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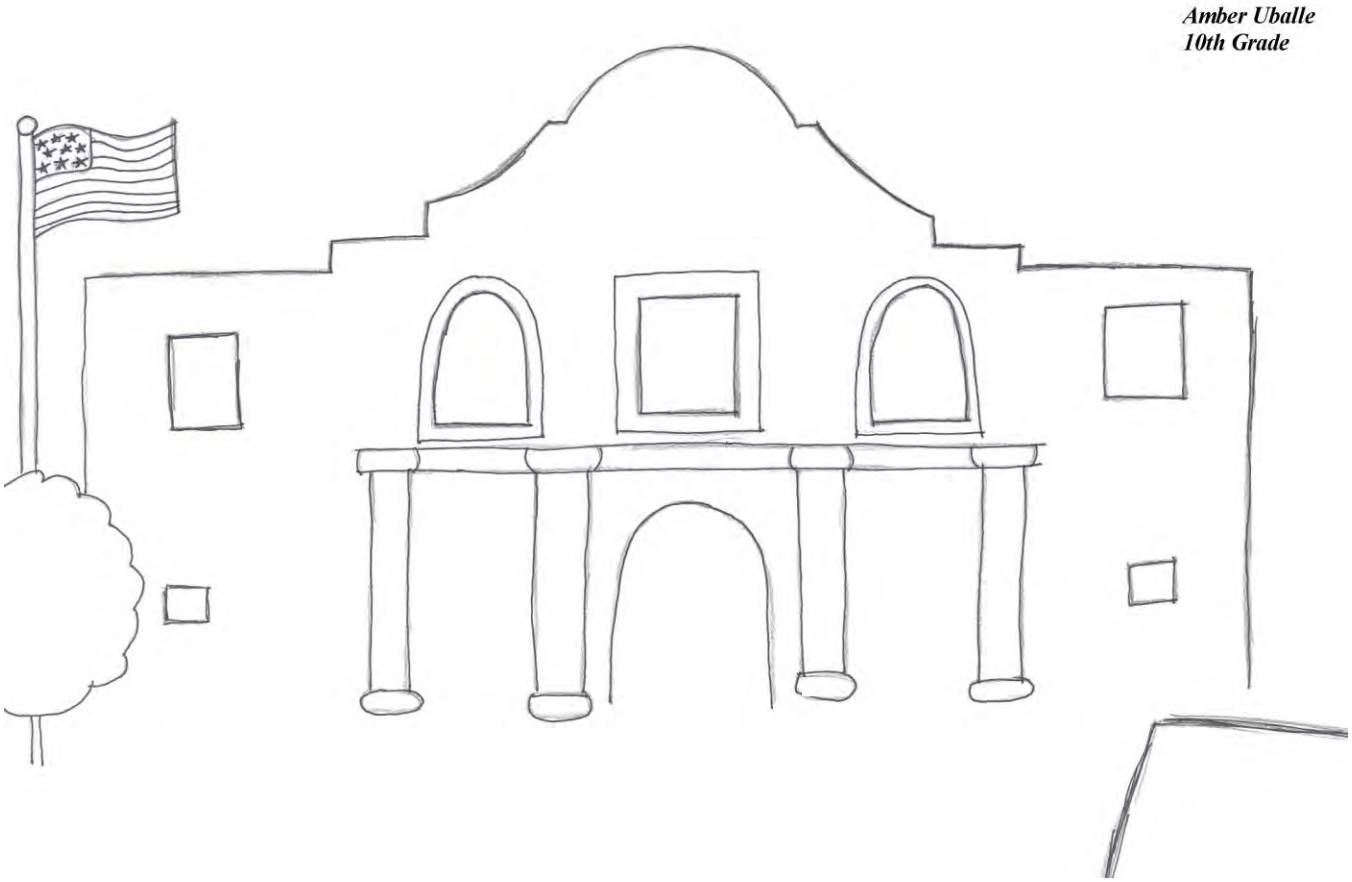

Amber Uballe
10th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

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The Texas A&M University System

Texas Water Development Board

Workforce Solutions Deep East Texas

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§148.40 - 148.55

The Texas Board of Pardons and Paroles adopts, on an emergency basis, new Chapter 148, §§148.40 - 148.55, concerning sex offender conditions of parole or mandatory supervision.

New Chapter 148, §§148.40 - 148.55, is adopted, on an emergency basis, to provide a procedure for panel members when considering the imposition of sex offender conditions for releasees not convicted of a sex offense.

The emergency rules are adopted under §§508.036, 508.0441, 508.045, 508.141 and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

No other statutes, articles, or codes are affected by the emergency new rules.

§148.40. Purpose.

This chapter only applies to releasees not convicted of a sex offense.

§148.41. Public Hearings.

(a) All hearings on matters not confidential or privileged by law, or both, shall be open to the public.

(b) Appropriate federal and state constitutional provisions, statutes, regulations, and judicial precedent establishing the confidential or privileged nature of information presented shall be given effect by the panel member.

(c) To effect this provision, the panel member shall have the authority to close the hearing to the extent necessary to protect against the improper disclosure of confidential and/or privileged information.

§148.42. Authority of a Panel Member.

(a) A panel member shall have the following authority:

(1) to administer oaths;

(2) to examine witnesses;

(3) to rule on the admissibility of evidence;

(4) to rule on motions and objections;

(5) to recess any hearing from time to time and place to place;

(6) to reopen, upon request of a panel member, or reconvene, or both, any hearing;

(7) to issue on behalf of the board subpoenas and other documents authorized by and signed by a board member in accordance with statutory authority;

(8) to maintain order and decorum throughout the course of any proceedings;

(9) to collect documents and exhibits comprising the record of the hearing;

(10) to prepare the report of the hearing to the parole panel for disposition of the case; and

(11) to determine the weight to be given to particular evidence or testimony and to determine the credibility of witnesses.

(b) If a panel member fails to complete an assigned case, another panel member may complete the case without the necessity of duplicating any duty or function performed by the previous panel member.

§148.43. Ex Parte Consultations.

Unless required for the disposition of matters authorized by law, the panel members assigned to render a decision in a matter may not communicate, directly or indirectly, in connection with any issue of fact or law with any party, except on notice and opportunity for all parties to participate.

§148.44. Motions.

Unless made during a hearing, motions shall be made in writing, set forth the relief or order sought, and shall be filed with the panel member assigned to conduct the hearing. Motions based on matters which do not appear of record shall be supported by affidavit.

§148.45. Witnesses.

(a) The panel member may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the panel member exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 of this title (relating to Definition of Terms) and includes:

(A) the releasee;

(B) the releasee's attorney; and

(C) no more than one representative of the TDCJ-PD who has acted or served in the capacity of supervising, advising, or agent officer in the case.

(2) In the event that it appears to the satisfaction of the panel member that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue of fact or law, then the panel member, in his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the panel member specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing, and upon good cause determined by the panel member, may present testimony by written statement.

§148.46. Opinion and Expert Testimony.

All witnesses who are testifying in the form of an opinion or inference shall submit a written report to the other party and the panel member in the manner prescribed by §148.47 of this title (relating to Evidence).

§148.47. Evidence.

(a) No later than five (5) days prior to the scheduled hearing, all parties shall submit all documents that will be introduced into evidence at the hearing to the other party and the panel member.

(b) All parties shall have an opportunity to present evidence in the form of testimony and written documentation. The panel member shall determine the order of presentation of evidence.

(c) The Texas Rules of Evidence shall apply. When necessary to ascertain facts not reasonably susceptible of proof under these rules, evidence not admissible there under may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(d) The panel member shall give effect to the rules of privilege recognized by law.

(e) Relevant testimony shall be confined to the subject of the pending matter. In the event any party at a hearing shall pursue a line of questioning that is, in the opinion of the panel member, irrelevant, incompetent, unduly repetitious, or immaterial, such questioning shall be terminated.

(f) Relevant staff reports may be admitted as evidence in any hearing.

(g) Evidence may be stipulated by agreement of all parties.

(h) Objections may be made and shall be ruled upon by the panel member, and any objections and the rulings thereon shall be noted in the record.

§148.48. Record.

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant TDCJ-PD documents, staff memoranda or reports submitted to or considered by the parole panel involved in making the decision; and any decision or order of the parole panel presiding at the hearing.

(b) All hearings shall be electronically recorded in their entirety, and at the board's option shall be either copied or transcribed upon the request and deposit of estimated costs by any party.

§148.49. Decisions.

(a) A final decision or order shall be in writing and delivered to the releasee or attorney as required by §148.53 of this title (relating to Final Panel Disposition).

(b) The releasee or attorney shall be notified in writing and provided with a copy of the report of the parole panel and notice of the right to submit a petition to reopen the hearing.

§148.50. Procedure after Waiver of Hearing.

The parole panel of the board may accept a waiver of the hearing provided that a waiver of the hearing includes the following:

(1) information that releasee was served with written notice of the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender conditions may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the panel member specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision maker; and

(F) opportunity to waive in writing the right to a hearing; and

(2) information TDCJ-PD relied upon to identify the releasee as a sex offender.

§148.51. Scheduling of Hearing.

Upon request, the panel member or his/her designee shall schedule the hearing unless:

(1) fewer than seven calendar days have elapsed from the time the releasee received notice; or

(2) information has not been presented to the panel member or his/her designee that the releasee was served with the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender conditions may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the panel member specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision maker; and

(F) opportunity to waive in writing the right to a hearing.

§148.52. Hearing.

(a) The panel member shall conduct the hearing for the purpose of determining whether sex offender conditions may be imposed as a special condition of release.

(b) The parole panel must determine, as shown by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control.

(c) At the close of the hearing, the panel member shall collect, prepare and forward to the other panel members:

(1) all documents;

(2) a summary report of the hearing with a written statement as to the evidence relied upon to make a finding or no finding that the releasee constitutes a threat to society by reason of his/her lack of sexual control; and

(3) and the recording of the hearing.

§148.53. Final Panel Disposition.

(a) After reviewing the evidence in the summary report of the hearing, the parole panel shall make final disposition of the case by taking one of the following actions:

(1) impose sex offender conditions; or

(2) deny imposition of sex offender conditions.

(b) The releasee or attorney shall be notified in writing and provided a copy of the summary report of the hearing and notice of the right to submit a petition to reopen the hearing.

§148.54. Releasee's Motion to Reopen Hearing.

(a) The releasee or releasee's attorney shall have 30 days from the date of the parole panel's decision to request a reopening of the case for any substantial error in the process.

(b) A request to reopen the hearing submitted later than 30 days from the date of the parole panel's decision will not be considered unless under exceptional circumstances including but not limited to:

(1) judicial order requiring a hearing; or

(2) initial decision was made without opportunity for a hearing or waiver.

(c) Any such request for reopening made under this section must be in writing and delivered to the board or placed in the United States mail and addressed to the Texas Board of Pardons and Paroles, General Counsel, 8610 Shoal Creek Boulevard, Austin, Texas 78757.

(d) On transmittal, a parole panel designated by the chair other than the original parole panel shall dispose of the motion by:

(1) granting of the motion and ordering that the hearing be reopened for a stated specified and limited purpose;

(2) denial of the motion; or

(3) reversal of the parole panel decision previously entered.

(e) The releasee and attorney, if any, shall be notified in writing of the parole panel's decision.

§148.55. Procedure after Motion to Reopen is Granted; Time; Rights of the Releasee; Final Disposition.

(a) When the parole panel disposes of a releasee's motion to reopen under §148.54 of this title (relating to Releasee's Motion to Reopen Hearing) by granting said motion to reopen the hearing, the case shall be disposed of or referred to a panel member for final disposition in accordance with this section and the previous disposition of the case made by the parole panel under §148.53 of this title (relating to Final Panel Disposition) shall be set aside and shall be of no force and effect.

(b) The purpose of the further proceedings before the panel member under this section shall be as specified by the parole panel in its order granting the releasee's motion to reopen pursuant to §148.54 of this title.

(c) When the panel member convenes the reopening of the hearing, he/she shall have before him/her the entire record previously compiled in the case, including:

(1) the record, report, and decision of the hearing (§148.52 of this title, relating to Hearing) collected or prepared by the panel member originally assigned to the case;

(2) any amendments, supplements, or modifications of the record, report, or decision as developed through prior reopenings of the case;

(3) the releasee's motion to reopen the hearing under §148.54 of this title; and

(4) any transmittal submitted to the parole panel with the recommendation from board staff. Any transmittal submitted to the parole panel by the general counsel constitutes legal advice which is confidential under law, and shall not be released to the public as part of the hearing packet.

(d) At the conclusion of the proceedings before the panel member, or within a reasonable time thereafter, the parole panel shall make final disposition of the case by taking one of the following actions in any manner warranted by the evidence:

(1) continue the parole panel's action; or

(2) withdraw the imposition of special condition.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102094
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: June 8, 2011
Expiration date: October 5, 2011
For further information, please call: (512) 406-5388

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PROPOSED RULES

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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

The Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 201, §§201.1, 201.2, 201.4 - 201.6, 201.9, 201.15, and 201.17, concerning Planning and Management of Information Resources Technologies; and new 1 TAC Chapter 201, §§201.1 - 201.5, concerning General Administration. The proposed repeal of and new 1 TAC Chapter 201 result from a rule review of the chapter, notice of which was published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1567).

The new chapter applies to state agencies and institutions of higher education. The assessment of the impact of the proposed sections on institutions of higher education has been prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

The department proposes to repeal 1 TAC Chapter 201 in its entirety, to rename the chapter, eliminate unnecessary rules, revise rules, and enable renumbering in new 1 TAC Chapter 201, concerning General Administration. The department proposes to rename the chapter to General Administration from its current title to align the topics contained in the chapter closely with the proposed changes to the chapter.

The department proposes to repeal the current text of §201.1 as the definitions no longer are required under the proposed changes to the chapter.

The department proposes to renumber §201.2 as §201.1; rename the rule to eliminate the reference to complaints; repeal the text in subsection (a) about complaints; reletter current subsection (b) as subsection (a); revise the text to comply with rules of the State of Texas Procurement authority regarding Vendor Protest Procedures; restructure the paragraphs within the subsection of the protest rule to better organize the information: §201.2(b)(13) is now §201.1(a)(12)(D), §201.2(b)(14) is now §201.1(a)(12)(E), §201.2(b)(15) is now §201.1(a)(13), and add §201.1(a)(14) to state the retention schedule for protest records; reletter subsection (c) as subsection (b); revise the text to delete the reference to a specific website page as reference for the rules of the Office of Attorney General regarding Negotiation and Mediation of Certain Contract Disputes; reletter subsection (d) as subsection (c); revise the text to update the reference to the State of Texas Procurement rules relating to Bid Submission, Bid Opening and Tabulation; and delete the reference to a specific website page as reference for such rules.

The department proposes to renumber §201.4 as §201.2; revise the text to update the references to the State of Texas Procurement rules related to the Historically Underutilized Business Program, the citation to the rules; and add an email address for the department's HUB coordinator.

The department proposes to renumber §201.5 as §201.3 without further changes to the text.

The department proposes to repeal §201.6, and through separate rulemaking, create 1 TAC Chapter 205 relating to Geographic Information Standards.

The department proposes to renumber §201.9 as §201.4 without further changes to the text.

The department proposes to repeal in its entirety §201.15, relating to Charges for Copies of Public Records.

The department proposes to renumber §201.17 as §201.5 without further changes to the text.

During the rule review, the department determined that current §201.2(a) and §201.15 are not mandated by statute to be rules and may be promulgated as official polices of the department. The department proposes that upon final adoption of these changes to Chapter 201, new department policies on these topics will be simultaneously adopted and provided on the department's website for appropriate transparency to constituents.

R. Douglas Holt, Deputy Executive Director, Statewide Technology Services, has determined that for the first five-year period the repeal and new rules are in effect, there will be a positive fiscal impact on state agencies and institutions of higher education, although an exact cost avoidance estimate cannot be assessed. The elimination of unnecessary rules and the reintroduction of such administrative items as policies reduce bureaucracy and increases flexibility in the conduct of business for the department and its constituents. Creating a new Chapter 205 relating to Geographic Information Standards will bring needed visibility to this important subject. There is no impact on local government as a result of enforcing or administering the repeal and new rules as proposed.

Mr. Holt has also determined that for each year of the first five years the proposed repeal and new rules are in effect, the anticipated public benefit results from more effective use of public and financial resources through rules concerning general administrative responsibilities. There are no anticipated economic costs to persons or small businesses required to comply with the proposed repeal and new rules.

Comments on the proposed repeal and new rules may be submitted to Cynthia J. Kreider, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to cynthia.kreider@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

1 TAC §§201.1, 201.2, 201.4 - 201.6, 201.9, 201.15, 201.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this repeal.

§201.1. Definitions.

§201.2. Procedures for Complaints, Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures.

§201.4. Historically Underutilized Business Program.

§201.5. Assignment of Department Vehicles.

§201.6. Geographic Information Standards.

§201.9. Board Policies.

