, Texas 78041

Chip Coleman, 9822 Appellate Way, Converse, Texas 78109

Tom Karol, P.O. Box 192121, Dallas, Texas 75219

Jared R. Perkowski, 1601 Rice Boulevard, Houston, Texas 77005

Janice L. Grizzaffi, 9800 Northwest Fwy #307, Houston, Texas 77092

Tarah Taylor, 7105 Old Katy Rd. #2114, Houston, Texas 77024

Benjamin Peterek, P.O. Box 258, Kemah, Texas 77565

Shaunda R. Brainard, 120 Woodbine Trl., Alavardo, Texas 76009

Lori L. Gallagher, 201 Seward Junction Loop, Liberty Hill, Texas 78642

Gina Bouvier, P.O. Box 588, Santa Fe, Texas 77510

Gloria Ray, P.O. Box 866, San Antonio, Texas 78293

George W. Strake, 712 Main St., Ste 3300, Houston, Texas 77002

Amy F. Barber, 1602 E. Highway 175, Crandall, Texas 75114

Kaci A. Cook, 509 Hillcrest Ln, Krum, Texas 76249

Rebecca E. Cullums, 127 Troy St., Bridge City, Texas 77611

Marcie Holt, 1714 Crescent Drive, Sherman, Texas 75092

Martin Golando, 2326 W Magnolia, San Antonio, Texas 78201

Nicolas B. Teachenor, 4144 Grassmere Ln., Unit #4, Dallas, Texas 75205

Stacy A. Gonzalez, 902 Cleveland St., Apt 6333, Houston, Texas 77019

TRD-202204025

Aidan Shaughnessy
Program Specialist
Texas Ethics Commission
Filed: October 7, 2022

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List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Aidan Shaughnessy at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2022 for Committees

Claude Foster, Grassroots Bold Leadership Political Action Committee, 11041 Shadow Creek Parkway Suite 57, Pearland, Texas 77584

Aaron R. Franco, Committee For Victoria's Future, 416 Villaggio Circle, Victoria, Texas 77904

Molly Stone, Keep Celina Great, 421 Paddock Lane, Celina, Texas 75009

Jordan B. Hulcy, Constitutional Texans, 4100 Eldorado Pkwy., Ste. 100 #184, McKinney, Texas 75070

Patrick Tarlton, Texas Concrete Pipe Association Political Action Committee, 6300 Lohman Ford Ste. B, Lago Vista, Texas 78645

Lawrence Collins, Alliance Against Sexual Assault, 1105 Angelina St., Austin, Texas 78702

Susan R. Fowler, Texas Motion Picture Alliance PAC, 4809 Comal St., Pearland, Texas 77581

Michelle Hill, First Financial Corp. PAC, 800 Washington Ave., Waco, Texas 76701

Marquis Hawkins, Dallas County Young Dems, 4329 Delmar Ave., Dallas, Texas 75206

Eddie Rabb, Midland County Texas Coalition of Black Democrats PAC, 1403 Chestnut Ave., Midland, Texas 79701

Gary I. Dixon, Port Arthur Community Political Action Committee, 2302 Bayou Dr., Port Arthur, Texas 77640

Taylor L. Hogeland, A Better Hays PAC, 2022 Ford St., Austin, Texas 78704

Tommy J. Azopardi, Texans for Economic Development, P.O. Box 685138, Austin, Texas 78768

Michael Dougherty, Texans for Wellness and Recovery, 1122 Colorado St., Ste. 102, Austin, Texas 78701

Mildred Escobedo, People First, 903 E. Bugambilia, Hidalgo, Texas 78557

Deshdeepak Sahni, Texans for Access to Medical Care, 2608 Little John Lane, Austin, Texas 78704

Travis Q. Parmer, Good Government Fort Worth, 3000 South Hulen St., Suite 124306, Fort Worth, Texas 76107

Zane C. Smith, TX Youth PAC, 433 Belle Grove, P.O. Box 830456, Richardson, Texas 75083

Matthew H. Logan II, Family and Economic Prosperity PAC, 2303 Glenburn Dr., Kingwood, Texas 77345

Angela Darden, Move Tarrant Forward, 2716 York Ct., Southlake, Texas 76092

Eddie Johnson III, Black Equity PAC, 20770 US HWY 281 N., Ste 108-195, San Antonio, Texas 78258

Elizabeth Castro Gray, Republican National Hispanic Assembly-Texas Chapter, 7717 Louetta Rd., Ste. 11084, Spring, Texas 77379

Anatasia Wilford, LPCounties, 550 San Antonio St., Jacksonville, Texas 75766

Travis A. Bryan I, Texas Senate District 11, P.O. Box 7334, Pasadena, Texas 77508

Lindsay Jack Branton, Balch Springs Fire Fighters Political Action Committee, P.O. Box 800034, Balch Springs, Texas 75180

Julian Wilson, Change Texas PAC, 11435 Devencrest Dr., Houston, Texas 77066

Steve Klein, Friends of Good Government, 404 Ball Airport Rd., Victoria, Texas 77904

Rafael Alcoser III, San Antonio Young Democrats, 3000 IH 10 West, San Antonio, Texas 78201

Caige M. Sutton, The Redacted Caucus, 1350 Sonny Dr., Apt. #13202, Leander, Texas 76643

TRD-202204026
Aidan Shaughnessy
Program Specialist
Texas Ethics Commission
Filed: October 7, 2022

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 30, 2022 to October 7, 2022. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, October 14, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, November 13, 2022.

FEDERAL AGENCY ACTIONS:

Applicant: Orange County Drainage District

Location: The project site is located in wetlands within the Bessie Heights subbasin and adjacent to the Neches River at an area approximately 0.6-mile west of the intersection of Round Bunch Road and West Bridgefield Drive, near Bridge City, in Orange County, Texas.