§201.15. Charges for Copies of Public Record.

§201.17. Advisory Committees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102122
Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 475-4700

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CHAPTER 201. GENERAL ADMINISTRATION

1 TAC §§201.1 - 201.5

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by the new rules.

§201.1. Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures.

(a) Vendor Protest Procedure.

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the position identified in the department's Vendor Protest Procedures. Such protests must be in writing and received in the appropriate office within 10 working days after the protesting party knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and paragraph (3) of this subsection, and shall be resolved in accordance with the procedure set forth in paragraphs (4) and (5) of this subsection. Copies of the protest must be mailed or delivered by the protesting party to the department and all respondents who have submitted bids, proposals or offers for the contract involved. Names and addresses of such respondents may be obtained by sending a written request for the information to the office identified in the department's Vendor Protest Procedures.

(2) In the event of a timely protest under paragraph (1) of this subsection, and an award has not been made, the department shall not proceed further with the solicitation or award of the contract unless the executive director, after consultation with the appropriate position as identified in the department's Vendor Protest Procedures makes a written determination that the award of contract without delay is necessary to protect substantial interests of the state.

(3) A formal protest must be sworn and contain:

(A) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(B) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in subparagraph (A) of this paragraph;

(C) a precise statement of the relevant facts;

(D) an identification of the issue(s) to be resolved;

(E) argument and authorities in support of the protest; and

(F) proof that copies of the protest have been mailed or delivered to all respondents who have submitted bids, proposals or offers for the contract involved. A certification that copies were supplied to all interested parties with a list of the addresses the protest was sent to will be accepted as proof of delivery of copies.

(4) The position identified in the department's Vendor Protest Procedures shall have the authority, prior to appeal to the executive director of the department, or his or her designee, to settle and resolve the dispute concerning the solicitation or award of a contract.

(5) The position identified in the department's Vendor Protest Procedures may solicit written responses to the protest from respondents who have submitted bids, proposals or offers for the contract involved and from other interested parties. Upon written request, the protesting party shall be given notice of the request and any written responses received.

(6) The position identified in the department's Vendor Protest Procedures may consult with legal counsel concerning the dispute.

(7) If the protest is not resolved by mutual agreement, the position identified in the department's Vendor Protest Procedures will issue a written determination on the protest.

(A) If the position identified in the department's Vendor Protest Procedures determines no violation of rules or statutes occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter shall set forth the reasons for the determination.

(B) In instances in which the contract has not been awarded, if the position identified in the department's Vendor Protest Procedures determines that a violation of the rules or statutes has occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter shall set forth the reasons for the determination and the appropriate remedial action.

(C) In instances in which the contract has been awarded, if the position identified in the department's Vendor Protest Procedures determines that a violation of the rules or statutes has occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract by letter. The letter shall set forth the reasons for the determination and may conclude that the contract awarded is void.

(8) The determination of the position identified in the department's Vendor Protest Procedures on a protest may be appealed by the protesting party to the executive director of the department or his or her designee. An appeal of the determination of the position identified in the department's Vendor Protest Procedures must be written and must be received in the executive director's office no later than 10 working days after the date of the determination. The appeal shall be limited to review of the determination. A copy of the appeal must be mailed or delivered by the appealing party to the department and each respondent who submitted a bid, proposal or offer for the contract and must contain a certified statement that such copies have been provided. Failure of the protesting party to appeal the determination of the position identified in the department's Vendor Protest Procedures within 10 working days after the date of the determination renders the determination the final administrative action of the department on the protest.

(9) The executive director, or his or her designee, may confer with legal counsel in reviewing the matter appealed.

(10) The executive director, or his or her designee, shall review the protest petition, any requests for and written responses to the protest petition from any respondent who submitted a bid, proposal or offer for the contract or other interested parties, the determination and the appeal.

(11) The executive director, or his or her designee, may refer the matter to the board for consideration at a regularly scheduled open meeting or issue a written decision on the protest. If the matter is not referred to the board by the executive director, or his or her designee, the decision of the executive director, or his or her designee, is final.

(12) When a protest appealed under paragraph (8) of this subsection has been referred to the board under paragraph (11) of this subsection:

(A) Copies of the documents required by paragraph (10) of this subsection shall be mailed to the board.

(B) All interested parties who wish to make an oral presentation at the open meeting at which the board is scheduled to consider the protest shall notify the department general counsel at least 48 hours in advance of the open meeting.

(C) The board may consider oral presentations and written documents presented by staff and interested parties, including the protesting party and any respondent who submitted a bid, proposal or offer for the contract. The board chair shall set the order and length of time allowed for presentations.

(D) Board determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

(E) Unless good cause for delay is shown or the board determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(13) A decision issued by the board in open meeting, or in writing by the executive director, or his or her designee, or in writing by the position identified in the department's Vendor Protest Procedures, that is not appealed in a timely manner, shall be the final administrative action of the department.

(14) The department shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the department.

(b) The department adopts by reference the rules of the Office of the Attorney General relating to the negotiation and mediation of certain contract disputes, as such rules may be amended from time to time. Such rules are codified in 1 TAC Chapter 68 and are located at the Office of the Secretary of State's website.

(c) The department adopts by reference the rule of the State of Texas Procurement authority relating to Bid Submission, Bid Opening and Tabulation, as such rule may be amended from time to time. The rule is codified in 34 TAC §20.35 and is located at the Office of the Secretary of State's website.

§201.2. Historically Underutilized Business Program.

Pursuant to Texas Government Code §2161.003, the department adopts by reference the Historically Underutilized Business Program rules of the State of Texas Procurement authority, as such rules may be amended by the authority from time to time. The rules may be found at 34 TAC Chapter 20, Subchapter B or may be obtained by contacting the department's HUB coordinator at (512) 475-4700 or through electronic mail at DIRINFO@dir.texas.gov.

§201.3. Assignment of Department Vehicles.

(a) Department vehicles, with the exception of vehicles assigned to field employees, shall be assigned to the agency motor pool and may be available for checkout.

(b) The department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the department determines that the assignment is critical to the needs and mission of the department. The determination shall be documented and maintained in writing.

§201.4. Board Policies.

(a) The executive director is hereby delegated authority by the board to grant a requesting state agency a compliance waiver from administrative rule, statewide standards, or other board policies. A state agency may request a compliance waiver from administrative rule, statewide standards or other board policy. The agency must clearly demonstrate to the department through written justification any performance or cost advantages to be gained and that the overall economic interests of the state are best served by granting the compliance waiver. The executive director of the department will notify the board when requests for waivers are received.

(b) The executive director is hereby delegated authority by the board to establish a sick leave pool program for employees of the department. The program must be consistent with the requirements of state law regarding state employee sick leave pools. The executive director is hereby appointed as the sick leave pool administrator. The executive director may designate another employee of the department to serve as the pool administrator under the supervision of the executive director. The pool administrator shall prescribe procedures relating to the operation of the sick leave pool program.

(c) In compliance with Chapter 2255, Texas Government Code, this subsection establishes the criteria, procedures and standards of conduct governing the relationship between the department and its officers and employees and private donors. This subsection authorizes the department to accept gifts and donations the department determines it is in the public interest to accept as a result of an emergency, including both natural and manmade disasters.

(1) A private donor may make donations, including gifts, to the department to be spent or used for public purposes during times of emergency, including times of manmade and natural disasters. Use by the department of the donation must be consistent with the mission and duties of the department. If the donor specifies the purpose for which the donation may be spent, the department must expend the donation only for that purpose.

(2) Donations must be spent in accordance with the State Appropriations Act and shall be deposited in the state treasury unless statutorily exempted.

(3) The executive director is hereby delegated authority to coordinate all donations and may accept donations that do not exceed $250,000 in value on behalf of the department. Each donation accepted by the executive director must be acknowledged by the board within thirty days of acceptance of the donation by the department. Donations that exceed $250,000 in value must be accepted by the board.

(4) Acceptance of the donation by either the board or the executive director of the department must be recorded in the board minutes, together with the name of the donor, description of the donation and a statement of the purpose of the donation.

(5) Donations may be accepted only if the executive director or board, as applicable, determines the donation will further the department's mission or duties, provide significant public benefit and not influence or reasonably appear to influence, the department in the performance of its duties.

(6) Execution of a donation agreement is required if the value of the donation exceeds $10,000 or if a written agreement is necessary, in the opinion of the department, to:

(A) indemnify the department as to ownership;

(B) prevent potential claims that could result from use of the donation;

(C) document donation terms or conditions; or

(D) describe how the donation will further the department's mission or duties, provides a significant public benefit and is not made in an effort to influence action on the part of the department.

(7) Each donation agreement must include:

(A) a description of the donation, including a determination of its value;

(B) donor attestation of ownership rights in the donation;

(C) any restrictions or terms of use of the donation imposed by the donor;

(D) contact information for the donor;

(E) a statement that the department takes no position regarding and is not responsible for any tax-related representations by the donor; and

(F) the signature of the executive director and the donor or an authorized representative of the donor if it is an entity rather than an individual.

§201.5. Advisory Committees.

State Strategic Plan for Information Resources Management Advisory Committee.

(1) This advisory committee shall consist of at least nine and not more than 24 members appointed by the department Executive Director with the approval of the board. Members should have demonstrated the ability to think strategically and to work in a consensus building, committee setting. The membership will include at least:

(A) two information resources managers from Texas state agencies other than a university system or institution of higher education as defined in Education Code, §61.003;

(B) one representative from a state university system or institution of higher education as defined in Education Code, §61.003;

(C) one resident of the state that is not currently employed by the state and is not employed in the computing and/or telecommunications field;

(D) one representative from a local government organization in the state that is knowledgeable about computing and/or telecommunications;

(E) two representatives from the computing and/or telecommunications industry but whose company does not sell computing or telecommunications services or products to the state;

(F) one representative from an organization that sells computing and/or telecommunications services or products to the state;

(G) one representative from a federal agency that is knowledgeable about computing and/or telecommunications.

(2) This advisory committee shall be appointed after November 30 of every odd-numbered year for a term to expire on November 30 of the following odd-numbered year.

(3) This advisory committee shall:

(A) review and advise on the development of the State Strategic Plan for Information Resources Management as it is prepared for publication pursuant to the Information Resources Management Act, Texas Government Code Annotated, Chapter 2054;

(B) meet at least once during its term;

(C) develop a strategic vision of what the future of computing and telecommunications technology is for state government as a whole.

(4) The department may elect to provide professional facilitation for any meetings the Advisory Committee may hold.

(5) The department may elect to have department staff present at Advisory Committee meetings.

(6) The department will set the agenda of all Advisory Committee meetings.

(7) The department may reimburse committee members for travel expenses related to attending committee meetings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

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Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 475-4700

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CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

The Department of Information Resources (department) proposes amendments to 1 TAC Chapter 203, §§203.1, 203.20, 203.23, 203.25, 203.40, 203.43, and 203.45, concerning Management of Electronic Transactions and Signed Records. The proposed amendments result from a rule review of the chapter, notice of which was published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1567).

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the proposed change on institutions of higher education has been prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

In Subchapter A, the department proposes to amend the current text of §203.1 to delete an unnecessary definition. In Subchapters B and C, the department proposes to modify §§203.20, 203.23, 203.25, 203.40, 203.43, and 203.45 to eliminate specific references to exact locations of the department's website.

R. Douglas Holt, Deputy Executive Director, Statewide Technology Services, has determined that for the first five-year period the rules are in effect, there will be no fiscal impact to state agencies and institutions of higher education. The elimination of an unnecessary definition and the update of the rules to eliminate exact web references will increase flexibility in the conduct of business for the department, state agencies and institutions of higher education. There is no impact on local government as a result of enforcing or administering the rules as proposed.

Mr. Holt has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit results from more effective use of public and financial resources through the enforcement and administration of rules concerning management of electronic transactions and signed records. There are no anticipated economic costs to persons or small businesses required to comply with the proposed rules.

Comments on the proposed rule amendments may be submitted to Martin Zelinsky, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or martin.zelinsky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §203.1

The amendments to 1 TAC §203.1 are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this proposal.

§203.1. Key Terms and Technologies for Electronic Transactions and Signed Records.

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

(1) Asymmetric cryptosystem--A computer-based system that employs two different but mathematically related keys with the following characteristics:

(A) one key encrypts a given message;

(B) one key decrypts a given message; and

(C) the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.

(2) Certificate--A message which:

(A) identifies the certification authority issuing it;

(B) names or identifies its subscriber;

(C) contains the subscriber's public key;

(D) identifies its operational period;

(E) is digitally signed by the certification authority issuing it;[,] and

(F) conforms to ISO X.509 Version 3 standards.

(3) Certificate Manufacturer--A person that provides operational services for a Certification Authority or PKI Service Provider. The nature and scope of the obligations and functions of a Certificate Manufacturer depend on contractual arrangements between the Certification Authority or other PKI Service Provider and the Certificate Manufacturer.

(4) Certificate Policy--A document prepared by a Policy Authority that describes the parties, scope of business, functional operations, and obligations between and among PKI Service Providers and End Entities who engage in electronic transactions in a Public Key Infrastructure.

(5) Certification Authority--A person who issues a certificate.

(6) Certification practice statement--Documentation of the practices, procedures, and controls employed by a Certification Authority.

[~~(7) Department--Department of Information Resources~~]

(7) [~~(8)~~] Digital signature--An electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature, and that complies with the requirements of this chapter [~~section~~].

(8) [~~(9)~~] Digitally-signed communication--A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message.

(9) [~~(10)~~] Electronic--Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) [~~(11)~~] Electronic record--A record created, generated, sent, communicated, received, or stored by electronic means.

(11) [~~(12)~~] Electronic signature--An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(12) [~~(13)~~] End Entities--Subscribers or Signers and Relying Parties.

(13) [~~(14)~~] Escrow agent--A person who holds a copy of a private key at the request of the owner of the private key in a trustworthy manner.

(14) [~~(15)~~] Expert--A person with demonstrable skill and knowledge based on training and experience who would qualify as an expert under Rule 702 of the Texas Rules of Evidence.

(15) [~~(16)~~] Handwriting measurements--The metrics of the shapes, speeds and/or other distinguishing features of a signature as the person writes it by hand with a pen or stylus on a flat surface.

(16) [~~(17)~~] Key pair--A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify a digital signature that the private key creates.

(17) [~~(18)~~] Local government--A county, municipality, special district, or other political subdivision of this state or another state, or a combination of two or more of those entities, but excluding an agency in the judicial branch of local government.

(18) [~~(19)~~] Message--A digital representation of information.

(19) [~~(20)~~] Person--An individual, state agency, institution of higher education, local government, corporation, partnership, association, organization, or any other legal entity.

(20) [~~(21)~~] PKI--Public Key Infrastructure.

(21) [~~(22)~~] PKI Service Provider--A Certification Authority, Certificate Manufacturer, Registrar, or any other person that performs services pertaining to the issuance or verification of certificates.

(22) [~~(23)~~] Policy Authority--A person with final authority and responsibility for specifying a Certificate Policy.

(23) [~~(24)~~] Private key--The key of a key pair used to create a digital signature.

(24) [~~(25)~~] Proof of Identification--The document or documents or other evidence presented to a Certification Authority to establish the identity of a subscriber.

(25) [~~(26)~~] Public key--The key of a key pair used to verify a digital signature.

(26) [~~(27)~~] Public Key Cryptography--A type of cryptographic technology that employs an asymmetric cryptosystem.

(27) [~~(28)~~] Record--Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(28) [~~(29)~~] Registrar--A person that gathers evidence necessary to confirm the accuracy of information to be included in a Subscriber's certificate.

(29) [~~(30)~~] Relying Party--A state agency, including an institution of higher education, that has received an electronic message that has been signed with a digital signature and is in a position to rely on the message and signature.

(30) [~~(31)~~] Role-based key--A key pair issued to a person to use when acting in a particular business or organizational capacity.

(31) [~~(32)~~] Signature Dynamics--Measuring the way an individual writes his or her signature by hand on a flat surface and binding the measurements to a message through the use of cryptographic techniques.

(32) [~~(33)~~] Signer--The person who signs a digitally signed communication with the use of an acceptable technology to uniquely link the message with the person sending it.

(33) [~~(34)~~] Subscriber--A person who:

(A) is the subject listed in a certificate;

(B) accepts the certificate; and

(C) holds a private key which corresponds to a public key listed in that certificate.

(34) [~~(35)~~] Technology--The computer hardware and/or software-based method or process used to create digital signatures.

(35) [~~(36)~~] Transaction--An action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs, where one of the persons is a state agency, including an institution of higher education.

(36) [~~(37)~~] Written electronic communication--A message that is sent by one person to another person.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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SUBCHAPTER B. STATE AGENCY USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §§203.20, 203.23, 203.25

The amendments to 1 TAC §§203.20, 203.23, and 203.25 are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this proposal.

§203.20. Guidelines.