Latitude & Longitude (NAD 83): 30.043659, -93.903456

Project Description: The applicant proposes to permanently convert approximately 2.054 acres of estuarine emergent wetlands (EEM) and 1.452 acres of palustrine forested (PFO) wetlands to open water, and to deepen and widen approximately 1.409 acres of tidal open water to improve and extend the Bessie Heights Drainage Ditch. The proposed

drainage ditch extension will be approximately 4,965 feet in length, have a varying width of 45 feet to 64 feet, and a depth ranging from -2.9 feet to -7.3 feet (NAV '88). Approximately 2,291 cubic yards of material will be dredged from tidal open waters, 9,246 cubic yards of material excavated from estuarine emergent marsh, and 3,307 cubic yards of material excavated from palustrine forested wetlands to construct the new drainage channel. The 14,844 cubic yards of dredged and excavated material will either be removed to uplands, thin spray discharged into the adjacent marsh for beneficial use, and/or utilized for marsh creation as part of a permittee responsible compensatory mitigation plan. The purpose of the project is to improve stormwater flow through the northern portion of the Bessie Heights Marsh that allows the Bessie Heights Drainage Ditch to reach open water with minimal effects to the marsh.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2022-00314. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1032-F1

Applicant: Advario Texas Independent Deepwater Expansion, LLC

Location: The project site is located in the Texas City Ship Channel and Galveston West Bay, at 2800 Loop 197 South, in Texas City, Galveston County, Texas 77590.

Latitude & Longitude (NAD 83): 29.359435, -94.898121

Project Description: The applicant proposes to construct a marine tanker terminal comprised of two berths bisected by a finger pier and associated marine industrial infrastructure including roadways, utilities and security facilities, with access to a deep draft navigation channel (minus 45 feet mean lower low water (MLLW) including an additional 2 feet of allowable over dredge). This includes hydraulic and mechanical dredging of approximately 2.95-million cubic yards (MCY). The upper 1.61 MCY of dredge material within the levee would be placed onsite, filling approximately 38.37-acres of onsite wetlands (delineation described below in current conditions), to facilitate future construction, and approximately 32.69-acres of onsite waters of the United States (WOTUS). Approximately 1.34 MCY would be placed into Shoal Point Island, specifically the portion owned by the General Land Office. The components to construct the marine terminal and supporting infrastructure include the following:

--Dredge marine dock (38-acres total: 36.88-acres WOTUS; 1.01-acres palustrine emergent wetlands (PEM) and 0.07-acre estuarine emergent wetlands (EEM)) and dredged access to the Texas City Terminal Ship Channel (34.5-acres of WOTUS),

--Roads and utilities corridors (9-acres total: 0.43-acre WOTUS; 0.46-acre palustrine scrub-shrub wetlands (PSS); 0.25-acre PEM; 0.01-acre palustrine forested wetlands (PFO)),

--Liquid Petroleum Gas (LPG) Plant, equipment and storage areas (35-acres total: 8.59-acres WOTUS; 1.63-acres PSS; 10.77-acres PEM),

--Chemical Plant, equipment and storage areas (27-acres total: 12.13-acres WOTUS; 8.57-acres PEM; 0.37-acre PFO),

--Guard house - administration, and substations (5-acres total: 3.52-acres WOTUS; 0.69-acre PSS; 0.47-acre PEM),

--Lake Institute Fill Area for future development (8.02-acres WOTUS; 12.62-acres PSS; 0.85-acre PEM; 0.60-acre PFO).

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2016-01025. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1033-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202204049
Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Filed: October 10, 2022

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Interim Payment Rates for Small and Large State-Operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IIDs) for Fiscal Year 2023

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 27, 2022, at 9:00 a.m. to receive public comments on the proposed interim payment rates for small and large state-operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IIDs) for Fiscal Year 2023.

The public hearing will be held in the HHSC John H. Winters Building, Public Hearing Room 125W, First Floor, at 701 W. 51st Street, Austin, Texas 78751. Free parking is available in front of the building and in the adjacent parking garage. HHSC will also broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and accessible on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code Section 32.0282, which requires public notice of hearings on proposed Medicaid reimbursements.

Proposal. HHSC proposes the following interim per diem reimbursement rates for small and large state-operated ICFs/IID, effective retroactive to September 1, 2022:

*Small State-Operated ICF/IIDs - Medicaid-only clients:

-Proposed interim daily rate: $723.50

*Large State-Operated ICF/IIDs - Medicaid-only clients:

-Proposed interim daily rate: $994.17

*Large State-Operated ICF/IIDs - Dual-eligible Medicaid/Medicare clients:

-Proposed interim daily rate: $947.50

HHSC is proposing these interim rates to ensure there are adequate funds to serve the individuals in these facilities. The proposed interim rates account for actual and projected increases in costs to operate these facilities.

Methodology and Justification. The proposed payment rates were determined in accordance with Title 1 of the Texas Administrative Code

Section 355.456, which addresses the reimbursement methodology for ICF/IID.

Briefing Package. A briefing package describing the proposed payment rates will be available at https://pfd.hhs.texas.gov/rate-packets no later than October 12, 2022. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Provider Finance Department by telephone at (737) 867-7817; by fax at (512) 730-7475; or by email at PFD-LTSS@hhs.texas.gov. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFD-LTSS@hhs.texas.gov. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact HHSC Provider Finance by calling (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202204075
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 12, 2022

♦ ♦ ♦

Public Hearing on State Fiscal Year 2021 Settlement and Proposed Interim Reimbursement Rates for the State Veterans Nursing Homes effective State Fiscal Year 2023

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 27, 2022, at 9:00 a.m. to receive public comments on state fiscal year 2023 proposed interim reimbursement rates for the State Veterans Nursing Homes, effective retroactive to September 1, 2022.

The public hearing will be held in the HHSC John H. Winters Building, Public Hearing Room 125W, First Floor, at 701 W. 51st Street, Austin, Texas 78751. Free parking is available in front of the building and in the adjacent parking garage. HHSC will also broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and accessible on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code Section 32.0282, which requires public notice of hearings on proposed Medicaid reimbursements.

Proposal. State Fiscal Year 2023 Proposed Interim Reimbursement Rates for the State Veterans Nursing Homes, effective retroactive to September 1, 2022.

Methodology and Justification. HHSC maintains a program so Medicaid-eligible veterans can reside in State Veterans Nursing Homes. Currently, eight homes are in operation, overseen by the Veterans Land Board (VLB). The VLB is authorized to operate these nursing facilities under Chapter 164, Natural Resources Code. Interim rates are calculated by the VLB and adopted by HHSC.

Briefing Package. A briefing package describing the proposed payment rates will be available at https://pfd.hhs.texas.gov/rate-packets no later than October 12, 2022. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Provider Finance Department by telephone at (737) 867-7817; by fax at (512) 730-7475; or by email at PFD-LTSS@hhs.texas.gov. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFD-LTSS@hhs.texas.gov. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact HHSC Provider Finance by calling (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202204074
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 12, 2022

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Public Notice - Appendix K Class Waiver

Due to the public health emergency resulting from COVID-19, the Health and Human Services Commission (HHSC) submitted a request to the Centers for Medicare & Medicaid Services to amend the waiver application for the Community Living Assistance and Support Services (CLASS) waiver program through an Appendix K. HHSC administers the CLASS waiver program under the authority of §1915(c) of the Social Security Act.

The proposed effective date for the amendment is August 31, 2021.

The request proposes to increase Factor C (unduplicated participants) from 5,878 to 6,014 and to increase the point-in-time limit from 5,650 to 5,818 for waiver year two (September 1, 2020-August 31, 2021).

The CLASS waiver program provides community-based services and supports to eligible individuals as an alternative to an intermediate care facility for individuals with an intellectual disability or related conditions. CLASS waiver services are intended to enhance an individual's integration into the community, maintain or improve the individual's independent functioning and quality of life, and prevent the individual's admission to an institution. Services and supports supplement, rather than replace, existing informal or formal supports and resources.

To obtain a free copy of the proposed Appendix K, ask questions, or obtain additional information please contact Jayasree Sankaran by U.S. mail, telephone, fax, or email at the addresses and numbers below.

Addresses

Attention: Jayasree Sankaran, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street

Mail Code H-310

Austin, Texas 78751

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

Telephone

(512) 438-4331

Fax

(512) 323-1905 Attention - Jayasree Sankaran

TRD-202204072
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 12, 2022

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Public Notice - K Factor C HCS Waiver

Due to the public health emergency resulting from COVID-19, the Health and Human Services Commission (HHSC) submitted a request to the Centers for Medicare & Medicaid Services for an amendment to the Home and Community-based Services (HCS) waiver under §1915 (c) of the Social Security Act through an Appendix K.

The proposed effective date for the amendment is August 31, 2020.

The request proposes to increase Factor C (unduplicated participants) for waiver year two (September 1, 2019-August 31, 2020) from 27,378 to 27,763.

The HCS waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes, in the home of a family member, or another community setting such as a three-person or four-person residence operated by an HCS program provider. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources. Services in the HCS waiver program include day habilitation, respite, supported employment, adaptive aids, audiology, occupational therapy, physical therapy, prescribed drugs, speech and language pathology, financial management services, support consultation, behavioral support, cognitive rehabilitation therapy, dental treatment, dietary services, employment assistance, minor home modifications, nursing, residential assistance, social work, supporting home living, and transition assistance services.

To obtain a free copy of the proposed Appendix K amendment request, ask questions, or obtain additional information please contact Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email at the addresses and numbers below.

Addresses:

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street

Mail Code H-310

Austin, Texas 78751

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

Telephone

(512) 438-4321

Fax

(512) 323-1905 Attention - Basundhara Raychaudhuri

TRD-202204073
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 12, 2022

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of August 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
CYPRESS	CYPRESS HEART AND VASCULAR CENTER PLLC	L07163	CYPRESS	00	08/10/22
IRVING	THE UNIVERSITY OF DALLAS	L07155	IRVING	00	08/05/22

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AUSTIN	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	115	08/03/22
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	241	08/02/22
BEDFORD	TEXAS HEALTH PHYSICIANS GROUP	L06373	BEDFORD	12	08/02/22
BURLESON	TEXAS HEALTH HUGULEY INC	L06514	FORT WORTH	08	08/11/22
DALLAS	SOUTHERN METHODIST UNIVERSITY	L00443	DALLAS	31	08/02/22
DALLAS	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	146	08/08/22
DEER PARK	WESTLAKE EPOXY INC	L05323	DEER PARK	14	08/11/22
FORT WORTH	UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER FORT WORTH	L07089	FORT WORTH	01	08/10/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WILLOWBROOK HOSPITAL	L05472	HOUSTON	70	08/02/22
HOUSTON	TTG IMAGING SOLUTIONS LLC	L05775	HOUSTON	116	08/03/22
IRVING	HEALTHCARE ASSOCIATES OF IRVING PLLC	L05371	IRVING	20	08/03/22
KATY	WSSM LLC	L07035	KATY	03	08/03/22
LA PORTE	EQUISTAR CHEMICALS LP	L00204	LA PORTE	77	08/11/22
MANSFIELD	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	22	08/03/22
MCKINNEY	COLUMBIA MEDICAL CTR OF MCKINNEY SUBSIDIARY	L02415	MCKINNEY	52	08/10/22
MONT BELVIEU	EXXON MOBIL CORPORATION	L03119	MONT BELVIEU	34	08/11/22
NACOGDOCHES	TH HEALTHCARE LTD	L02853	NACOGDOCHES	60	08/03/22
SAN ANTONIO	SAN ANTONIO HEART IMAGING PLLC	L06569	SAN ANTONIO	01	08/08/22
SAN ANTONIO	UT MEDICINE SAN ANTONIO	L06737	SAN ANTONIO	07	08/09/22
SAN ANTONIO	SOUTHWEST GENERAL HOSPITAL LP	L02689	SAN ANTONIO	54	08/09/22
SAN ANTONIO	CHRISTUS SANTA ROSA HEALTH CARE	L02237	SAN ANTONIO	178	08/03/22
SAN ANTONIO	SOUTH TEXAS RADIOLOGY IMAGING CENTERS	L00325	SAN ANTONIO	258	08/08/22
THROUGHOUT TX	HAIMO AMERICA INC	L06936	HOUSTON	11	08/02/22
THROUGHOUT TX	WELD SPEC INC	L05426	LUMBERTON	121	08/02/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	MULTI PHASE METER SOLUTIONS LLC	L07141	MIDLAND	02	08/03/22
THROUGHOUT TX	TECHCORR USA MANAGEMENT LLC	L05972	PASADENA	133	08/11/22
TOMBALL	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	158	08/10/22
WEATHERFORD	WEATHERFORD HEALTH SERVICES LLC DBA MEDICAL CITY WEATHERFORD	L06937	WEATHERFORD	3	08/03/22