The Guidelines for the Management of Electronic Transactions and Signed Records, which are available at the department's website, [~~http://www.dir.state.tx.us/standards/UETA_Guideline.htm~~] were adopted by the department based on the work and recommendations of the Uniform Electronic Transactions Act Task Force. The Uniform Electronic Transactions Act Task Force was jointly created by the department and the Texas State Library and Archives Commission to advise the agencies on the rules each might adopt pursuant to Texas Business and Commerce Code, §43.017.

§203.23. Digital Signatures.

(a) This section applies to all written electronic communications which are sent to a state agency over the Internet or other electronic network or by another means that is acceptable to the state agency, for which the identity of the sender or the contents of the message must be authenticated, and for which no prior agreement

between the sender and the receiving state agency regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede the use and expansion of existing systems:

(1) for the receipt of electronically filed documents pursuant to the Texas Business and Commerce Code or other applicable statutory law where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving state agency or local government is not a party to the underlying transaction which is the subject of the communication; or

(2) for the electronic approval of payment vouchers under rules adopted by the comptroller of public accounts pursuant to applicable law.

(b) Prior to accepting a digital signature, a state agency shall ensure that the level of security used to identify the signer of a message and to transmit the signature is sufficient for the transaction being conducted. A state agency that accepts digital signatures may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the state agency.

(c) A state agency that accepts digital signatures shall not be required to accept a digital signature that has been created by means of a particular acceptable technology described in §203.24 of this chapter if the state agency:

(1) determines that the expense that would necessarily be incurred by the state agency in accepting such a digital signature is excessive and unreasonable; and

(2) provides reasonable notice to all interested persons of the fact that such digital signatures will not be accepted, and of the basis for the determination that the cost of acceptance is excessive and unreasonable.[~~; and~~]

(d) A state agency shall review and consider any applicable guidelines and recommendations that have been adopted by the department in determining whether and for what purposes the state agency shall accept a digital signature. A copy of such guidelines and recommendations may be obtained directly from the department, or may be obtained electronically via the the department's website [~~World Wide Web at the following location: http://www.dir.state.tx.us~~].

(e) A state agency shall ensure that all written electronic communications received by the state agency and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the state agency as necessary to comply with applicable law pertaining to audit and records retention requirements.

§203.25. Acceptable PKI Service Providers.

(a) The department shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to state agencies or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the department, or may be obtained electronically via the department's website [~~World Wide Web at the following location: http://www.dir.state.tx.us/standards~~].

(b) State agencies shall only accept certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

(c) The department shall place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the department with a copy of its current certification practice statement, if any, and a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (SAS 70) [~~(S.A.S. 70)~~] to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

(d) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undergo a SAS 70 Type One audit--A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.

(e) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undergo a SAS 70 Type Two audit--A Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.

(f) In lieu of the audit requirements of subsections (d) and (e) of this section, a PKI Service Provider may be placed on the "Approved List of PKI Service Providers" upon providing the department with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the department in its sole discretion. The department may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable guidelines published by the department.

(g) To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the audit requirements or other acceptable documentation to the department every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the department promptly following the adoption by the Certification Authority of such changes.

(h) If the department is informed that a PKI Service Provider has received a qualified or otherwise unacceptable opinion following a required audit or if the department obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, or if the PKI Service Provider's certification practice statement is substantially amended in a manner that causes the PKI Service Provider to be non-compliant with the audit requirements of this section, the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the department. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit state agencies from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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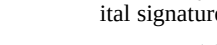

SUBCHAPTER C. INSTITUTIONS OF HIGHER EDUCATION USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §§203.40, 203.43, 203.45

The amendments to 1 TAC §§203.40, 203.43, and 203.45 are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this proposal.

§203.40. Guidelines.

The Guidelines for the Management of Electronic Transactions and Signed Records, which are available at the department's website, [~~http://www.dir.state.tx.us/standards/UETA_Guideline.htm~~] were adopted by the department based on the work and recommendations of the Uniform Electronic Transactions Act Task Force. The Uniform Electronic Transactions Act Task Force was jointly created by the department and the Texas State Library and Archives Commission to advise the agencies on the rules each might adopt pursuant to Texas Business and Commerce Code, §43.017.

§203.43. Digital Signatures.

(a) This section applies to all written electronic communications which are sent to an institution of higher education over the Internet or other electronic network or by another means that is acceptable to the institution of higher education, for which the identity of the sender or the contents of the message must be authenticated, and for which no prior agreement between the sender and the receiving institution of higher education regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede the use and expansion of existing systems:

(1) for the receipt of electronically filed documents pursuant to the Texas Business and Commerce Code or other applicable statutory law where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving institution of higher education is not a party to the underlying transaction which is the subject of the communication; or

(2) for the electronic approval of payment vouchers under rules adopted by the comptroller of public accounts pursuant to applicable law.

(b) Prior to accepting a digital signature, an institution of higher education shall ensure that the level of security used to identify the signer of a message and to transmit the signature is sufficient for the transaction being conducted. An institution of higher education that accepts digital signatures may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the institution of higher education.

(c) An institution of higher education that accepts digital signatures shall not be required to accept a digital signature that has been created by means of a particular acceptable technology described in §203.44 of this chapter if the institution of higher education:

(1) determines that the expense that would necessarily be incurred by the institution of higher education in accepting such a digital signature is excessive and unreasonable; and

(2) provides reasonable notice to all interested persons of the fact that such digital signatures will not be accepted, and of the basis for the determination that the cost of acceptance is excessive and unreasonable.[~~; and~~]

(d) An institution of higher education shall review and consider any applicable guidelines and recommendations that have been adopted by the department in determining whether and for what purposes the institution of higher education shall accept a digital signature. A copy of such guidelines and recommendations may be obtained directly from the department, or may be obtained electronically via the department's website [~~World Wide Web at the following location: http://www.dir.state.tx.us~~].

(e) An institution of higher education shall ensure that all written electronic communications received by it and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the institution of higher education as necessary to comply with applicable law pertaining to audit and records retention requirements.

§203.45. Acceptable PKI Service Providers.

(a) The department shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to institutions of higher education or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the department, or may be obtained electronically via the department's website [~~World Wide Web at the following location: http://www.dir.state.tx.us/standards~~].

(b) Institutions of higher education shall only accept certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

(c) The department shall place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the department with a copy of its current certification practice statement, if any, and a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (SAS 70) [~~(S.A.S. 70)~~] to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

(d) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for

one year or less shall undergo a SAS 70 Type One audit--A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.

(e) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undergo a SAS 70 Type Two audit--A Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.

(f) In lieu of the audit requirements of subsections (d) and (e) of this section [~~listed above~~], a PKI Service Provider may be placed on the "Approved List of PKI Service Providers" upon providing the department with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the department in its sole discretion. The department may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable department guidelines.

(g) To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the audit requirements or other acceptable documentation to the department every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the department promptly following the adoption by the Certification Authority of such changes.

(h) If the department is informed that a PKI Service Provider has received a qualified or otherwise unacceptable opinion following a required audit or if the department obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, or if the PKI Service Provider's certification practice statement is substantially amended in a manner that causes the PKI Service Provider to become no longer in compliance with the audit requirements of this section, the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the department. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit institutions of higher education from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

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Martin Zelinsky
General Counsel
Department of Information Resources
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CHAPTER 205. GEOGRAPHIC INFORMATION STANDARDS

The Texas Department of Information Resources (department) proposes new 1 TAC Chapter 205, §205.1 - 205.3, 205.10, and 205.20, concerning Geographic Information Standards. The proposed new chapter results from a rule review of 1 TAC Chapter 201, notice of which was published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1567).

The new chapter applies to state agencies and institutions of higher education. The assessment of the impact of the proposal on institutions of higher education has been prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

The department proposes the new chapter to raise the visibility of these important standards, which previously were included in 1 TAC Chapter 201. The department proposes new Subchapter A, consisting of §§205.1 - 205.3, the definitions required for Geographic Information Standards; Subchapter B, consisting of §205.10, the Geographic Information Standards applicable to State Agencies; and Subchapter C, consisting of §205.20, the Geographic Information Standards applicable to the Institutions of Higher Education. The rules for the definitions and standards have not been amended from the text as it appeared in 1 TAC Chapter 201 except when required to clarify applicability to state agencies or higher education institutions and eliminate specific references to exact locations on the department's website in §205.10 and §205.20. Proposed amendments to the definitions and standards, if any, will be addressed in a separate rulemaking.

R. Douglas Holt, Deputy Executive Director, Statewide Technology Services, has determined that for the first five-year period the rules are in effect, there will be no fiscal impact to state agencies and institutions of higher education. There is no impact on local government as a result of enforcing or administering the new rules as proposed.

Mr. Holt has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit results from more effective use of public and financial resources through increased visibility to important standards for geographic information standards. There are no anticipated economic costs to persons or small businesses required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Cynthia J. Kreider, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to cynthia.kreider@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §§205.1 - 205.3

The new 1 TAC §§205.1 - 205.3 is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this proposal.

§205.1. Definitions for Geographic Information Standards.

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

(1) Albers equal area conic projection--A map projection developed by Albers in 1805 and commonly used in mapping of the United States by the U.S. Geological Survey. While some distortion is

inherent in all map projections, a characteristic of the albers equal area conic projection is that scale distortion is minimized.

(2) Datum--A smooth mathematical surface that closely defines the mean sea-level surface of the earth throughout a certain geographic region of interest (such as North America). Accurate ground positional measurements must be made with reference to a specific datum appropriate to the region.

(3) Geographic information system (GIS)--A system of computer hardware, software and procedures used to store, analyze and display geospatial data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications.

(4) Geospatial data (set)--Data which describes some aspect of the earth's surface (or near-surface regions), or which can be identified with a specific location on or near the earth's surface. A geospatial dataset employs a defined, earth-based coordinate system which allows its use in a geographic information system.

(5) Geospatial dataset enhancement--Substantial alteration of a geospatial dataset which increases its usefulness through the addition of attribute (tabular) data fields, improvements in spatial accuracy, or extension of geographic coverage.

(6) Geospatial dataset maintenance--Addition to, or alteration of, a geospatial dataset as part of a routine business process.

(7) Geospatial metadata--A description of the characteristics of a geospatial dataset, recorded in a standard format. Characteristics include data content, quality, purpose, condition, format, spatial coordinate system, availability, etc. The Federal Geographic Data Committee has defined a formal content standard for digital geospatial metadata for use by federal agencies.

(8) GeoTIFF--A TIFF-based image format for geo-referenced raster imagery.

(9) GIS map product--A geographic representation, in paper or electronic format, displaying features from one or more digital geospatial datasets. Small scale images that are clearly intended only for graphic illustration within a larger publication are not considered to be GIS map products.

(10) JPEG--A standardized image compression mechanism. JPEG stands for Joint Photographic Experts Group, the original name of the committee that wrote the standard.

(11) Lambert conformal conic projection--A map projection developed by Lambert in 1772 and commonly used in mapping of the United States by the U.S. Geological Survey. While some distortion is inherent in all map projections, a characteristic of the lambert conformal conic projection is that shape distortion is minimized.

(12) Map projection--A systematic representation of all or part of a surface of a round body, especially Earth, on a plane.

(13) Raster--A data structure for representing spatial data. The raster data structure divides a region of space into a regular, two-dimensional grid. Each cell in the grid has an associated data value. A common use of the raster data structure is to represent imagery in a digital format. In this case, the data value for each cell represents the color exhibited by that part of the image.

(14) Survey product--A map, report, letter or other document produced by a registered professional land surveyor while engaged in the practice of land surveying.

(15) TIFF--Tagged Image File Format. A public domain raster image file format.

(16) World file--A file that accompanies a specific raster image file and that contains georeferencing information that can be used by certain GIS software to correctly display the raster image in an earth-based coordinate system.

§205.2. Institution of Higher Education.

A university system or institution of higher education as defined by §61.003, Education Code.

§205.3. State Agency.

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

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Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 475-4700

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SUBCHAPTER B. STATE AGENCY GEOGRAPHIC INFORMATION STANDARDS

1 TAC §205.10

The new 1 TAC §205.10 is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this proposal.

§205.10. State Agency Geographic Information Standards.

(a) Applicability. All users and developers of digital geospatial data and geographic information systems in state agencies and state-supported universities must comply with the technical standards specified in this section. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Art. 5282c, VTCS) are exempt from these standards.

(b) Implementation timeframe.

(1) New datasets and dataset enhancement. These standards go into effect immediately for activities involving the acquisition or development of new digital geospatial data, or the enhancement of existing digital geospatial data.

(2) Existing datasets and dataset maintenance. These standards go into effect one year from the date of adoption for digital geospatial datasets, including related maintenance and field data collection procedures, that were in existence prior to adoption.

(c) Implementation guidance. Pursuant to Water Code §16.021(b), the Texas Geographic Information Council provides guidance to the executive administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the Texas Geographic

Information Council to the department relates to rules developed by the department for geospatial data and technology standards. In fulfilling its duties under Water Code §16.021(b), the Texas Geographic Information Council publishes and maintains guidance information relating to the implementation of geographic information standards on the department's website. State agencies are encouraged to utilize the Texas Geographic Information Council guidance in implementing the standards set forth in this rule. However, only the department may modify, or grant waivers from, these standards.

(d) Waivers. The information resource manager of an agency that wants to obtain a waiver from the department shall submit a written waiver request to the executive director of the department, 300 West 15th Street, Suite 1300, Austin, Texas 78701. Within ten days of receipt of the request, the department shall notify the requesting agency of any additional information that may be needed to act on the waiver request. The department shall grant or deny the waiver request within the later of thirty days of receipt of the request or thirty days of receipt of the additional information requested by the department in order to act on the waiver request. The department may request that the Texas Geographic Information Council review and comment on the waiver request. The decision of the department regarding the granting or denial of a waiver is final and may not be appealed.

(e) Standards.

(1) Geospatial data acquisition and development.

(A) Standard. An agency planning to acquire, develop, or enhance a digital geospatial dataset that corresponds to a current or planned Texas framework layer shall coordinate such activity with the Texas Geographic Information Council. Texas framework layers are defined as digital orthoimagery, digital elevation models, elevation contours, soil surveys, water features, political boundaries, and transportation.

(B) Exclusions. This standard excludes geospatial dataset acquisition, development or improvement projects that involve an expenditure of $100,000 or less, or which are performed under contract for an external entity.

(2) Geospatial data exchange.

(A) Data format. An agency that originates or adds data content to a digital geospatial dataset and distributes the dataset to other agencies or the public must make the dataset available in at least one digital format which is readily usable by a variety of geographic information system software packages. This requirement does not preclude the agency from offering the dataset in other data formats. Readily usable formats are defined as: Spatial Data Transfer Standard, Digital Line Graph, Digital Elevation Model, Environmental Systems Research Institute ArcInfo Export File, Environmental Systems Research Institute Shape File (and associated files), Bentley MicroStation Design File, AutoDesk AutoCAD Drawing Exchange File, MapInfo, GeoTIFF, TIFF World File, JPEG World File, Lizard Tech Multi-Resolution Seamless Image Database, and ER Mapper Encapsulated Wavelet.

(B) Purchase of public domain datasets. An agency that purchases a copy of a federal or other public domain geospatial dataset shall make the dataset available to the Texas Natural Resources Information System. Such datasets shall be made available to other agencies, institutions of higher education, and the public via the Texas Natural Resources Information System and/or by the acquiring agency following Texas Natural Resources Information System guidelines.

(3) Geospatial data documentation.

(A) Preparation. An agency shall prepare standardized documentation for each digital geospatial dataset that it both:

(i) originates and/or adds data content to; and

(ii) distributes as a standard product to other governmental entities or the public.

(B) Format. This standardized documentation shall be in compliance with the Federal Geographic Data Committee's Content Standard for Digital Geospatial Metadata, Version 2 (FGDC-STD-001-1998) or later.

(C) Delivery. In responding to a request for a digital geospatial dataset, an agency shall provide the requestor a copy of the corresponding metadata documentation.

(D) Purpose of dataset. Documentation shall include a statement of the purpose or intended use of the dataset and a disclaimer warning against unintended uses of the dataset. If an agency is aware of specific inappropriate uses of the dataset which some users may be inclined to make, the dataset disclaimer shall specifically warn against those uses.

(E) Geographic information system map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the agency, shall include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer shall clearly state that the map is not a survey product.

(4) Mapping Datum.

(A) Horizontal datum. All horizontal positional data obtained by an agency or its contractor using on-site measurement techniques shall be referenced to the North American Datum of 1983 (NAD83).

(B) Vertical datum. All vertical elevation data obtained by an agency or its contractor using on-site measurement techniques shall be referenced to the North American Vertical Datum of 1988 (NAVD88).

(C) Horizontal datum transformation. Coordinates obtained in a specific horizontal datum may be transformed to another datum for the purposes of compatibility with existing data. The horizontal datum transformation method shall directly use, or be directly traceable to the North American Datum Conversion (NADCON) algorithm. A horizontal datum transformation shall not be performed on positions obtained through high accuracy survey techniques unless the transformation method employs a closed mathematical formula.