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ARLINGTON	TEXAS HEALTH ARLINGTON MEMORIAL HOSPITAL	L02217	ARLINGTON	123	08/03/22
FORT WORTH	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L06468	FORT WORTH	10	08/02/22
HARKER HEIGHTS	HH/KILLEEN HEALTH SYSTEM LLC DBA SETON MEDICAL CENTER HARKER HEIGHTS	L06481	HARKER HEIGHTS	07	08/02/22
LAREDO	LAREDO TEXAS HOSPITAL COMPANY LP	L01306	LAREDO	83	08/10/22

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
DALLAS	SOUTHERN METHODIST UNIVERSITY	L02887	DALLAS	24	08/08/22

TRD-202204020
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: October 7, 2022

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Licensing Actions for Radioactive Materials

During the second half of August 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
SAN ANTONIO	INDO-MIM INC	L07164	SAN ANTONIO	00	08/17/22

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ALICE	CHRISTUS SPOHN HEALTH SYSTEM CORPORATION DBA CHRISTUS SPOHN HOSPITAL ALICE	L02390	ALICE	52	08/24/22
ALVIN	ASCEND PERFORMANCE MATERIALS TEXAS LLC	L06630	ALVIN	10	08/15/22
AUSTIN	ASCENSION TEXAS CARDIOVASCULAR	L06598	AUSTIN	12	08/31/22
BAYTOWN	ENTERPRISE PRODUCTS OPERATING LLC	L06963	MONT BELVIEU	04	08/16/22
BEAUMONT	BAPTIST HOSPITAL OF SOUTHEAST TEXAS	L00358	BEAUMONT	158	08/17/22
BEEVILLE	CHRISTUS SPOHN HEALTH SYSTEM CORPORATION DBA CHRISTUS SPOHN HOSPITAL BEEVILLE	L04510	BEEVILLE	35	08/24/22
BISHOP	BASF CORPORATION	L06855	BISHOP	13	08/17/22
BISHOP	BASF CORPORATION	L06855	BISHOP	14	08/22/22
CARROLLTON	JUBILANT DRAXIMAGE INC DBA JUBILANT RADIOPHARMA	L06943	CARROLLTON	16	08/24/22
DECATUR	DECATUR HOSPITAL AUTHORITY	L02382	DECATUR	48	08/29/22
EL PASO	ENVIROSERVE INC	L06811	EL PASO	04	08/31/22
EL PASO	BHS PHYSICIANS NETWORK INC	L06893	EL PASO	06	08/24/22
EL PASO	TENET HOSPITALS LIMITED	L02353	EL PASO	153	08/26/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

FORT WORTH	UPNT CANCER LLC	L07068	FORT WORTH	04	08/17/22
HARLINGEN	TEXAS ONCOLOGY PA	L00154	HARLINGEN	53	08/23/22
HOUSTON	GULF COAST CANCER AND DIAGNOSTIC CENTER AT SOUTHEAST INC	L05185	HOUSTON	22	08/23/22
HOUSTON	UT PHYSICIANS	L05465	HOUSTON	27	08/22/22
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L06832	HOUSTON	33	08/19/22
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L06227	HOUSTON	57	08/24/22
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L03772	HOUSTON	172	08/19/22
HUMBLE	RAJIV AGARWAL MD PA MODERN HEART AND VASCULAR INSTITUTE	L06991	HUMBLE	08	08/17/22
JEWETT	NRG TEXAS POWER LLC	L06457	JEWETT	08	08/23/22
JUSTIN	EUROVIA ATLANTIC COAST LLC DBA SUNMOUNT PAVING COMPANY	L06968	JUSTIN	01	08/26/22
KINGSVILLE	CHRISTUS SPOHN HEALTH SYSTEM DBA CHRISTUS SPOHN HOSPITAL KLEBERG	L02917	KINGSVILLE	58	08/24/22
MANSFIELD	TEXAS HEALTH HOSPITAL MANSFIELD	L07076	MANSFIELD	03	8/16/22
NEW BRAUNFELS	TXI OPERATIONS LP	L01421	NEW BRAUNFELS	06	08/17/22
PORT ARTHUR	THE PREMCOR REFINING GROUP INC	L04871	PORT ARTHUR	26	08/23/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

PORT ARTHUR	MOTIVA ENTERPRISES LLC	L05211	PORT ARTHUR	29	08/19/22
SAN ANTONIO	METHODIST PHYSICIAN PRACTICES PLLC	L05675	SAN ANTONIO	25	08/26/22
THE WOODLANDS	METHODIST HEALTH CENTER DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L06861	THE WOODLANDS	13	08/19/22
THROUGHOUT TX	ECM INTERNATIONAL INC	L06987	EL PASO	05	08/31/22
THROUGHOUT TX	STERIGENICS US LLC	L03851	FORT WORTH	55	08/30/22
THROUGHOUT TX	URANIUM ENERGY CORPORATION	L06127	GOLIAD	11	08/24/22
THROUGHOUT TX	TGI GEOTECHNICS INC	L06848	HOUSTON	04	08/15/22
THROUGHOUT TX	TESTMASTERS INC	L03651	HOUSTON	36	08/15/22
THROUGHOUT TX	KLEINFELDER INC	L06960	IRVING	10	08/23/22
THROUGHOUT TX	PRO INSPECTION INC	L06666	ODESSA	17	08/22/22
THROUGHOUT TX	TEAM INDUSTRIAL SERVICES INC	L00087	PASADENA	258	08/25/22
THROUGHOUT TX	INSIGHT NDE INC	L06817	PORT LAVACA	08	08/22/22
THROUGHOUT TX	ARIAS & ASSOCIATES INC	L04964	SAN ANTONIO	61	08/23/22
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L01833	SUGAR LAND	225	08/31/22
THROUGHOUT TX	BRAUN INTERTEC CORPORATION	L06681	TYLER	21	08/22/22
THROUGHOUT TX	ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC	L06508	TYLER	24	08/15/22
THROUHGOUT TX	NATIONAL CALIBRATION INC	L07127	HOUSTON	01	08/19/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUHGOUT TX	SENTINEL INTEGRITY SOLUTIONS INC	L06735	HOUSTON	11	08/19/22
TYLER	TYLER REGIONAL HOSPITAL LLC DBA UT HEALTH EAST TEXAS TYLER REGIONAL HOSPITAL	L06973	TYLER	07	08/30/22

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend -ment Numbe r	Date of Action
DALLAS	DALLAS CARDIAC ASSOCIATES PA	L05508	DALLAS	07	08/22/22
HOUSTON	RADIOGRAPHIC SPECIALISTS INC	L02742	HOUSTON	72	08/16/22
PASADENA	KANEKA NORTH AMERICA LLC	L06488	PASADENA	03	08/23/22
RICHARDSON	METHODIST HOSPITALS OF DALLAS	L06475	RICHARDSON	12	08/29/22
THROUGHOUT TX	KIEWIT INFRASTRUCTUR E CO	L04569	FORT WORTH	28	08/25/22
THROUGHOUT TX	FUGRO CONSULTANTS INC	L03461	GRAND PRAIRIE	37	08/25/22
WEATHERFORD	MEDICAL AND HEART CENTER PA	L05573	WEATHERFORD	07	08/17/22

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AMARILLO	PEGA DEVELOPMENT LLC	L06636	AMARILLO	03	08/24/22
HOUSTON	ATC GROUP SERVICES INC	L05920	HOUSTON	10	08/16/22
PHARR	HARISH KOOLWAL MD PA	L05149	PHARR	15	08/31/22

EXEMPTIONS ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
IDAHO FALLS, IDAHO	TECHNICAL RESOURCES GROUP, INC.	NRC 11-35127-01	IDAHO FALLS, IDAHO	N/A	08/24/22

TRD-202204022
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: October 7, 2022

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Licensing Actions for Radioactive Materials

During the first half of September 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

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A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ABELINE	HENDRICK MEDICAL CENTER	L02433	ABELINE	138	09/13/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

AMARILLO	BSA HOSPITAL LLC DBA BAPTIST ST ANTHONYS HOSPITAL	L06573	AMARILLO	20	09/12/22
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS SOUTH AUSTIN MEDICAL CENTER	L03273	AUSTIN	126	09/12/22
BIG SPRING	ECOSERV PERMIAN LLC	L07020	BIG SPRING	04	09/14/22
CYPRESS	HOUSTON INTERVENTIONAL CARDIOLOGY PA	L05470	CYPRESS	16	09/13/22
EL PASO	TEXAS ONCOLOGY PA DBA EL PASO CANCER TREATMENT CENTER	L05774	EL PASO	20	09/12/22
EL PASO	ISOMEDIX OPERATIONS INC	L04268	EL PASO	27	09/01/22
HOUSTON	MEDICAL CENTER CARDIOVASCULAR ASSOCIATION	L07032	HOUSTON	02	09/12/22
HOUSTON	THE METHODIST HOSPITAL RESEARCH INSTITUTE DBAHOUSTON METHODIST RESEARCH INSTITUTE	L06383	HOUSTON	20	09/06/22
HOUSTON	THE METHODIST HOSPITAL RESEARCH INSTITUTE DBAHOUSTON METHODIST RESEARCH INSTITUTE	L06331	HOUSTON	21	09/06/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

IRVING	DALLAS-FT WORTH VETERINARY IMAGING CENTER DBA ANIMAL IMAGING	L04602	IRVING	24	09/12/22
IRVING	BAYLOR MEDICAL CENTER AT IRVING	L02444	IRVING	122	09/12/22
RICHARDSON	METHODIST HOSPITALS OF DALLAS	L06474	RICHARDSON	13	09/12/22
SAN ANTONIO	CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES	L02033	SAN ANTONIO	116	09/12/22
SAN ANTONIO	VHS SAN ANTONIO PARTNERS LLC DBA BAPTIST HEALTH SYSTEM	L00455	SAN ANTONIO	271	09/06/22
THROUGHOUT TX	RECON PETROTECHNOLOGIES OKLAHOMA INC	L06839	ALVARADO	06	09/13/22
THROUGHOUT TX	HVJ SOUTH CENTRAL TEXAS – M&J INC	L06858	AUSTIN	07	09/06/22
THROUGHOUT TX	CARDINAL HEALTH 414 LLC	L04043	CORPUS CHRISTI	60	09/12/22
THROUGHOUT TX	MAS-TEK ENGINEERING & ASSOCIATES INC	L04864	DALLAS	17	09/13/22
THROUGHOUT TX	CQC TESTING AND ENGINEERING LLC	L05082	EL PASO	13	09/14/22
THROUGHOUT TX	NATIONAL INSPECTION SERVICES LLC	L05930	FORT WORTH	51	09/06/22
THROUGHOUT TX	STERIGENICS US LLC	L03851	FORT WORTH	56	09/06/22
THROUGHOUT TX	TOLUNAY ENGINEERING GROUP INC DBA TEG	L06840	HOUSTON	04	09/06/22
THROUGHOUT TX	VARCO LP	L00287	HOUSTON	163	09/01/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	ACUREN INSPECTION INC	L01774	LA PORTE	311	09/08/22
THROUGHOUT TX	TEAM INDUSTRIAL SERVICES INC	L00087	PASADENA	259	09/13/22
THROUGHOUT TX	ADVANCED INSPECTION TECHNOLOGIES LLC	L06608	PORT NECHES	16	09/09/22
THROUGHOUT TX	EVOLUTION WELL SERVICES OPERATING LLC	L06748	THE WOODLANDS	06	09/01/22

TRD-202204023
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: October 7, 2022

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for CareSource Bayou Health, LLC, a domestic Health Maintenance Organization (HMO). The home office is in Houston, Texas.

Application to do business in the state of Texas for State Farm Classic Insurance Company, a foreign fire and/or casualty company. The home office is in Bloomington, Illinois.

Application to do business in the state of Texas for RGA Life and Annuity Insurance Company, a foreign life, accident and/or health company. The home office is in Chesterfield, Missouri.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202204078
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: October 12, 2022

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Texas Lottery Commission

Scratch Ticket Game Number 2456 "Lucky 7"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2456 is "LUCKY 7". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2456 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2456.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 7 SYMBOL, 77 SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2456 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
58	FFET
59	FFNI
60	SXTY
7 SYMBOL	TRP
77 SYMBOL	WINALL

$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2456), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2456-0000001-001.

H. Pack - A Pack of the "LUCKY 7" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LUCKY 7" Scratch Ticket Game No. 2456.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LUCKY 7" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "7" Play Symbol, the player wins TRIPLE the prize for that symbol. If the player reveals a "77" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have five (5) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbosl will never appear more than three (3) times.