(D) Vertical datum transformation. Coordinates obtained in a specific vertical datum may be transformed to another datum for the purposes of compatibility with existing data. The vertical datum transformation method shall directly use, or be directly traceable to the North American Vertical Datum Conversion (VERTCON) algorithm.

(5) Statewide mapping system.

(A) Usage. No existing mapping system has been generally recognized as a standard for minimum-distortion mapping of the entire State of Texas. This section defines such a mapping system, in both a conformal and an equal area version. Either version of this mapping system may be employed for a single geospatial dataset that covers all of, or a large portion of, the State of Texas. Usage of this mapping system is not required. Existing standard mapping systems such as Universal Transverse Mercator and State Plane Coordinate System may be more appropriate for geospatial datasets that cover smaller regions of the State.

(B) Conformal version. A mapping system named "Texas Centric Mapping System/Lambert Conformal" is hereby defined, and the terms "Texas Centric Mapping System/Lambert Conformal" and its abbreviated form "TCMS/LC" shall be used only in strict accord with this definition:

(i) Mapping System Name: Texas Centric Mapping System/Lambert Conformal

(ii) Abbreviation: TCMS/LC

(iii) Projection: Lambert Conformal Conic

(iv) Longitude of Origin: 100 degrees West (-100)

(v) Latitude of Origin: 18 degrees North (18)

(vi) Lower Standard Parallel: 27 degrees, 30 minutes (27.5)

(vii) Upper Standard Parallel: 35 degrees (35.0)

(viii) False Easting: 1,500,000 meters

(ix) False Northing: 5,000,000 meters

(x) Datum: North American Datum of 1983 (NAD83)

(xi) Unit of Measure: meter

(C) Equal area version. A mapping system named "Texas Centric Mapping System/Albers Equal Area" is hereby defined, and the terms "Texas Centric Mapping System/Albers Equal Area" and its abbreviated form "TCMS/AEA" shall be used only in strict accord with this definition:

(i) Mapping System Name: Texas Centric Mapping System/Albers Equal Area

(ii) Abbreviation: TCMS/AEA

(iii) Projection: Albers Equal Area Conic

(iv) Longitude of Origin: 100 degrees West (-100)

(v) Latitude of Origin: 18 degrees North (18)

(vi) Lower Standard Parallel: 27 degrees, 30 minutes (27.5)

(vii) Upper Standard Parallel: 35 degrees (35.0)

(viii) False Easting: 1,500,000 meters

(ix) False Northing: 6,000,000 meters

(x) Datum: North American Datum of 1983 (NAD83)

(xi) Unit of Measure: meter

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 475-4700

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SUBCHAPTER C. INSTITUTIONS OF HIGHER EDUCATION GEOGRAPHIC INFORMATION STANDARDS

1 TAC §205.20

The new 1 TAC §205.20 is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this proposal.

§205.20. Institutions of Higher Education Geographic Information Standards.

(a) Applicability. All users and developers of digital geospatial data and geographic information systems in institutions of higher education must comply with the technical standards specified in this section. Institutions of higher education are exempt from these standards when geographic information systems are acquired, or digital geospatial data developed, solely for research or instructional purposes. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Art. 5282c, VTCS) are exempt from these standards.

(b) Implementation timeframe.

(1) New datasets and dataset enhancement. These standards go into effect immediately for activities involving the acquisition or development of new digital geospatial data, or the enhancement of existing digital geospatial data.

(2) Existing datasets and dataset maintenance. These standards go into effect one year from the date of adoption for digital geospatial datasets, including related maintenance and field data collection procedures, that were in existence prior to adoption.

(c) Implementation guidance. Pursuant to Water Code §16.021(b), the Texas Geographic Information Council provides guidance to the executive administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the Texas Geographic Information Council to the department relates to rules developed by the department for geospatial data and technology standards. In fulfilling its duties under Water Code §16.021(b), the Texas Geographic Information Council publishes and maintains guidance information relating to the implementation of geographic information standards on the department's website. Institutions of higher education are encouraged to utilize the Texas Geographic Information Council guidance in implementing the standards set forth in this rule. However, only the department may modify, or grant waivers from, these standards.

(d) Waivers. The information resource manager of an institution of higher education that wants to obtain a waiver from the department shall submit a written waiver request to the executive director of the department, 300 West 15th Street, Suite 1300, Austin, Texas 78701. Within ten days of receipt of the request, the department shall notify the requesting institution of any additional information that may be needed to act on the waiver request. The department shall grant or deny the waiver request within the later of thirty days of receipt of the request or thirty days of receipt of the additional information requested by the department in order to act on the waiver request. The department may request that the Texas Geographic Information Council review and comment on the waiver request. The decision of the department regarding the granting or denial of a waiver is final and may not be appealed.

(e) Standards.

(1) Geospatial data acquisition and development.

(A) Standard. An institution of higher education planning to acquire, develop, or enhance a digital geospatial dataset that corresponds to a current or planned Texas framework layer shall coordinate such activity with the Texas Geographic Information Council. Texas framework layers are defined as digital orthoimagery, digital elevation models, elevation contours, soil surveys, water features, political boundaries, and transportation.

(B) Exclusions. This standard excludes geospatial dataset acquisition, development or improvement projects that involve an expenditure of $100,000 or less, or which are performed under contract for an external entity.

(2) Geospatial data exchange.

(A) Data format. An institution of higher education that originates or adds data content to a digital geospatial dataset and distributes the dataset to other institutions of higher education, agencies, or the public must make the dataset available in at least one digital format which is readily usable by a variety of geographic information system software packages. This requirement does not preclude the institution of higher education from offering the dataset in other data formats. Readily usable formats are defined as: Spatial Data Transfer Standard, Digital Line Graph, Digital Elevation Model, Environmental Systems Research Institute ArcInfo Export File, Environmental Systems Research Institute Shape File (and associated files), Bentley MicroStation Design File, AutoDesk AutoCAD Drawing Exchange File, MapInfo, GeoTIFF, TIFF World File, JPEG World File, Lizard Tech Multi-Resolution Seamless Image Database, and ER Mapper Encapsulated Wavelet.

(B) Purchase of public domain datasets. An institution of higher education that purchases a copy of a federal or other public domain geospatial dataset shall make the dataset available to the Texas Natural Resources Information System. Such datasets shall be made available to other institutions of higher education, agencies, and the public via the Texas Natural Resources Information System and/or by the acquiring institution of higher education following Texas Natural Resources Information System guidelines.

(3) Geospatial data documentation.

(A) Preparation. An institution of higher education shall prepare standardized documentation for each digital geospatial dataset that it both:

(i) originates and/or adds data content to; and

(ii) distributes as a standard product to other governmental entities or the public.

(B) Format. This standardized documentation shall be in compliance with the Federal Geographic Data Committee's Content Standard for Digital Geospatial Metadata, Version 2 (FGDC-STD-001-1998) or later.

(C) Delivery. In responding to a request for a digital geospatial dataset, an institution of higher education shall provide the requestor a copy of the corresponding metadata documentation.

(D) Purpose of dataset. Documentation shall include a statement of the purpose or intended use of the dataset and a disclaimer warning against unintended uses of the dataset. If an institution of higher education is aware of specific inappropriate uses of the dataset which some users may be inclined to make, the dataset disclaimer shall specifically warn against those uses.

(E) Geographic information system map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the institution of higher education, shall include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer shall clearly state that the map is not a survey product.

(4) Mapping Datum.

(A) Horizontal datum. All horizontal positional data obtained by an institution of higher education or its contractor using on-site measurement techniques shall be referenced to the North American Datum of 1983 (NAD83).

(B) Vertical datum. All vertical elevation data obtained by an institution of higher education or its contractor using on-site measurement techniques shall be referenced to the North American Vertical Datum of 1988 (NAVD88).

(C) Horizontal datum transformation. Coordinates obtained in a specific horizontal datum may be transformed to another datum for the purposes of compatibility with existing data. The horizontal datum transformation method shall directly use, or be directly traceable to the North American Datum Conversion (NADCON) algorithm. A horizontal datum transformation shall not be performed on positions obtained through high accuracy survey techniques unless the transformation method employs a closed mathematical formula.

(D) Vertical datum transformation. Coordinates obtained in a specific vertical datum may be transformed to another datum for the purposes of compatibility with existing data. The vertical datum transformation method shall directly use, or be directly traceable to the North American Vertical Datum Conversion (VERTCON) algorithm.

(5) Statewide mapping system.

(A) Usage. No existing mapping system has been generally recognized as a standard for minimum-distortion mapping of the entire State of Texas. This section defines such a mapping system, in both a conformal and an equal area version. Either version of this mapping system may be employed for a single geospatial dataset that covers all of, or a large portion of, the State of Texas. Usage of this mapping system is not required. Existing standard mapping systems such as Universal Transverse Mercator and State Plane Coordinate System may be more appropriate for geospatial datasets that cover smaller regions of the State.

(B) Conformal version. A mapping system named "Texas Centric Mapping System/Lambert Conformal" is hereby defined, and the terms "Texas Centric Mapping System/Lambert Conformal" and its abbreviated form "TCMS/LC" shall be used only in strict accord with this definition:

(i) Mapping System Name: Texas Centric Mapping System/Lambert Conformal

(ii) Abbreviation: TCMS/LC

(iii) Projection: Lambert Conformal Conic

(iv) Longitude of Origin: 100 degrees West (-100)

(v) Latitude of Origin: 18 degrees North (18)

(vi) Lower Standard Parallel: 27 degrees, 30 minutes (27.5)

(vii) Upper Standard Parallel: 35 degrees (35.0)

(viii) False Easting: 1,500,000 meters

(ix) False Northing: 5,000,000 meters

(x) Datum: North American Datum of 1983 (NAD83)

(xi) Unit of Measure: meter

(C) Equal area version. A mapping system named "Texas Centric Mapping System/Albers Equal Area" is hereby defined, and the terms "Texas Centric Mapping System/Albers Equal Area" and its abbreviated form "TCMS/AEA" shall be used only in strict accord with this definition:

(i) Mapping System Name: Texas Centric Mapping System/Albers Equal Area

(ii) Abbreviation: TCMS/AEA

(iii) Projection: Albers Equal Area Conic

(iv) Longitude of Origin: 100 degrees West (-100)

(v) Latitude of Origin: 18 degrees North (18)

(vi) Lower Standard Parallel: 27 degrees, 30 minutes (27.5)

(vii) Upper Standard Parallel: 35 degrees (35.0)

(viii) False Easting: 1,500,000 meters

(ix) False Northing: 6,000,000 meters

(x) Datum: North American Datum of 1983 (NAD83)

(xi) Unit of Measure: meter

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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For further information, please call: (512) 475-4700

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CHAPTER 208. COMMUNICATIONS WIRING STANDARDS

The Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 208, §§208.1 - 208.3, 208.10, and 208.20, concerning Communications Wiring Standards. The proposed repeal results from a rule review of the chapter, notice of which was published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1568).

The chapter applies to state agencies and institutions of higher education. The assessment of the impact of the proposed repeal on institutions of higher education has been prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

The department proposes to repeal Subchapter A, Definitions; Subchapter B, Wiring State Agency Buildings; and Subchapter C, Wiring Institutions of Higher Education Buildings to eliminate unnecessary rules.

R. Douglas Holt, Deputy Executive Director, Statewide Technology Services, has determined that repealing the chapter will have a positive fiscal impact on state agencies and institutions of higher education, although an exact cost avoidance estimate cannot be assessed. The elimination of unnecessary rules will increase flexibility in the conduct of business for the department, state agencies and institutions of higher education. There is no impact on local government as a result of repealing the rules.

Mr. Holt has also determined that for each year of the first five years after the repeal of the rules are in effect, the anticipated public benefit results from a more effective use of public and financial resources by ceasing to provide administration of the repealed rules concerning communications wiring standards. There is no anticipated economic effect or costs to persons or small businesses if the rules are repealed.

Comments on the proposed repeal may be submitted to Cynthia J. Kreider, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to cynthia.kreider@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §§208.1 - 208.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of 1 TAC §§208.1 - 208.3 is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules to implement its responsibilities under Chapter 2054, Texas Government Code. Having no rulemaking authority under Chapter 2170, Texas Government Code, which is the source for the department's authority over telecommunications, prevents the department from relying on Chapter 2170 to effect this repeal.

No other statutes are affected by this repeal.

§208.1. Key Terms and Technologies for Communications Wiring Standards.

§208.2. Institution of Higher Education.

§208.3. State Agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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SUBCHAPTER B. WIRING STATE AGENCY BUILDINGS

1 TAC §208.10

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of 1 TAC §208.10 is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules to implement its responsibilities under Chapter 2054, Texas Government Code. Having no rulemaking authority under Chapter 2170, Texas Government Code, which is the source for the department's authority over telecommunications, prevents the department from relying on Chapter 2170 to effect this repeal.

No other statutes are affected by this repeal.

§208.10. State Agency Wiring Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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For further information, please call: (512) 475-4700

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SUBCHAPTER C. WIRING INSTITUTION OF HIGHER EDUCATION BUILDINGS

1 TAC §208.20

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of 1 TAC §208.20 is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules to implement its responsibilities under Chapter 2054, Texas Government Code. Having no rulemaking authority under Chapter 2170, Texas Government Code, which is the source for the department's authority over telecommunications, prevents the department from relying on Chapter 2170 to effect this repeal.

No other statutes are affected by this repeal.

§208.20. Institution of Higher Education Wiring Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

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Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 475-4700

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CHAPTER 209. MINIMUM STANDARDS FOR MEETINGS HELD BY VIDEOCONFERENCE

The Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 209, §§209.1 - 209.3, 209.10 - 209.13, and 209.30 - 209.33; and new 1 TAC Chapter 209, §§209.1 - 209.3, 209.10, 209.11, 209.30, and 209.31, concerning Minimum Standards for Meetings Held by Videoconference. The proposed repeal of and new 1 TAC Chapter 209 result from a rule review of the chapter, notice of which was published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1568).

The new chapter applies to state agencies and institutions of higher education. The assessment of the impact of the proposed sections on institutions of higher education has been prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

The department proposes to repeal 1 TAC Chapter 209 in its entirety to eliminate unnecessary rules, revise rules, and enable renumbering in new 1 TAC Chapter 209. In Subchapter A, the department proposes to revise the current text of §209.1 to delete unnecessary definitions. In Subchapter B, the department proposes to repeal §209.10; renumber current §209.11 as §209.10 and revise the text to reference standards established by the International Telecommunications Union in lieu of listing individual standards; repeal current §209.12 as redundant of statute; and renumber §209.13 as §209.11 and revise the text to eliminate a specific reference to an exact location of the department's website. In Subchapter C, the department proposes to repeal §209.30; renumber current §209.31 as §209.30 and revise the text to reference standards established by the International Telecommunications Union in lieu of listing individual standards; repeal current §209.32 as redundant of statute; and renumber §209.33 as §209.31 and revise the text to eliminate a specific reference to an exact location of the department's website.

R. Douglas Holt, Deputy Executive Director, Statewide Technology Services, has determined that for the first five-year period the repeal and new rules are in effect, there will be a positive fiscal impact on state agencies and institutions of higher education, although an exact cost avoidance estimate cannot be assessed. The elimination of unnecessary rules and the update of the rules to the newest technology standards will increase flexibility in the conduct of business for the department, state agencies and institutions of higher education. There is no impact on local government as a result of enforcing or administering the repeal and new rules as proposed.

Mr. Holt has also determined that for each year of the first five years the repeal and new rules are in effect, the anticipated public benefit results from more effective use of public and financial resources through the enforcement and administration of rules concerning standards for meetings held by video conference. There are no anticipated economic costs to persons or small businesses required to comply with the proposed repeal and new rules.

Comments on the proposed repeal and new rules may be submitted to Cynthia J. Kreider, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to cynthia.kreider@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §§209.1 - 209.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed pursuant to §551.127 and §2054.052(a), Texas Government Code, which authorizes the department to, respectively, adopt rules for standards for meetings held by videoconferencing and to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this repeal.

§209.1. Applicable Terms and Technologies for Meetings Held by Videoconference.

§209.2. Institution of Higher Education.

§209.3. State Agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 475-4700

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SUBCHAPTER B. VIDEOCONFERENCES HELD BY AGENCIES AND OTHER GOVERNMENTAL BODIES, EXCLUDING INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§209.10 - 209.13

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed pursuant to §551.127 and §2054.052(a), Texas Government Code, which authorizes the department to, respectively, adopt rules for standards for meetings held by videoconferencing and to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this repeal.

§209.10. Analog Video.

§209.11. Compressed Video.

§209.12. Perceptibility of Audio and Video Signals.

§209.13. Other Recommendations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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For further information, please call: (512) 475-4700

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SUBCHAPTER C. VIDEOCONFERENCES HELD BY INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§209.30 - 209.33

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Information Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed pursuant to §551.127 and §2054.052(a), Texas Government Code, which authorizes the department to, respectively, adopt rules for standards for meetings held by videoconferencing and to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by this repeal.