G. The "7" (TRP) and "77" (WINALL) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "7" (TRP) and "77" (WINALL) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. On Tickets that contain the "77" (WINALL) Play Symbol, none of the WINNING NUMBERS Play Symbols will match any of the YOUR NUMBERS Play Symbols and the "7" (TRP) Play Symbol will not appear.

J. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY 7" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 7" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LUCKY 7" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LUCKY 7" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2456. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2456 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	768,000	9.38
$10.00	528,000	13.64
$15.00	192,000	37.50
$20.00	192,000	37.50
$50.00	96,000	75.00
$100	28,800	250.00
$500	720	10,000.00
$1,000	100	72,000.00
$100,000	5	1,440,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2456 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2456, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202204070
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 11, 2022

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Public Utility Commission of Texas

Correction of Error

The Public Utility Commission of Texas (commission) adopted new 16 TAC §25.55 in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6866). Due to an error as submitted by the commission, the text for subsection (c)(2)(E) as well as subsection (f)(2)(E) included the word "winter" instead of "summer".

The text for both subparagraphs should read as follows:

"(E) Beginning in 2023, create a list of all hot weather critical components, review the list at least annually prior to the beginning of the summer season, and update the list as necessary."

TRD-202204048
Adriana Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2022

♦ ♦ ♦

Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on October 7, 2022, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Brazoria Telephone Company to Recover Funds from the TUSF under PURA §56.025 and 16 TAC §26.406 For Calendar Year 2020, Docket Number 54192.

The Application: Brazoria Telephone Company seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Brazoria Telephone Company for 2020. Brazoria Telephone Company requests that the Commission allow recovery of funds from the TUSF in the amount of $1,047,367.36 for 2020 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 54192.

TRD-202204057
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2022

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Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on October 7, 2022, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Brazoria Telephone Company to Recover Funds from the Texas Universal Service Fund (TUSF) under PURA §56.025 and 16 TAC §26.406 for calendar year 2021, Docket Number 54193.

The Application: Brazoria Telephone Company seeks recovery of funds from the TUSF due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Brazoria Telephone Company for 2021. Brazoria Telephone Company requests that the Commission allow recovery of funds from the TUSF in the amount of $1,205,183.23 for 2021 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 54193.

TRD-202204069
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2022

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Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on October 7, 2022, for recovery of universal service funding under Public Utility Regulatory Act (PURA) § 56.025 and 16 Texas Administrative Code (TAC) § 26.406.

Docket Style and Number: Application of Brazoria Telephone Company to Recover Funds from the TUSF under PURA § 56.025 and 16 TAC § 26.406 For Calendar Year 2018, Docket Number 54190.

The Application: Brazoria Telephone Company seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Brazoria Telephone Company for 2018. Brazoria Telephone Company requests that the Commission allow recovery of funds from the TUSF in the amount of $411,464.43 for 2018 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 54190.

TRD-202204077
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 2022

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Supreme Court of Texas

Order Amending Texas Plan for Recognition and Regulation of Specialization in the Law and Adopting Standards for Attorney Certification in Insurance Law

Supreme Court of Texas

Misc. Docket No. 22-9088

Order Amending Texas Plan for Recognition and Regulation of Specialization in the Law and Adopting Standards for Attorney Certification in Insurance Law

ORDERED that:

1. Section XII of the Texas Plan for Recognition and Regulation of Specialization in law is amended as follows, effective immediately.

2. The Standards for Attorney Certification in Insurance Law are adopted as follows, effective immediately.

3. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

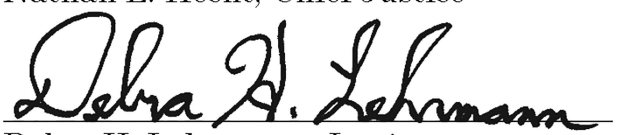
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

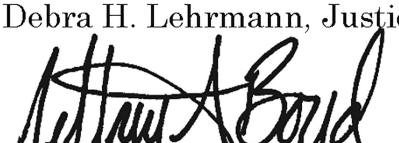
   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: September 27, 2022.

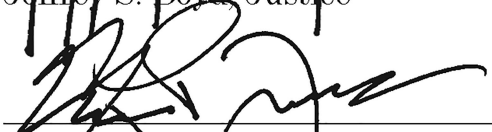
Nathan L. Hecht, Chief Justice



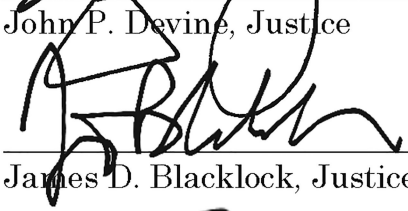
Debra H. Lehrmann, Justice



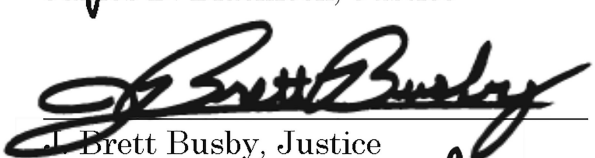
Jeffrey S. Boyd, Justice



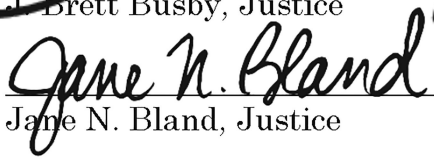
John P. Devine, Justice



James D. Blacklock, Justice

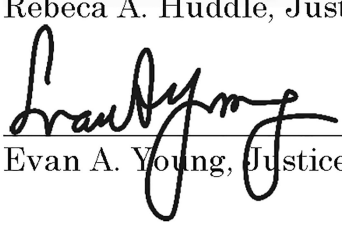


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS PLAN FOR RECOGNITION AND REGULATION OF SPECIALIZATION IN THE LAW

***

SECTION XII
RETAINED JURISDICTION OF SUPREME COURT

The jurisdiction of the TBLS shall be limited to twenty-~~two~~three areas of law: Criminal Law; Labor and Employment Law; Family Law; Estate Planning and Probate Law; Civil Trial Law; Personal Injury Trial Law; Immigration and Nationality Law; Real Estate Law; Tax Law; Bankruptcy Law; Oil, Gas and Mineral Law; Civil Appellate Law; Administrative Law; Consumer and Commercial Law; Juvenile Law; Health Law; Workers' Compensation Law; Criminal Appellate Law; Construction Law; Child Welfare Law; Legislative and Campaign Law; ~~and~~ Aviation Law; and Insurance Law; and to the development and operation of the program in the recognition and regulation of specialization in the law, provided, however, that the number and type of areas included in the program and the jurisdiction of the TBLS may be enlarged, altered, or terminated from time to time by the Supreme Court of Texas.