§209.30. Analog Video.

§209.31. Compressed Video.

§209.32. Perceptibility of Audio and Video Signals.

§209.33. Other Recommendations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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SUBCHAPTER A. DEFINITIONS

1 TAC §§209.1 - 209.3

The new sections are proposed pursuant to §551.127 and §2054.052(a), Texas Government Code, which authorizes the department to, respectively, adopt rules for standards for meetings held by videoconferencing and to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by the new sections.

§209.1. Applicable Terms and Technologies for Meetings Held by Videoconference.

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

(1) Compressed video--Video data that has been digitized and in the process, condensed by the use of one or more of the common video compression processes (lossy, lossless, interframe compression,

etc.). A codec produces compressed video and uncompresses the video at the remote end.

(2) ITU--International Telecommunication Union.

(3) Videoconference--Real-time video and audio communications between or among multiple sites.

§209.2. Institution of Higher Education.
A university system or institution of higher education as defined by §61.003, Education Code.

§209.3. State Agency.
A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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SUBCHAPTER B. VIDEOCONFERENCES HELD BY AGENCIES AND OTHER GOVERNMENTAL BODIES, EXCLUDING INSTITUTIONS OF HIGHER EDUCATION

1 TAC §209.10, §209.11

The new sections are proposed pursuant to §551.127 and §2054.052(a), Texas Government Code, which authorizes the department to, respectively, adopt rules for standards for meetings held by videoconferencing and to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by the new sections.

§209.10. Compressed Video.
A governmental body holding an open or closed meeting by videoconference using compressed video shall use equipment meeting the minimum technical standards for videoconferencing established by the International Telecommunications Union (www.itu.int). Use of equipment meeting these standards does not preclude the use of proprietary vendor protocols as long as the governmental body has received certification from the vendor stating that the vendor's equipment and proprietary software protocol release version meets or exceeds the specified standards.

§209.11. Other Recommendations.
State agencies conducting open or closed meetings by videoconference call shall review and consider any applicable recommendations promulgated by the department. Such recommendations may be obtained directly from the department or may be accessed via the Web at the department's website.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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SUBCHAPTER C. VIDEOCONFERENCES HELD BY INSTITUTIONS OF HIGHER EDUCATION

1 TAC §209.30, §209.31

The new sections are proposed pursuant to §551.127 and §2054.052(a), Texas Government Code, which authorizes the department to, respectively, adopt rules for standards for meetings held by videoconferencing and to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by the new sections.

§209.30. Compressed Video.

An institution of higher education holding an open or closed meeting by videoconference using compressed video shall use equipment meeting the minimum technical standards for videoconferencing established by the International Telecommunications Union (www.itu.int). Use of equipment meeting these standards does not preclude the use of proprietary vendor protocols as long as the institution of higher education has received certification from the vendor stating that the vendor's equipment and proprietary software protocol release version meets or exceeds the specified standards.

§209.31. Other Recommendations.

Institutions of higher education conducting open or closed meetings by videoconference call shall review and consider any applicable recommendations promulgated by the department. Such recommendations may be obtained directly from the department or may be accessed via the Web at the department's website.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Zelinsky
General Counsel
Department of Information Resources
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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to repeal and replace §355.8381, concerning Case Management Reimbursement Methodology.

Background and Justification

HHSC proposes to repeal §355.8381 and replace it with new §355.8381, related to the case management reimbursement methodology for the Blind Children's Vocational Discovery and Development Program (BCVDDP), to transition the monthly prospective reimbursement rate to a monthly interim rate with cost settlement. The Centers for Medicare and Medicaid Services (CMS) informed HHSC that the current monthly unit of service for BCVDDP was not acceptable and needed to be changed. This proposal changes the prospective monthly rate to a monthly interim rate and the cost reconciliation and settlement process.

The new rule will also update and clarify current Medicaid requirements for BCVDDP and delete outdated information.

Section-by-Section Summary

Proposed new §355.8381 replaces repealed §355.8381.

Proposed new subsection (a) add definitions to include allowable cost, collateral, provider, and unit of service.

Proposed new subsection (a)(4) defines the unit of service as a monthly interim rate based on one or more contacts per month with the client or collateral, either by face-to face or telephone.

Proposed new subsection (b) describes the reimbursement methodology to include the initial rate and the cost report-based rates.

Proposed new subsection (c) clarifies cost reporting requirements.

Proposed new subsection (d) describes the cost reconciliation process, which HHSC uses to determine the federal share owed to the provider and reconciles with interim payments made to providers.

Proposed new subsection (e) describes the cost settlement process.

Proposed new subsection (f) describes the cost reporting process and references the cost determination process rules that govern cost reporting and adjustments to reported costs.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, during the first five years the repeal and the new rule are in effect, there is no foreseeable fiscal impact to state or local governments.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no adverse economic effect on small or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the new rule. There is no anticipated economic cost to persons who are required to comply with the proposed new rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the repeal and new rule are in effect, the expected public benefit of the repeal and the new rule is that HHSC will have the new reimbursement methodology for this service in its rule base.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this 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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Yvonne Moorad, Senior Rate Analyst of Acute Care Services, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Yvonne.Moorad@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

DIVISION 20. CASE MANAGEMENT FOR CHILDREN WHO ARE BLIND AND VISUALLY IMPAIRED

1 TAC §355.8381

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeal is proposed under 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 provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The repeal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8381. Case Management Reimbursement Methodology.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102108

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 20. CASE MANAGEMENT FOR CHILDREN WHO ARE BLIND OR VISUALLY IMPAIRED

1 TAC §355.8381

Statutory Authority

The new rule is proposed under 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 provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8381. Case Management Reimbursement Methodology.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Allowable costs--Those expenses that are reasonable and necessary costs in the normal conduct of operations relating to case management services as defined in §355.102(f)(1) and (2) of this title (relating to General Principles of Allowable and Unallowable Costs).

(2) Collateral--A child's parent as defined in 40 TAC §106.1407(12) (relating to Definitions) or legally authorized representative.

(3) Provider--The Division for Blind Services, Department of Assistive and Rehabilitative Services (DARS), which delivers case management services to Medicaid-eligible individuals according to the Blind Children's Vocational Discovery and Development Program (BCVDDP) rules established by DARS.

(4) Unit of service--One or more contacts per month with the client or collateral, either by face-to face or telephone. The monthly interim rate is based on the unit of service.

(b) Rate methodology.

(1) Initial rates. The prospective monthly rate in effect June 1, 2011, is established as the interim rate effective September 1, 2011.

(2) Cost report-based rates. After the Texas Health and Human Services Commission (HHSC) determines that cost data collected as described in subsection (c) of this section is reliable and sufficient, HHSC will re-base the interim rate. The provider interim rate is developed based on a biennial review of actual cost data submitted by the provider.

(c) Reporting of cost. A provider must submit an annual cost report for services delivered during the previous state fiscal year in a manner specified by HHSC. The primary purposes of the cost report are to:

(1) document the provider's actual allowable Medicaid costs for delivering the service based on federally mandated cost allocation methodologies; and

(2) reconcile interim payments to actual allowable Medicaid costs based on approved cost allocation methodology procedures.

(d) Cost reconciliation. The allowable Medicaid costs reported for services delivered during the state fiscal year are adjusted by the federal Medicaid assistance percentage (FMAP) to arrive at the federal share owed to the provider. This amount is then reconciled with interim payments made to the provider.

(e) Cost settlement. If a provider's interim Medicaid payment exceeds the provider's actual allowable Medicaid costs, HHSC will recoup the overpayment from the provider. If a provider's actual, allowable Medicaid cost exceeds the provider's interim Medicaid payments, HHSC will pay the difference to the provider.

(f) General information. In addition to the requirements of this section, the cost reporting guidelines will be governed by the information in: §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 13. GRAIN WAREHOUSE

4 TAC §13.7

The Texas Department of Agriculture (the department) proposes amendments to §13.7, regarding fees for registration and inspection pertaining to a state licensed public grain warehouse. The department administers a grain warehouse program to license and inspect businesses that store grain for producers and other grain depositors. Annual inspections are conducted at

each licensed facility to ensure the warehouse is maintaining the proper quantity and quality of stored grain for depositors, as well as to ensure adequate recordkeeping and compliance with regulations adopted under Chapter 14 of the Texas Agriculture Code. These amendments are necessary to comply with changes made to the grain warehouse program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry. The proposed amendments to §13.7 will increase grain warehouse fees by an average of 48% so that the new leaner and more cost-efficient program may be implemented, under the cost recovery requirement imposed by the 82nd Legislature.

Rick Garza, Coordinator for Commodity Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government due to the increase in inspection and license fees collected. There will be an approximate increase in state revenue of $203,680 per year, as a result of enforcing or administering the amended section. The charging of the proposed fees is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to enforce statutory requirements will be impacted if the department does not assess a fee that recovers the full cost of the program. There will be no anticipated cost to local government as a result of enforcing or administering the amended sections.

Mr. Garza has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the proposed amendments will be achieving effective recovery of the costs of administering the department's grain warehouse program. The economic cost to individuals, micro businesses and small businesses affected by the proposed amended sections will be an increase in the application and renewal license fee of a facility headquarters by $85, an increase of $60 for additional facilities in a combination license, and an inspection fee increase of $7.00 for each 10,000 bushels or a fraction of 10,000 bushels of the licensed storage capacity. There are currently 191 headquarter facilities with an average increase in license fee of $85 and 124 additional facilities with an average increase in license fee of $60. There are currently 315 grain warehouse facilities licensed with the department, with an average facility capacity of 722,221 bushels. The average increase in the inspection fee for each facility is estimated to be $511 annually.

Comments on the proposal may be submitted to Rick Garza, Coordinator for Grain Warehouse Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The change is proposed under the Texas Agriculture Code (the Code), §14.015, which provides the department with the authority to adopt rules necessary for the administration of requirements and procedures for the operation of a grain warehouse; Code §14.023, which provides the department with the authority to provide by rule for an annual license fee for a grain warehouse license.

The code affected by this proposal is the Texas Agriculture Code, Chapter 14.

§13.7. Fees.

(a) Single warehouse license. The annual and renewal fee for a single grain warehouse license is $235.00 [~~$150.00~~].

(b) Combination warehouse license. The annual and renewal fee for a combination grain warehouse license is $235.00 [~~$150.00~~] for the headquarters location and $160.00 [~~$100.00~~] for each additional facility location.

(c) Inspection fees. The fee for an annual inspection is $22.00 [~~$15.00~~] for each 10,000 bushels or a fraction of 10,000 bushels of the licensed storage capacity, or $100.00, whichever is greater.

(d) Requested inspections.

(1) The fee for an inspection to increase or decrease licensed storage capacity including temporary storage is $22.00 [~~$15.00~~] for each 10,000 bushels or a fraction of 10,000 bushels of the increase or decrease in storage capacity, or $100.00, whichever is greater.

(2) The fee for a partial inspection is $22.00 [~~$15.00~~] for each 10,000 bushels or a fraction of 10,000 bushels of the partial facility that is being inspected, or $100.00, whichever is greater.

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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CHAPTER 14. PERISHABLE COMMODITIES HANDLING AND MARKETING PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §14.3

The Texas Department of Agriculture (the department) proposes changes to §14.3, related to the Handling and Marketing of Perishable Commodities Program (HMPC). The department administers the HMPC program to license and inspect businesses that buy Texas perishable commodities on credit. These licensees, in addition to paying an annual license fee, also pay an annual fee to the Produce Recovery Fund. This trust fund, administered by TDA, provides for the payment of claims to producers and other dealers who sell perishable commodities on credit as a way of recovery in situations where the licensee or a person required to be licensed refuses or is unable to pay. TDA processes claims and the Produce Recovery Fund Board holds hearings to determine whether or not the claims merit payment from the Produce Recovery Fund. These amendments are necessary to comply with changes made to the HMPC program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the depart-

ment has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry. The proposed amendments to §14.3 will increase HMPC fees by an average of 34% so that the new leaner and more cost-efficient program may be implemented under the cost recovery requirement imposed by the 82nd Legislature. The cost of the program was reduced by focusing inspections on complaints received from producers as well as using the Produce Recovery Fund as provided under Texas Agriculture Code, §103.002

Rick Garza, Coordinator for Commodity Programs, has determined that, for the first five-year period the amendments are in effect, there will be a fiscal impact for state government of an estimated $13,050 annually in state revenue as a result of increase in license and filing fees. The charging of a fee is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to enforce statutory requirements will be impacted. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Mr. Garza also has determined that for each year of the first five years the changes are in effect, the public benefit anticipated as a result of implementation of the changes will be the efficient use of department resources and perishable commodity regulations that provide greater protection and assistance to producers that do not receive payment for produce sold to a licensee or persons required to be licensed. The fiscal impact on microbusinesses or small business required to comply will be a $25 increase in licensing fees, a $5 increase for buying and transporting agent cards, and a $5 increase in the filing fee for administration of an HMPC complaint.

Written comments on the proposal may be submitted to Rick Garza, Coordinator for Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposed changes in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code (the Code), §101.006, which provides that the department shall charge a license fee, as provided by department rule, for persons licensed under Chapter 101; the Code, §103.010, which provides the department with the authority to charge a fee for a transporting agent or buying agent identification card; the Code, and §103.005, which provides the department with the authority to charge a fee for the filing of a claim seeking payment from the Produce Recovery Fund.

The code affected by the proposal is the Texas Agriculture Code, Chapters 101 and 103.

§14.3. Fees.

(a) License/registration/identification card fees.

(1) A license fee is $115 [~~$90~~].

(2) The fee for each identification card is $15 [~~$10.00~~].

(b) (No change.)

(c) Claim filing fee. A fee of $20 [~~$15~~] shall accompany the claim.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.161

The Texas Department of Agriculture (the department) proposes an amendment to §19.161 in order to expand the quarantined area for the Diaprepes root weevil, *Diaprepes abbreviatus* (L). The department deploys Tedder traps in the area adjacent to the quarantined area to determine if the Diaprepes root weevil infestation has expanded beyond the current quarantined area. Diaprepes adults were recently trapped at two sites just outside the area quarantined for the pest in McAllen, Texas. One Diaprepes adult was trapped at 9401 North 10th Street, and eight Diaprepes adult were trapped in a citrus grove 0.38 mile west of intersection of Hobbs Drive and North 2nd street. The amendment is proposed to prevent further spread of the Diaprepes root weevil and facilitate its suppression.

The department filed on an emergency basis an amendment to §19.161 on May 13, 2011, which was published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3231). The expanded quarantined area in the proposed §19.161 is identical to the expanded quarantined area described in the emergency quarantine now in effect.

The department believes addition of the two sites near the McAllen quarantined area, where the Diaprepes root weevils were detected, to the quarantine on a permanent basis is both necessary and appropriate to prevent the spread of the Diaprepes root weevil into the nearby areas and into nursery growing areas of Texas. Without this proposed amendment, other states are likely to quarantine Texas. As a result, Texas could lose important export markets and would require regulatory treatments to export Texas nursery stock, resulting in increased production costs to producers. In addition, citrus producers will be faced with the added control cost and the losses caused by this pest. The proposed amendment prevents artificial spread of the quarantined pest and enhances chances for successful pest suppression. Amended §19.161 expands the quarantined area in correspondence with the detection of the Diaprepes root weevils adjacent to the current quarantined area.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five years the amended section is in effect, there will be fiscal implication to the state, but not to the local government, as a result of enforcing or administering the proposed amendment. The department intends to expend its limited resources

based on the pest risk potential. Based on the experience concerning Diaprepes suppression activities, the department estimates the suppression activity in the new quarantined area will cost up to $50,000 annually. However, in the current challenging budgetary environment, the amount available for the suppression activity may be less than desired. Plant material moved outside the proposed quarantined area will require phytosanitary certification. However, the certification cost cannot be determined since frequency of movement of the plant material is not known.

Dr. Nilakhe has also determined that for each of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be to prevent artificial spread of the Diaprepes root weevil outside the quarantined area of the state. Approximately 18 acres of citrus and 40 residential properties are located in the new quarantined area. A production nursery or a retail nursery is not located in the new quarantined area. Consequently, a small business or a micro-business does not exist in the proposed quarantined area. Therefore, there will be no adverse economic effect to a small business or a micro-business. Consequently a Regulatory Flexibility Analysis is not required.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines the pest is dangerous and is not widely distributed in the state; and provides the Texas Department of Agriculture with the authority to establish emergency quarantines; and §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.161. Quarantined Areas.
The quarantined areas are:

(1) Within Texas:

(A) the citrus grove located in Hidalgo County, McAllen, Texas, 0.20 miles West of the intersection of Hobbs Drive and North 2nd Street and the area within approximately 300 yards surrounding the grove in all directions; the property located at 9601 N. 10th Street, Unit 1-11, Hidalgo County, McAllen, Texas and the surrounding area within approximately 300 yards in all directions, including the citrus grove, comprised of approximately 20 acres, located south of the Timberhill Mobile Park; the property located at 3539 Plaza del Lagos, Hidalgo [~~Hidaldo~~] County, Edinburg, Texas and the surrounding area within approximately 300-yards in all directions; the two adjoining citrus groves located south of the intersection of the Calle Conejo and Chachalaca Drive in Cameron County, Bayview, Texas, and the area within approximately 300 yards surrounding the grove in all directions; the property located at 6027 Glen Cove Street, Houston, Harris County, Texas, and the surrounding area within approximately 300 yards in all directions; [~~and~~] Russ Pitman Park, Bellaire, Harris County, Texas and the surrounding area within approximately 300 yards in all directions; the property located at North 10th Street, Hidalgo County, McAllen, Texas and the surrounding area within approximately 300 yards in all directions; and the citrus grove located in Hidalgo County, McAllen, Texas, 0.38 miles West of the intersection of Hobbs Drive and North 2nd Street and the area within approximately 300 yards surrounding the grove in all directions; and

(B) - (C) (No change.)

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 463-4075

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CHAPTER 20. COTTON PEST CONTROL
SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture (department) proposes amendments to §20.22, concerning stalk destruction requirements. The amendments to §20.22 provide new deadlines for requests for extension of cotton stalk destruction, as provided by Senate Bill (SB) 378, 82nd Legislature, 2011, which authorizes the department to specify the due date for destruction deadline extension requests by department rule. Input received from cotton producers and cotton producer organizations support a deadline for submitting extension requests as the date of the respective cotton stalk destruction deadline date. Submission of a cotton stalk destruction deadline extension request does not assure either that an extension will be granted or that the department will have time to act on the request before the destruction deadline passes. Thus, to avoid or minimize enforcement actions, a producer in all cases should take advantage of any opportunity to destroy cotton either before or as soon as possible after the destruction deadline. The department believes that the proposed changes will benefit producers and will not impact boll weevil eradication.

Dr. Robert Crocker, Coordinator for Pest Management, Citrus and Biotechnology Programs, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implication for the state and no impact for local government as a result of enforcing or administering the amended section.

Dr. Crocker also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be to protect the state's and Texas cotton producers' investment in boll weevil eradication, and to accelerate eradication of the boll weevil in Texas. There will be no fiscal impact to microbusinesses, small businesses or individuals required to comply with the section, as amended.

Comments on the proposal may be submitted to Dr. Robert Crocker, Coordinator for Pest Management, Citrus and Biotechnology Programs, Texas Department of Agriculture, P.O. Box

12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; §74.0032, as amended by SB 378, which provides that an extension request must be made within the period specified by department rule; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

Texas Agriculture Code, Chapter 74, is affected by the proposal.

§20.22. Stalk Destruction Requirements.

(a) (No change.)

(b) Deadline extensions.

(1) - (5) (No change.)

(6) Submission of extension requests:

(A) All requests for blanket or individual extensions must be hand-delivered to the department or submitted by mail, email, or fax, and be postmarked or electronically date-stamped by the department[~~:~~]

[~~(i)~~] no later than [~~10 days prior to the cotton stalk destruction deadline, for unharvested fields; or~~]

[~~(ii)~~] the [~~up to~~] end of the date of the deadline[~~, for fields containing hostable regrowth, hostable volunteer, and/or hostable harvested cotton~~].

(B) (No change.)

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2011.

TRD-201102106
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER P. APPROVAL OF DISTANCE EDUCATION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.264

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.264, concerning Formula Funding General Provisions. The intent of the amendments to this section is to align the section with recent changes to Texas Education Code §54.060(a) and (f) and new subsection (n) of §61.059, as amended by Senate Bill 1272. These changes allow Texas A&M University-Texarkana to report for formula funding distance education courses delivered to students residing in another state who are eligible for resident tuition and reside in a county contiguous to the county in which Texas A&M University-Texarkana is located.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments resulting from the amendment.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefit will be that Texas A&M University-Texarkana will be better able to serve its region. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.060(a) and (f) and §61.059(n), which determines eligibility for resident tuition and formula funding eligibility; §54.075(a), which grants the Coordinating Board authority to adopt rules to carry out the purposes of Texas Education Code, Chapter 54, Subchapter B; §61.059(h), which provides the Coordinating Board with the authority to adopt rules and regulations in conformity with the law applicable to funds appropriated to the Coordinating Board for allocation; and §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

The amendments affect the Texas Education Code, Chapter 54, Subchapter B, §54.060(a) and (f) and Texas Education Code, Chapter 61, Subchapter C, §61.059(n).

§4.264. Formula Funding General Provisions.

(a) Institutions shall report distance education courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(b) Institutions may submit for formula funding academic credit courses delivered by distance education to any student located in Texas or to Texas residents located out-of-state or out-of-country.

(c) Institutions, with the exception of those outlined in subsection (e) of this section, shall not submit for formula funding distance education courses taken by non-resident students who are located out-of-state or out-of-country, courses in out-of-state or out-of-country programs taken by any student, or self-supporting courses.

(d) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

(e) Pursuant to Texas Education Code, §54.060(a) and (f), Texas A&M University-Texarkana may submit distance education courses for formula funding that are taken by students enrolled in the university that reside in a county contiguous to the county in which Texas A&M University-Texarkana is located and who, under Texas Education Code, §61.059, are eligible to pay resident tuition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2011.

TRD-201102142
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 28, 2011
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.3

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.3, concerning General Provisions. Specifically, an amendment to the title of §21.3 is proposed to better align its wording with that of Texas Education Code §56.053(a) as amended by House Bill 3578, passed by the 82nd Texas Legislature, Regular Session, which expands the use of tuition and mandatory fee emergency loans to include covering the costs of textbooks. This section is amended to make the rule consistent with the language in Texas Education Code, §56.055.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §56.055, which provides the Coordinating Board with the authority to adopt rules relating to deferred payments of emergency loans made through Texas Education Code, Chapter 56, Subchapter D, for students who enroll in a graduate or professional degree program.

The amendments affect Texas Education Code, §56.055.

§21.3. Loan Repayment Deferral [~~and Loan Forgiveness~~] for Emergency Loans for Tuition, Mandatory Fees and Textbooks [~~Books~~] Made Under Texas Education Code, §56.051 for Students Who Enroll in Graduate or Professional Degree Programs.

(a) [~~An institution shall defer the repayment of emergency loans for tuition, fees and books, in accordance with guidelines adopted by the governing board of the institution. The deferred repayment, however, must begin on the earlier of the following dates: the first day of the ninth month after the last month in which the borrower was enrolled in a public institution of higher education, or the fifth anniversary of the date on which the loan was executed.~~] An institution may extend the time for repayment of loans for students who enroll in graduate or professional degree programs for up to three years, but not longer than one year beyond the time when the student fails to be enrolled in the institution on at least a half-time basis.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §21.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §21.10, concerning General Provisions. Specifically, this new section is proposed to reflect a new requirement for state financial assistance, as mandated by House Bill (HB) 3708, passed by the 82nd Texas Legislature, Regular Session. HB 3708 amends Subchapter A, Chapter 56, Texas Education Code, by adding §56.007, which indicates that, in determining a person's eligibility for a TEXAS Grant or other state-funded assistance, an institution may not take into consideration the person's right to receive payments or benefits from the higher education savings plan, prepaid tuition unit undergraduate education program, or the Texas Save and Match Program authorized in Texas Education Code, Chapter 54, Subchapters G, H, or I.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the new section is in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the section.

Mr. Weaver has also determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There

are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Education Code, §§56.077, 56.303, 56.403, 61.027, and 61.229, which provide the Coordinating Board authority to adopt rules related to state financial aid programs administered by the Texas Higher Education Coordinating Board.

The new section affects Texas Education Code, §§56.071 - 56.080, 56.301 - 56.311, 56.401 - 56.4075, 61.221 - 61.230, and 61.027 and Article III, Rider 53 (at III-62), of the General Appropriations Act of the 81st Texas Legislature.

§21.10. Exclusion of Certain Resources in Determining Need for State Aid.

The right of a person to receive payments or benefits from the Higher Education Savings Plan, Prepaid Tuition Unit Undergraduate Education Program: Texas Tomorrow Fund II, or the Texas Save and Match Program, authorized in the Texas Education Code, Chapter 54, Subchapters G, H, or I, is not to be considered an asset of the person or otherwise included in the person's household income or other financial resources for purposes of determining the person's eligibility for a TEXAS grant or other state-funded financial assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM FOR STUDENTS GRADUATING HIGH SCHOOL ON OR BEFORE JUNE 20, 2011

19 TAC §21.950

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to the title of Chapter 21, Subchapter CC and to §21.950, concerning the Early High School Graduation Scholarship Program. Specifically, the amendment to the subchapter title and to §21.950 are proposed to clarify that the rules in this subchapter only apply to persons who graduate from high school prior to September 20, 2011, the effective date of House Bill 3708, passed by the 82nd Texas Legislature. Section 13 of the bill indicates the bill's provisions do not apply to persons who qualified for awards through the Early High School Graduation Scholarship Program prior to the effective date of the bill.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §56.209, which provides the Coordinating Board with the authority to adopt rules to administer Texas Education Code, Chapter 56, Subchapter K.

The amendments affect Texas Education Code, §§56.201 - 56.210.

§21.950. Authority and Purpose.

(a) (No change.)

(b) Purpose. The purpose of the Early High School Graduation Scholarship Program is to increase the efficiency of the Foundation School Program and provide financial assistance to eligible students who graduate from high school on or before June 20, 2011.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2011.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §21.1084, §21.1086

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.1084 and §21.1086 concerning the Educational Aide Exemption Program. Specifically, the amendments to §21.1084 are proposed to provide Coordinating Board staff flexibility in awarding funds through the program if funding is limited. House Bill 3708, passed by the 82nd Texas Legislature, Regular Session, repealed language that authorized the use of transfers of Foundation Program funds by the Texas Education Agency to the Coordinating Board for reimbursing institutions for exemptions made through the program. This left gifts and donations as the only sources of funds for the program. It is anticipated that such funding will be limited,

and therefore new wording in §21.1084 creates a competitive, first come/first served approach for awarding those funds that become available. Only the process of identifying recipients is changed; student eligibility requirements and the value of the awards are not changed. Amendments to §21.1086(c) are made to reflect the anticipated irregular flow of funds through the program in the future by relieving the Coordinating Board of the responsibility of making disbursements at least once a month. Other changes are made to improve the grammar of the subsection. Section 21.1086(d) is deleted to eliminate references to funding for the program through the Foundation Program.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.214(e), which provides the Coordinating Board with the authority to adopt rules to administer the Educational Aide Exemption Program.

The amendments affect Texas Education Code, §54.214.

§21.1084. The Application and Awarding Process.

(a) Institutions are not required to provide exemptions under this subchapter beyond those funded through appropriations specifically designated for this purpose. The Board shall advise institutions of the availability of funds as soon as possible after funding is known.

(b) [~~(a)~~] Application forms and instructions developed by the Board will be distributed through [~~primarily through school district offices throughout the state. The Board will also provide forms to~~] financial aid offices of approved institutions [~~and students may request the forms directly from the Board~~].

(c) If funds are limited:

(1) the Board will advise institutions of a deadline for submitting applications and the number of applications each institution may submit to compete for funds;

(2) institutions will forward to the Board applications for students they have determined to be eligible; and

(3) the Board will then select recipients for the limited funds on a first come/first served basis and announce recipients to institutions.

[~~(b) The application has three parts that must be completed prior to the form's submission to the Board for processing.~~]

[~~(1) Part I is to be completed by the student applicant, who shall then forward the application to an authorized officer of the school or school district in which the applicant is employed.~~]

[~~(2) Part II is to be completed and signed by the school or school district authorized officer, who shall then forward the application to the financial aid office of the institution the applicant is attending.~~]

[~~(3) Part III is to be completed by the Program Officer at the institution, who shall then determine student eligibility and advise the student of his or her status.~~]

[~~(c) Applications will be processed by the institutions.~~]

[~~(d) If the student's financial need is based on the income methodology and prior year adjusted gross income is not available at the time of application, eligibility can be temporarily based on a prior prior-year tax return, but the student must provide the institution a copy of the prior-year tax return by the deadline set by the institution and reported to the student in his or her award announcement. If the updated return indicates an income that exceeds the cut-off amount for eligibility, the student will be required to refund to the program any awards received based on prior prior-year data.~~]

[~~(e) As soon as possible after processing applications, the institution will notify the relevant students and school districts of their awards.~~]

§21.1086. Reimbursements.

(a) Source of Funding. The funds used to reimburse institutions or students for awards made through the Educational Aide Exemption program will come from [~~the state's Foundation School Fund and~~] any gifts, grants and donations made to the Texas Education Agency for that purpose.

(b) (No change.)

(c) Disbursements by the Board. The Board will process institutional Requests for Reimbursement [~~at least once a month~~] and will subsequently have appropriate amounts transferred to institutions by the State Comptroller's office. Such funds are to be used by the institutions either to reimburse themselves [~~itself~~] (if they [~~it~~] exempted the students from the payment of the relevant charges) or to reimburse students for the relevant charges they paid to the institution.

[~~(d) Transfers from the Foundation Program. At least once a year the Board will request a transfer of funds from the foundation school fund for use in reimbursing institutions or students for their Educational Aide Exemption program awards.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2011.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §§21.2099 - 21.2110

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.2099 - 21.2110, concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act). Amendments to §§21.2102, 21.2104(2) and (3), 21.2105(b), 21.2107(a)(2) and 21.2108(a) are proposed due to the passage of Senate Bill 639, 82nd Texas Legislature, Regular Session.

Specifically, the amendment to §21.2102 (Eligible Veterans) adds a new residency requirement for veterans who claim the benefit for the first time beginning fall 2011. New §21.2104(2) clarifies that children must be 25 years or younger to be eligible to receive the exemption through the Hazlewood Act Exemption or the Hazlewood Legacy Program unless they are granted an extension of the age limit due to a serious illness or debilitating condition, described in new §21.2104(3). Previously, this provision only applied to children receiving the benefit through the Legacy Program. Former §21.2108(c)(3) and (d) are deleted accordingly. The amendment to §21.2105(b) and new §21.2108(b)(3) clarifies that institutions must grant the exemption provided the applicant submits the application and supporting documentation to the institution within a one-year time-frame. Previously, applicants were required to submit their documentation by the census date of a given term. Language referencing the "census date" is deleted. The amendment to §21.2107(a)(2) updates the new residency requirement for veterans. Amendments to §21.2108(a) clarify that a veteran's spouse or child's conservator, guardian, custodian, or other legally designated caretaker may re-assign unused hours to an eligible child on behalf of a veteran who died before submitting a request for transfer of hours.

The following amendments, unrelated to the passage of Senate Bill 639, are also proposed: The amendment to §21.2099 reflects the eligibility of spouses to receive benefits through the exemption program, as mandated by the passage of Senate Bill 93, 81st Texas Legislature, Regular Session. Two definitions in §21.2100 (Definitions) are amended to more clearly reflect statutory language regarding how to identify a child who is eligible for benefits through the exemption (§21.2100(4)), and regarding the changes to the exemption program brought about by the creation of the Hazelwood Legacy Act (§21.2100(10)) through the passage of Senate Bill 93, 81st Texas Legislature, Regular Session. Amendments to §21.2101(b) (Hazlewood Act Exemption) more clearly identify the federal veterans' education benefits that must be considered when determining a person's eligibility for benefits through the state's exemption program. The amendment to §21.2101(g) identifies the quoted section of statute as being from the Texas Education Code. The amendment to §21.2102(3) more clearly identifies the federal veterans' education benefits that must be considered when determining a person's eligibility for benefits through the state's exemption program. This amendment is also made in §21.2103(2) (Eligible Spouses) and §21.2104(4) (Eligible Children). Section 21.2103(3) (Eligible Spouses) and §21.2104(5) (Eligible Children) are amended to clarify that the spouse or child receiving an exemption under this program must be classified as a Texas resident at the time he or she claims the exemption, not when he or she applies for an exemption. The amendment to the title of §21.2106 (Supporting Documentation for the Initial Hazlewood Act Exemption Application) clarifies that the provisions of this section apply to a person's first application for an exemption, not the application for subsequent benefits. Amendments to §21.2106(b) clarify that documentation of eligibility is to be provided at the time the individual applies for an exemption (§21.2106(b)), that the only federal veterans' education benefits that must be considered are those specifically available for paying tuition and fees (§21.2106(b)(2)), that the child must meet the requirements of "child" as defined in this subchapter (§21.2106(b)(3)), and specify the requirements a spouse must meet in order to qualify (§21.2106(b)(4)). The amendment to §21.2106(b)(6) indicates that a disabled veteran, in order for his or her spouse or children to qualify for the exemption, must be rated as 100 percent unemployable due to his or her service-related injuries. Amendments to §21.2107 (Subsequent Hazlewood Exemption Awards) indicate that the provisions of this section only apply to continuing exemption recipients, that the only federal veterans' education benefits that must be considered are those specifically available for paying tuition and fees, and that defaults on federal loans are not relevant to a person's eligibility for an exemption under this program. Amendments to the title of §21.2108 (Assigning Unused Hours to a Child (Hazlewood Legacy Act)) and in new subsection (b) clarify that the provisions of this section are referred to as the Legacy Act. Amendments to §21.2109 clarify that all Hazlewood participants (veterans, spouses, and children) must sign a consent statement to release the number of hours utilized through the program, regardless of the census date. Amendments to §21.2110 update the reporting requirements to follow the procedure outlined in Texas Education Code §61.0516, titled "Electronic System to Monitor Tuition Exemptions for Veterans and Dependents."