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TEXAS BOARD OF LEGAL SPECIALIZATION

STANDARDS FOR ATTORNEY CERTIFICATION

PART II
SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply to the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

SECTION XXIII
INSURANCE LAW

(Area ID: IL / Year Started: 2022)

A. **DEFINITION.** Insurance law is the practice of law dealing with the determination and regulation of issues arising in respect to various policies of insurance, including commercial general liability (CGL); casualty; directors and officers liability; excess/umbrella; extra-contractual liability; employment practices; advertising injury; life, health, and disability; professional liability; environmental impairment liability; property; personal lines; title; marine; cyber; and reinsurance. Potential issues include coverage, regulatory, oversight, public policy, the sale of policies of insurance, what qualifies as an insurance indemnity agreement, and consumer protection. The practice can include dispute resolution, transactional work, counseling and advice, and regulatory work, among other areas.

B. **SUBSTANTIAL INVOLVEMENT.** To demonstrate substantial involvement and special competence in Texas insurance law, Applicant must meet the following minimum requirements.

1. **Certification.**

   a. Percentage of Practice Requirement. Applicant must have devoted a minimum of 30% of Applicant's time practicing Texas insurance law during each year of the three years immediately preceding application.

   b. Task Requirements. Applicant must provide information as

required by TBLS concerning specific tasks Applicant has performed in practicing Texas insurance law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant. Applicant must show that Applicant has engaged directly and substantially in a broad practice of Texas insurance law within the three years immediately preceding application. Applicant must show specific and substantial involvement in at least two of the areas below during each year of the three years immediately preceding application:

(1) counseling clients regarding insurance law claims;

(2) representing clients in the preparation, prosecution, and defense of insurance claims or insurance-related claims (e.g., broker licensing) in litigation, appellate, and alternative dispute resolution procedures;

(3) negotiating, preparing, and applying policies, insurance programs, risk transfer provisions of contracts, and other documents related to insurance law;

(4) counseling and representing clients regarding establishing, revising, or maintaining procedures, practices, forms, or programs to comply with insurance laws, including regulatory, administrative, and lobbying activities.

2. **Recertification.** Applicant must have devoted a minimum of 30% of Applicant's time practicing Texas insurance law during each year of the three-year period of certification unless Applicant meets the exception in Part I–General Requirements, Section VI, C, 1, (b).

C. **REFERENCE REQUIREMENTS.** Applicant must submit a minimum of five names and addresses of persons to be contacted as references to attest to Applicant's competence in Texas insurance law. These persons must be substantially involved in Texas insurance law and be familiar with Applicant's insurance law practice.

1. **Certification.** Applicant must submit names of persons with whom Applicant has had dealings involving insurance law matters within the three years immediately preceding application.

2. **Recertification.** Applicant must submit names of persons with whom Applicant has had dealings involving insurance law matters since certification or the most recent recertification.

3. **Reference Types.** Applicant must submit 5 Texas attorneys who are substantially involved in Texas insurance law.

TRD-202203996
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: October 5, 2022

Preliminary Approval of Amendments to Texas Rule of Appellate Procedure 39.7 (Joint Order, Court of Criminal Appeals Misc. Docket No. 22-007)

♦ ♦ ♦

Supreme Court of Texas

Misc. Docket No. 22-9089

Preliminary Approval of Amendments to Texas Rule of Appellate Procedure 39.7

ORDERED that:

1. The Court invites public comments on the proposed amendments to Texas Rule of Appellate Procedure 39.7 set forth in this Order.

2. Comments should be submitted in writing to rulescomments@txcourts.gov by January 1, 2023.

3. The Court will issue an order finalizing the amendments after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the final amendments to take effect on February 1, 2023.

4. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

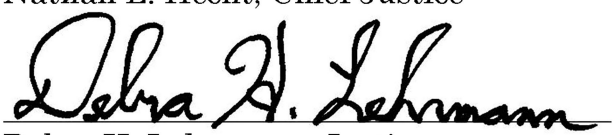
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

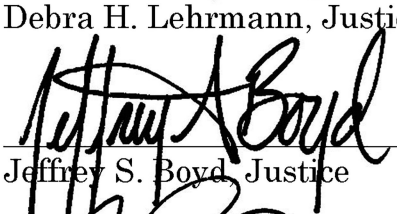
   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: September 30, 2022.

Nathan L. Hecht, Chief Justice

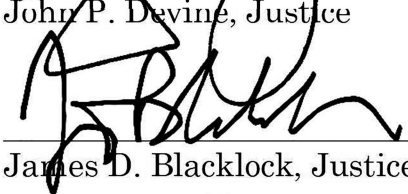


Debra H. Lehrmann, Justice

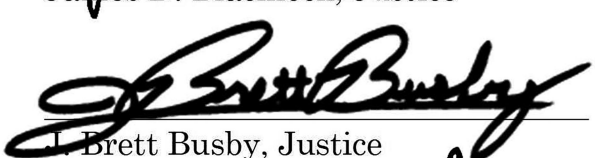


Jeffrey S. Boyd, Justice

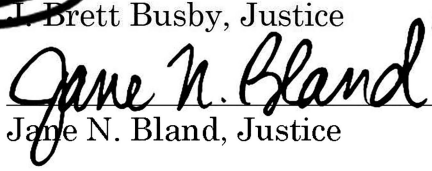
John P. Devine, Justice



James D. Blacklock, Justice

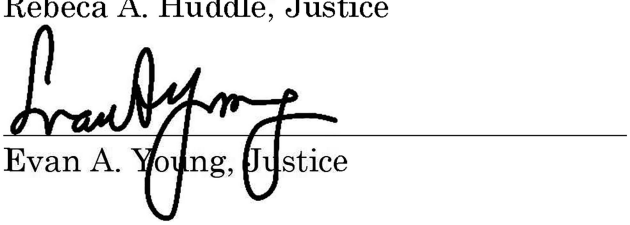


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

Texas Rules of Appellate Procedure

Rule 39. Oral Argument; Decision Without Argument (Redline Version)

***

39.7. Request ~~and Waiver~~

A party desiring oral argument must note that request on the front cover of the party's brief. ~~A party's failure to request oral argument waives the party's right to argue.~~If the court sets the case for oral argument, then all parties that filed a brief are entitled to participate in the oral argument, even if a party did not request oral argument on the cover of the party's brief. ~~But even if a party has waived oral argument, t~~The court may direct ~~the~~a party that has not requested argument to appear and argue.