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements and restrictions of benefits under the Exemption Program for Veterans and their Dependents. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.203(i) and (k), which provide the Coordinating Board with the authority to adopt rules to administer Texas Education Code, §54.203, including the Hazlewood Legacy Act.

The amendments affect Texas Education Code, §54.203.

§21.2099. Authority and Purpose.

(a) Authority. The authority for these rules is provided in Texas Education Code, §54.203, relating to an exemption for Texas veterans, <u>their spouses,</u> and dependents.

(b) (No change.)

§21.2100. Definitions.

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

(1) - (3) (No change.)

(4) Child or Children--Persons who:

(A) are the stepchildren, biological or adopted children of the veteran; or

(B) were claimed as dependents on the federal income tax return of the veteran the preceding year or will be claimed as dependents on the veteran's federal income tax return for the current year.

[~~(A) Persons who are the veteran's biological or adopted children and who are younger than 25 years of age on the date of the death or disabling injury of the veteran; or~~]

[~~(B) Persons who are not the biological or adopted children of the veteran, but who were claimed as dependents on the federal income tax return of the veteran for the year preceding the year of the veteran's death or disabling injury and who are younger than 25 years of age on the date of the death or disabling injury of the veteran.~~]

(5) - (9) (No change.)

(10) Hazelwood Legacy Act--The tuition and partial fee exemption authorized under Texas Education Code, §54.203, as amended by Senate Bill 93, 81st Texas Legislature, June 1, 2009[~~, which removes certain residency restrictions, extends eligibility to spouses, and permits eligible veterans to assign their unused hours to their child~~].

(11) - (18) (No change.)

§21.2101. Hazlewood Act Exemption.

(a) (No change.)

(b) If the eligible veteran, spouse or child is entitled to federal veterans' education benefits that may be used solely for the payment of tuition and fees, he or she may claim the Hazlewood Act Exemption only if the value of such federal veterans' education benefits are less than the value of the exemption (tuition and fees other than deposit and student services fees). The total of such federal benefits and the exemption may not exceed the person's tuition and fees. A person's eligibility for the Hazlewood Act Exemption is not impacted by federal veterans' education benefits that may be used for purposes other than paying tuition and fees. [~~If the eligible veteran, spouse, or child is entitled to federal veterans' education benefits during the term or semester for which he or she applies for the Hazlewood Act Exemption, he or she is entitled to receive both federal and state veterans benefits during the same time only if the value of the federal veteran's benefits that may be used only for the payment for tuition and fees for the term or semester is less than the value of the student's tuition, fees, dues, and other required charges, less deposit and student service fees. The total amount a person may receive simultaneously through federal education benefits that may be used only for tuition and fees and the Hazlewood exemption is an amount equal to the total tuition and fees.~~]

(c) - (f) (No change.)

(g) The governing board of a public junior college, public technical institute, or public state college as those terms are defined by Texas Education Code, §61.003, may establish a fee for extraordinary costs associated with a specific course or program and may determine that the exemption does not apply to this fee.

(h) (No change.)

§21.2102. Eligible Veterans.

In order to be eligible to receive a Hazlewood Act Exemption, a veteran shall demonstrate that he or she currently resides in the state (applies only to new Hazlewood recipients beginning fall 2011) and:

(1) - (2) (No change.)

(3) has no federal veteran's education benefits[~~, or, if he or she has such benefits, that the value of the benefits~~] that may be used only for the payment of tuition and fees for the semester or, if the veteran has such benefits, the value of such benefits[~~, including such benefits as those issued under Title 38, United States Code, Chapter 33,~~] is less than the value of the Hazlewood Act Exemption [~~student's tuition, fees, and other required charges, less deposit and student service fees~~] for the relevant term;

(4) - (7) (No change.)

§21.2103. Eligible Spouses.

In order to be eligible to receive a Hazlewood Act Exemption, veterans' spouses shall demonstrate that they:

(1) (No change.)

(2) have no federal veteran's education benefits, based on the member's death or disability, [~~of a veteran spouse, or, if eligible for federal benefits, that the value of the benefits~~] that may be used only for the payment of tuition and fees for the semester, or, if the spouse has such benefits, the value of such benefits is less than the value of the spouse's Hazlewood Act Exemption [~~tuition, fees, and other required charges, less deposit and student service fees for the term in which the exemption is to be used~~]; and

(3) are classified by their institutions as residents of Texas for the term or semester for which they claim [~~apply for~~] the Hazlewood Act Exemption.

§21.2104. Eligible Children.

In order to be eligible to receive a Hazlewood Act Exemption, children shall demonstrate that they:

(1) (No change.)

(2) are 25 years of age or younger on the first day of the semester or other academic term for which the exemption is claimed unless the child is granted an extension in keeping with paragraph (3) of this section.

(3) are 25 years of age or older if the child is otherwise eligible for the exemption and provides his or her institution documentation from a physician indicating he or she suffered from a severe illness or other debilitating condition which prevented the child from using the exemption in the required timeframe. In this case, the student's eligibility shall be extended for a period of time equal to the time during which he or she experienced the illness or debilitating condition.

(4) [~~(2)~~] have no federal veteran's education benefits, based on the parent's death or disability, [~~of a veteran parent, or, if eligible for federal benefits, that the value of the benefits~~] that may be used only for the payment of tuition and fees, or, if the child has such benefits, the value of such benefits is less than the value of the child's Hazlewood Act Exemption [~~children's tuition, fees, and other required charges, less deposit and student service fees for the term in which the exemption is to be used~~]; and

(5) [~~(3)~~] are classified by their institutions as residents of Texas for the term or semester for which they claim [~~apply for~~] the Hazlewood Act Exemption.

§21.2105. The Application.

(a) Board staff shall produce and distribute a state-wide Hazlewood Act Exemption Application, requiring institutions to obtain the following information from applicants for the exemption:

(1) - (2) (No change.)

(3) residency information for the time that the veteran, spouse or child wishes to use the exemption;

(4) - (5) (No change.)

(b) For an otherwise eligible veteran, spouse, or child to be entitled to a Hazlewood Act exemption in a given term or semester, he or she must provide a completed Hazlewood Act Exemption Application and provide the supporting documentation to the institution no later than one year after the institution provides written notice to the applicant of his or her eligibility or receives written confirmation from the applicant acknowledging the applicant's awareness of his or her eligibility for the exemption, whichever is earlier. [~~the census date of that term or semester. If the application or supporting documents are provided after the census date, the institution may make the award but is not required to do so.~~]

(c) (No change.)

§21.2106. Supporting Documentation for the Initial Hazlewood Act Exemption Application.

(a) (No change.)

(b) When applying for the first time for the Hazlewood Act Exemption, a spouse or child shall provide to the institution[~~, along with~~] the Hazlewood Act Exemption Application, along with the following supporting documentation:

(1) (No change.)

(2) proof of the spouse's or child's current status regarding eligibility for federal veterans' education benefits that are restricted for the use of paying tuition and fees and that were awarded on the basis of the spouse's or parent's service-related death or disability;

(3) if a child, proof that he or she is the child of an eligible veteran as defined in §21.2100(4) of this title (relating to Definitions); [~~was a dependent of the veteran at the time the veteran died, sustained his or her disabling injury, or was classified as missing in action;~~]

(4) if a spouse, proof that he or she [~~the spouse~~] was the [~~legal~~] spouse of the veteran at the time the veteran died or[~~,~~] sustained a [~~his or her~~] disabling injury[~~,~~] or is the spouse of an otherwise eligible member of the military who is [~~was~~] classified as missing in action;

(5) (No change.)

(6) for the spouse or child of a disabled veteran or guardsman documentation that the veteran has been rated by the Veterans' Administration as 100 percent unemployable due to his or her service-related injuries.

§21.2107. Subsequent Hazlewood Exemption Awards.

(a) For each subsequent term or semester of an academic year in which the veteran, spouse, or child receives a Hazlewood Act Exemption, the institution shall confirm that the veteran, spouse, or child:

(1) (No change.)

(2) resides in Texas (applies only to veterans), or is still classified as a resident student (applies only to a spouse or child),

(3) has no federal veteran's benefits[~~, or if he or she has federal veterans education benefits~~] that may be used only to pay tuition and fees, or, if he or she has such benefits, [~~that~~] the value of such [~~the~~] benefits is less than the person's Hazlewood Act Exemption [~~student's tuition and required fees less deposit and student service fees for the term~~]; and

(4) is not in default on an education loan made or guaranteed by the State of Texas [~~and is not in default on a federal loan if that default is the reason the student cannot use his or her federal veterans' benefits~~].

(b) For each term or semester of an academic year in which the veteran, spouse, or child receives a Hazlewood Act Exemption, he or she shall submit the appropriate program application to his or her institution.

§21.2108. Assigning Unused Hours to a Child (Hazlewood Legacy Act).

(a) An eligible veteran or, if the eligible veteran has died, his or her spouse, or child's conservator, guardian, custodian, or other legally designated caretaker (if the child does not otherwise qualify for an exemption under Texas Education Code, §54.203(b)), may elect to waive the eligible veteran's [~~his or her~~] right to all [~~any~~] unused hours for which he or she is eligible (up to the maximum 150 semester credit hours). By completing the relevant forms provided through the Board website and submitting them to the institution, the veteran, his or her spouse, or child's conservator, guardian, custodian, or other legally designated caretaker may:

(1) - (2) (No change.)

[~~(b) For purposes of this section, a child designee must be:~~]

[~~(1) the stepchild, biological, or adopted child of the parent veteran; or~~]

[~~(2) claimed as a dependent on a federal income tax return filed for the preceding year or for the current year.~~]

(b) [~~(c)~~] For an otherwise eligible child to be entitled to a Hazlewood Act exemption through the Hazlewood Legacy Program in a given term or semester, he or she must:

(1) be a resident of Texas;

(2) make satisfactory academic progress in a degree, certificate, or continuing education program as determined by the institution; except, the child is not required to enroll in a minimum course load;

[~~(3) be 25 years of age or younger on the first day of the semester or other academic term for which the exemption is claimed, unless the child is granted an extension in keeping with paragraph (d) of this section.~~]

(3) [~~(4)~~] provide his or her institution a completed Hazlewood Act Exemption Application and the supporting documentation to the institution no later than one year after the institution provides written notice to the applicant of his or her eligibility or receives written confirmation from the applicant acknowledging the applicant's awareness of his or her eligibility for the exemption, whichever is earlier. [~~the census date of that term or semester. If the application or supporting documents are provided after the census date, the institution may make the award but is not required to do so.~~]

[~~(d) An otherwise eligible child assigned hours through this section may use the exemption in a given term at age 25 years or older if the child provides his or her institution documentation form a physician, indicating he or she suffered from a severe illness or other debilitating condition which prevented the child from using the exemption in the required timeframe. In this case, the student's eligibility shall be extended for a period of time equal to the time during which he or she experienced the illness or debilitating condition.~~]

§21.2109. Release of Data to the Board and Institutions.

The veteran, spouse, or child [~~Prior to the census date of the first term or semester of an academic year in which the veteran, spouse, or child receives a Hazlewood Act Exemption, he or she~~] shall execute a statement, consenting to the release of the number of hours taken in the current academic year and in all previous academic years to the Board and to any institution that he or she [~~the veteran~~] may attend.

§21.2110. Reporting.

All institutions shall report, by means specified by the Board, data related to the veterans, spouses, and children who receive exemptions under this subchapter. Such data will include:

(1) the name of the institution;

(2) the name, identification number and date of birth of each individual receiving benefits for the semester;

(3) for each individual receiving benefits, the number of credit hours for which the individual received an exemption for the semester;

(4) for each individual receiving benefits, the cumulative number of credit hours for which the individual has received an exemption at the institution; and

(5) any other information required by the Board.

~~[(a) All institutions shall report by means of the Texas Higher Education Coordinating Board's CBM 001 report, for each eligible veteran, spouse, and child who is exempted from the payment of tuition and mandatory and discretionary fees, other than deposit and student service fees, the following information to the Board:]~~

~~[(1) the person's name;]~~

~~[(2) the person's identification number;]~~

~~[(3) the person's date of birth; and]~~

~~[(4) the number of credit hours for which the person received an exemption in the given semester.]~~

~~[(b) All institutions shall submit the report required under this provision to the Board no later than December 31, for the fall term, no later than May 31, for the spring term, and no later than September 30, for the summer term or semester.]~~

~~[(c) If the individual concurrently received federal and state benefits in a given semester, institutions must adjust the data for the Board's report of all students enrolled in credit courses as of the official census date (CBM001 report) to reflect only hours paid through the Hazlewood Act Exemption.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER RR. TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

19 TAC §§21.2240 - 21.2242, 21.2244, 21.2247

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.2240 - 21.2242, 21.2244, and 21.2247, concerning the Texas Armed Services Scholarship Program. The proposed amendments would align program requirements with statutory changes mandated by House Bill 3470, 82nd Texas Legislature, Regular Session. Specifically, each of these sections is amended to correct the name of the Texas Army National Guard and the Texas Air National Guard, and to add the Texas State Guard, the United States Coast Guard, and the United States Merchant Marine, in keeping with the statutory language. Section 21.2242 is amended to clarify the amount that may be awarded to a student. Section 21.2242 and §21.2244 are amended to reflect the change from five to six years allowed for the student's graduation. Section 21.2241 and §21.2244 are amended to remove the definition of, and subsequent reference to, enrollment as a freshman.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be that program requirements for the Texas Armed Services Scholarship Program will be aligned with the governing statute. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.9774, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas Armed Services Scholarship Program.

The amendments affect the Texas Education Code, §§61.9771 - 61.9776.

§21.2240. Authority and Purpose.

(a) (No change.)

(b) Purpose. The purpose of the Texas Armed Services Scholarship Program is to encourage students to become members of the Texas Army National Guard, [~~members of~~] the Texas Air [~~Force~~] National Guard, the Texas State Guard, the United States Coast Guard, or the United States Merchant Marine, or to become[~~, and~~] commissioned officers in any branch of the armed services of the United States.

§21.2241. Definitions.

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

(1) - (5) (No change.)

~~[(6) Freshman--A student who has not completed an academic year in a public or private institution of higher education after receiving a high school diploma or a General Educational Diploma or its equivalent.]~~

§21.2242. Award Amount.

(a) The amount of a conditional Texas Armed Services Scholarship in an academic year shall not exceed $15,000. [~~will be the lesser of:~~]

~~[(1) $15,000;]~~

[(2) The amount available for each scholarship from appropriations that may be used for scholarships for this program for that academic year; or]

[(3) $15,000 less any amount paid to a student by the branch of the armed services of the United States during an academic year for which the student receives a Texas Armed Services Scholarship.]

(b) A scholarship awarded to a student under this subchapter shall be reduced for an academic year by the amount by which the full amount of the scholarship plus the total amount to be paid to the student for being under contract with one of the branches of the armed services of the United States exceeds the student's total cost of attendance for that academic year at the public or private institution of higher education in which the student is enrolled.

(c) [(b)] A student may receive a scholarship for four of the six [five] years allowed for graduation.

§21.2244. Initial Award Eligibility and Agreement Requirements.

To receive an initial conditional scholarship award through the Texas Armed Services Scholarship Program, a selected student must:

(1) Be enrolled [as a freshman] in a Texas public or private institution of higher education, as certified by the institution;

(2) (No change.)

(3) Enter into a written agreement with the Board agreeing to:

(A) (No change.)

(B) Graduate no later than six [five] years after the date the student first enrolls in a Texas public or private institution of higher education after having received a high school diploma or a General Educational Diploma or its equivalent;

(C) No later than six months after graduation, enter into and provide the Board with verification of:

(i) A four-year commitment to be a member of the Texas Army National Guard, Texas [or] Air [Force] National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or

(ii) (No change.)

(D) Meet the physical examination requirements and all other prescreening requirements of the Texas Army National Guard, Texas [or] Air [Force] National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or the branch of the armed services with which the student enters into a contract; and

(E) (No change.)

§21.2247. Conversion of the Scholarship to a Loan.

(a) A scholarship will become a loan if the recipient:

(1) - (2) (No change.)

(3) Fails to fulfill one of the following:

(A) a four-year commitment to be a member of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or

[(B) a four-year commitment to be a member of the Texas Air Force National Guard; or]

(B) [(C)] a contract to serve as a commissioned officer in any branch of the armed services of the United States.