***

Rule 39. Oral Argument; Decision Without Argument (Clean Version)

***

39.7. Request

A party desiring oral argument must note that request on the front cover of the party's brief. If the court sets the case for oral argument, then all parties that filed a brief are entitled to participate in the oral argument, even if a party did not request oral argument on the cover of the party's brief. The court may direct a party that has not requested argument to appear and argue.

***

TRD-202204028
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: October 7, 2022

♦ ♦ ♦

Preliminary Approval of Amendments to Texas Rule of Judicial Administration 10

Supreme Court of Texas

Misc. Docket No. 22-9087

Preliminary Approval of Amendments to Texas Rule of Judicial Administration 10

ORDERED that:

1. In accordance with the Act of May 25, 2019, 86th Leg., R.S., ch. 582 (S.B. 362), the Court preliminarily amends Rule 10 of the Texas Rules of Judicial Administration.

2. The amendments to Rule 10 are redlined against the version of the rule that was adopted in Misc. Dkt. No. 22-9081 and that will take effect on January 1, 2023.

3. The Court invites public comments on the amendments. Comments should be submitted in writing to rulescomments@txcourts.gov by March 1, 2023.

4. The Court will issue an order finalizing the amendments after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the amendments to take effect April 1, 2023.

5. The Clerk is directed to:

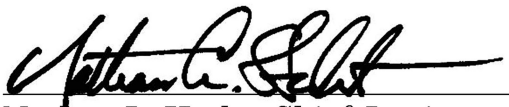
   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

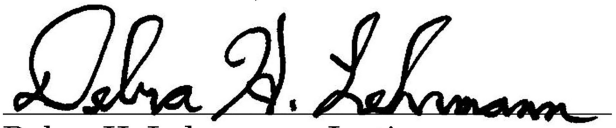
   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

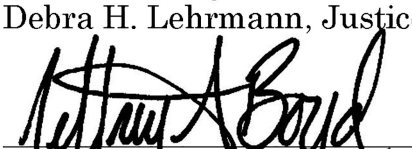
Dated: September 27, 2022.



Nathan L. Hecht, Chief Justice

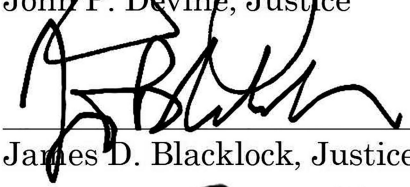


Debra H. Lehrmann, Justice

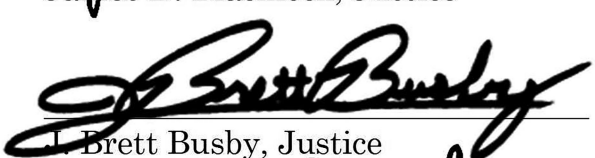


Jeffrey S. Boyd, Justice

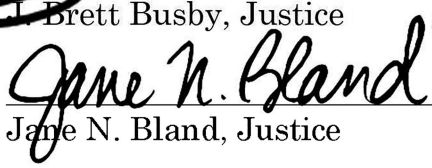
John P. Devine, Justice



James D. Blacklock, Justice

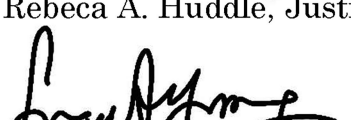


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

Texas Rules of Judicial Administration

Rule 10. Local Rules, Forms, and Standing Orders.

(a) *General Rule.* Local rules, forms, and standing orders must not be inconsistent with other laws or rules and must be published on the Office of Court Administration's website.

(b) *Multi-Court Counties.* In multi-court counties having two or more court divisions, each division must adopt a single set of local rules, forms, and standing orders that govern all courts in the division.

(c) *Local Rule Contents.* Local rules must include:

(1) provisions for fair distribution of the caseload among the judges in the county;

(2) designation of the responsibility for emergency and special matters;

(3) plans for judicial vacation, sick leave, attendance at educational programs, and similar matters; and

(4) any other content required by sections 27.061 or 74.093(b) of the Texas Government Code.

(d) *Format.* Local rules, forms, and standing orders must be submitted in a format specified by the Office of Court Administration.

(e) *Presiding Judge Authority.* The presiding judge of an administrative judicial region may direct a court in the region to amend or withdraw a local rule, form, or standing order if the presiding judge determines that the rule, form, or standing order fails to comply with Rule 3a of the Texas Rules of Civil Procedure or that it is unfair or unduly burdensome.

(f) *Supreme Court Authority.* The Supreme Court may direct a court to amend or withdraw a local rule, form, or standing order if the Supreme Court determines that the rule, form, or standing order fails to comply with Rule 3a of the Texas Rules of Civil Procedure or Rule 1.2 of the Texas Rules of Appellate Procedure or that it is unfair or unduly burdensome.

(g) *Forms.* A court must not require a party to use a local form. A court must not reject a properly completed form approved by the Supreme Court or an organization that reports to the Supreme Court.

Comment to 2023 change: Rule 10 is amended to implement the changes to Texas Rule of Civil Procedure 3a and Texas Rule of Appellate Procedure 1.2. But it also applies to local justice court rules authorized by section 27.061 of the Texas Government Code. Paragraphs (e) and (f) expressly authorize the regional presiding judges and the Supreme Court to direct changes to or the repeal of local rules, forms, and standing orders. Paragraph (g) is added to prohibit a court from requiring the use of a local form. Paragraph (g) makes clear that access to the justice system cannot be denied because of a party's failure to use a local form. Paragraph (g) also specifies that a court cannot reject forms approved by the Supreme Court or organizations that report to the Supreme Court.

TRD-202203995
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: October 5, 2022

♦ ♦ ♦


TEXAS

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 47 (2022) is cited as follows: 47 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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