(b) If a scholarship recipient requires a temporary leave of absence from the institution and/or the ROTC program for personal reasons or to provide service for the Texas Army National Guard, Texas [or] Air [Force] National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine for fewer than twelve months, the Board may agree to not convert the scholarship to a loan during that time.

(c) If a recipient is required to provide more than twelve months of service in the Texas Army National Guard, Texas [or] Air [Force] National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine as a result of a national emergency, the Board shall grant that recipient additional time to meet the graduation and service requirements specified in the Texas Armed Services Scholarship agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.24

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §22.24, concerning Provisions for the Tuition Equalization Grant Program.

Specifically, the amendments would bring program rules into compliance with the Texas Education Code, Chapter 61, Subchapter F, as amended by House Bill 2907, 82nd Texas Legislature, Regular Session. Amendments to §22.24(b) clarify that an individual who receives his or her first award through the Tuition Equalization Grant (TEG) Program must, in order to qualify for an award in a subsequent year, be meeting the institution's financial aid academic progress requirements. To receive a TEG award after receiving a continuation award, the student must complete at least 75 percent of the semester credit hours attempted in the most recent academic year. Amendments to §22.24(e) indicate the institution may allow a student to receive a continuation TEG award after completing less than 75 percent of the hours attempted in the previous year as the result of a hardship or for other good cause.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated

as a result of administering the section will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the program.

The amendments affect §§61.221 - 61.230.

§22.24. Provisions that Apply Only to 2006 Revised TEG Program Students.

(a) (No change.)

(b) Continued Eligibility.

(1) Eligibility at End of Initial Year Award. 2006 Revised TEG Program students who complete their first year receiving a Tuition Equalization Grant in compliance with their institutions' financial aid academic progress requirements are eligible to receive renewal awards in the following year if they meet the other requirements listed in subsection (a) of this section.

(2) Satisfactory Academic Progress. 2006 Revised TEG Program students shall, unless granted a hardship postponement in accordance with subsection (e) of this section, as of the end of an [~~the second or subsequent~~] academic year in which the student receives a continuation award:

(A) have completed at least:

(i) for undergraduates, 24 semester credit hours in the most recent academic year, or if at the end of the academic year in which the student receives an initial award and the student entered college at the beginning of the spring term in the year in which he or she received his or her initial award, have completed at least 12 semester credit hours in the most recent academic year; or

(ii) for graduate students, 18 semester credit hours in the most recent academic year;

(B) have an overall cumulative grade-point average of at least 2.5 on a four-point scale or its equivalent for all coursework attempted at a public, private, or independent institution;

(C) have completed at least 75 percent of the semester credit hours attempted in the most recent academic year; and[~~,~~]

(D) meet the requirements listed in subsection (a) of this section.

(c) - (d) (No change.)

(e) Hardship.

(1) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible student to receive a TEG while:

(A) enrolled less than three-quarter of full-time enrollment [~~or~~];

(B) if the student's grade point average, [~~or~~] number of hours completed, or percent of attempted hours completed falls below the satisfactory academic progress requirements as referred to in subsection (b) of this section; or

(C) if the student has taken more time to complete his/her certificate or degree than specified in subsection (d) of this section.

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §22.256

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §22.256, concerning the Texas Educational Opportunity Grant (TEOG) Program.

Specifically, the amendment would bring program rules into compliance with the Texas Education Code, §56.404(e), as amended by House Bill 3577, 82nd Texas Legislature, Regular Session. The amendment to §22.256(a)(5) and (b)(6) indicates that to be eligible for an award through the TEOG program an individual may not be concurrently receiving an award through the Toward EXcellence, Access & Success (TEXAS) Grant Program. Previously, persons eligible for TEXAS Grants could not receive TEOG awards.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendment is in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Weaver has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §56.403, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 56, Subchapter P.

The amendment affects Texas Education Code, Chapter 56, Subchapter P.

§22.256. Eligible Students.

(a) To receive an initial award through the Texas Educational Opportunity Grant Program, a student must:

(1) - (4) (No change.)

(5) not be concurrently receiving [~~eligible for~~] a TEXAS Grant;

(6) - (7) (No change.)

(b) To receive a continuation award through the Texas Educational Opportunity Grant Program, a student must:

(1) - (5) (No change.)

(6) not be concurrently receiving [~~eligible for~~] a TEXAS Grant;

(7) - (8) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §22.530

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §22.530, concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses.

Specifically, the amendment to §22.530(a) reflects the change in statutory citation for the program as a result of the passage of House Bill 1163 by the 82nd Texas Legislature, Regular Session, which renumbered the relevant statute as Texas Education Code, §54.2081.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendment is in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Weaver has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §54.2081, which provides the Coordinating Board with the authority to adopt rules to administer the program.

The amendment affects Texas Education Code, §54.2081.

§22.530. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.2081 [~~§54.208~~], [~~Firefighters and~~] Peace Officers Enrolled in Certain Courses. This subchapter establishes procedures to administer this exemption program.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.2, relating to Proper Diligence and Efficient Practice of Chiropractic, to specify that a licensee's failure to refer a patient to an appropriate health care provider under certain circumstances constitutes a violation of this rule.

The Board proposes to add subparagraph (F) to subsection (a)(1) to specify that a violation of this rule includes a licensee's failure to refer a patient to an appropriate health care provider when the licensee determines or should have determined that the patient requires a diagnosis or treatment that is outside the chiropractic scope of practice. This determination must be made within the chiropractic scope of practice.

Currently, there is no explicit obligation imposed by the Board rules for a licensee to refer a patient to an appropriate health care provider in the above-mentioned situation. The Board believes that creating this explicit obligation is in the best interest of the public and the profession.

At its May 19, 2011, Board meeting, the Board also considered another version of an amendment to this rule. The Board would like the public to consider and comment on this other

version, available here: https://www.tbce.state.tx.us/ProposedRules/FY2011/75-2chart.pdf.

Glenn Parker, Executive Director, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect.

Mr. Parker has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be clarity in the obligation of chiropractors to refer patients to appropriate health care providers when the licensee determines or should have determined within the limitations of chiropractic scope of practice that the patient may suffer from a condition that requires a diagnosis or treatment that is outside the scope of chiropractic practice. This will allow patients to be referred more consistently to appropriate health care providers in these situations, thus increasing the quality of care provided to members of the public.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, TX 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

These amendments are proposed under Texas Occupations Code §201.152 and §201.502. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.502 authorizes the Board to discipline licensees for failing to use proper diligence in the practice of chiropractic or for using gross inefficiency in the practice of chiropractic.

No other statutes, articles, or codes are affected by the proposed amendment.

§75.2. Proper Diligence and Efficient Practice of Chiropractic.

(a) A lack of proper diligence in the practice of chiropractic or the gross inefficient practice of chiropractic when applied to a licensee or chiropractic facility includes but is not limited to the following:

(1) failing to conform to the minimal acceptable standards of practice of chiropractic, regardless of whether or not actual injury to any person was sustained, including, but not limited to:

(A) - (C) (No change.)

(D) causing, permitting, or allowing physical injury to a patient or impairment of the dignity or the safety of a patient [~~or~~];

(E) abandoning patients without reasonable cause and without giving a patient adequate notice and the opportunity to obtain the services of another chiropractor and without providing for the orderly transfer of a patient's records; or[~~.~~]

(F) failing to refer a patient to an appropriate health care provider when the licensee determines or should have determined within the limitations of the chiropractic scope of practice that the patient may suffer from a condition that requires a diagnosis outside the chiropractic scope of practice as authorized by Texas Occupations Code §201.002 or §75.17 of this title (relating to Scope of Practice), or that requires treatment outside the chiropractic scope of practice as authorized by Texas Occupations Code §201.002 or §75.17 of this title.

(2) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2011.

TRD-201102154
Yvette Yarbrough
Board Attorney
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 305-6716

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22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.17, relating to Scope of Practice, to address several matters. First, in recent litigation brought by the Texas Medical Association, a district court judge identified concerns regarding subsection (d)(1)(A) and (B), relating to analysis, diagnosis, and other opinions. Second, the Board has recognized the need to define additional terms in order to improve the clarity of the rule. Third, the Board is clarifying that certain treatments are not within the scope of practice. Finally, the Board is replacing some terms of art with plain language descriptions and making other minor editorial corrections to the rule.

The Board has proposed adding definitions for biomechanics and cosmetic treatments in subsection (b).

Additionally, the Board has proposed changes and additions to subsection (d)(1) to provide clarity on what analysis, diagnosis, and other opinion may be rendered by a chiropractic licensee, in response to a district court judge's ruling in recent litigation involving the Board. The Board has removed the expansive language "including, but not limited to," which failed to make clear the limits of diagnosis under chiropractic scope of practice. The Board has also clarified in subsection (d)(1)(H) that a licensee can render a diagnosis for the purpose of referring a patient to another health care provider for evaluation or treatment of conditions not within the chiropractic scope of practice.

In addition, the Board proposes to remove "incisive or surgical procedures," "the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription," and "the use of x-ray therapy or therapy that exposes the body to radioactive materials" from subsection (d)(2), as these are more appropriate where they are already listed in subsection (e)(3), which deals with treatment procedures and services outside the chiropractic scope of practice. The Board has also proposed adding language in subsection (d)(2) making clear that licensees cannot render a definitive opinion or diagnosis that a person suffers from a disease or condition unrelated to the biomechanics of the spine or musculoskeletal system.

The Board has proposed adding dry needling and video fluoroscopy (with restrictions on use) to subsection (e)(2), treatment procedures and services that are within the chiropractic scope of practice. Also, the Board proposes adding language in subsection (e)(2)(C) to clarify the restrictions on the use of acupuncture with a reference to the requirements of §75.21(b).

Finally, in subsection (e)(3) the Board proposes to add the following treatment procedures and services that are outside the scope of practice for chiropractors in Texas: cosmetic

treatments, oxygen therapy, and treatment of pathology of the internal organs of certain body systems. This addition is in response to the Board's Enforcement Committee noticing an increase in the number of complaints involving licensees advertising and/or performing cosmetic treatments and in response to certain scope of practice questions posed to the Board by licensees.

At its May 19, 2011, Board meeting, the Board also considered other versions of amendments to this rule. The Board would like the public to consider and comment on these other versions, available here: https://www.tbce.state.tx.us/ProposedRules/FY2011/75-17chart.pdf.

Glenn Parker, Executive Director, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect.

Mr. Parker has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be clarity in the scope of practice for chiropractors in Texas.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, TX 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

These amendments are proposed under Texas Occupations Code §201.152 and §201.1525. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 requires that the Board adopt rules clarifying what activities are included within the scope of practice of chiropractic and what activities are outside of that scope.

No other statutes, articles, or codes are affected by the proposed amendment.

§75.17. Scope of Practice.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) (No change.)

(2) Biomechanics--the interaction of components of the human musculoskeletal system (such as the bones, muscles, ligaments, and tendons) with each other and with the peripheral nervous system that allows a body or part of a body to move from one place or position to another or to maintain position.

(3) Cosmetic treatment--a treatment that is primarily intended to address the outward appearance of an individual, such as hair removal, body sculpting, dermatological treatments, laser treatment of toenail fungus, and similar treatments.

(4) [~~(2)~~] CPT Codebook--the American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(5) [~~(3)~~] Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.

(6) [~~(4)~~] Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(7) [~~(5)~~] On-site--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(8) [~~(6)~~] Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(9) [~~(7)~~] Subluxation complex--a neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(c) (No change.)

(d) Analysis, Diagnosis, and Other Opinions

(1) Except as provided by paragraph (2) or other law, in [~~In~~] the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion, made in accordance with appropriate clinical judgment, regarding [~~the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following~~]:

(A) the following characteristics of [~~An analysis, diagnosis or other opinion regarding~~] the biomechanical condition of the spine or musculoskeletal system [~~including, but not limited to, the following~~]:

(i) the health, [~~and~~] integrity, normality, or abnormality of the structures of the spine or musculoskeletal system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health, [~~and~~] integrity, normality, or abnormality of the spine or musculoskeletal system;

(iii) the existence of structural pathology, functional pathology, or other abnormality of the spine or musculoskeletal system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the spine or musculoskeletal system;

(v) the etiology of the [~~said~~] structural pathology, functional pathology, or other abnormality of the spine or musculoskeletal system; and

(vi) the effect of the [~~said~~] structural pathology, functional pathology or other abnormality of the spine or musculoskeletal system on the health of an individual patient or population of patients;

(B) the following characteristics of [~~An analysis, diagnosis or other opinion regarding~~] a subluxation complex of the spine or musculoskeletal system [~~including, but not limited to, the following~~]:

(i) the nature, severity, complicating factors and effects of the [~~said~~] subluxation complex;

(ii) the etiology of the [~~said~~] subluxation complex; and

(iii) the effect of the [~~said~~] subluxation complex on the health of an individual patient or population of patients;

(C) the [An opinion regarding the] treatment procedures that are indicated in the chiropractic [therapeutic] care of a patient or condition;

(D) the [An opinion regarding the] likelihood of recovery of a patient or condition under an indicated course of chiropractic treatment;

(E) the [An opinion regarding the] risks associated with the treatment procedures that are indicated in the chiropractic [therapeutic] care of a patient or condition;

(F) the [An opinion regarding the] risks associated with not receiving the treatment procedures that are indicated in the chiropractic [therapeutic] care of a patient or condition;

(G) the [An opinion regarding the] treatment procedures that are contraindicated in the chiropractic [therapeutic] care of a patient or condition;

(H) whether [An opinion that] a patient should be referred to another health care [or condition is in need of care from a medical or other class of] provider for evaluation or treatment of conditions not within the chiropractic scope of practice, as authorized by Texas Occupations Code §201.002 and this rule;

(I) [An opinion regarding] an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment; and

(J) the risks to [An opinion regarding] the biomechanical condition of [risks to] a patient's spine or musculoskeletal system [patient], or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment.[; and]

[(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.]

(2) Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations that [which] are outside the scope of chiropractic include:

(A) a definitive opinion or diagnosis that a patient suffers from a disease or condition unrelated to the biomechanics of the spine or musculoskeletal system;

[(A) incisive or surgical procedures;]

[(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;]

[(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or]

(B) [(D)] other analysis, diagnosis, and other opinions that are inconsistent with the practice of chiropractic, as authorized by Chapter 201, Occupations Code; or

(C) other [and with the] analysis, diagnosis, and other opinions that are inconsistent with paragraph (1) of [described under] this subsection.

(e) Treatment Procedures and Services

(1) (No change.)

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture, as long as the licensee meets the requirements of §75.21(b) of this title (relating to Acupuncture), and other reflex techniques;

(D) dry needling, as long as the licensee meets the requirements of §75.21(b) of this title to practice acupuncture;

(E) [(D)] exercise therapy;

(F) [(E)] patient education;

(G) [(F)] advice and counsel;

(H) [(G)] diet and weight control;

(I) [(H)] immobilization;

(J) [(I)] splinting;

(K) [(J)] bracing;

(L) [(K)] therapeutic [Therapeutic] lasers (non-invasive, non-incisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(M) [(L)] durable medical goods and devices;

(N) [(M)] homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, neutraceuticals, and glandular extracts;

(O) [(N)] non-prescription drugs;

(P) [(O)] manipulation under anesthesia;

(Q) video fluoroscopy, as long as the licensee has a diplomate in chiropractic radiology from the American Chiropractic Board of Radiology;

(R) [(P)] referral of patients to other doctors and health care providers; and

(S) [(Q)] other treatment procedures and services consistent with the practice of chiropractic.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; [or]

(D) the treatment of pathology of the internal organs of the circulatory system, respiratory system, excretory system, urinary system, endocrine system, digestive system, and reproductive system;

(E) cosmetic treatments;

(F) oxygen therapy, including the use of an oxygen concentrator or hyperbaric chamber;

(G) [(D)] other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Yvette Yarbrough
Board Attorney
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 305-6716

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TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §§601.2 - 601.4, 601.6, 601.9

The Texas Medical Disclosure Panel (panel) proposes amendments to §§601.2 - 601.4 and 601.6 and new §601.9, concerning informed consent.

BACKGROUND AND PURPOSE

These amendments and new section are proposed in accordance with the Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. The sections cover procedures requiring full disclosure of specific risks and hazards in List A, procedures requiring no disclosure of specific risks and hazards in List B, disclosure and consent form for medical and surgical procedures, history, and disclosure and consent form for anesthesia and/or perioperative pain management.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §601.2 amends and adds procedures and risks and hazards for the cardiovascular system, digestive system treatments and procedures, eye treatments and procedures, female genital system treatments and procedures, male genital system, maternity and related cases, musculoskeletal system treatments and procedures, radiology, respiratory system treatments and procedures, urinary system, and pain management procedures.

The proposed amendment to §601.3 amends and adds procedures relating to maternity and related cases, musculoskeletal system, respiratory system, urinary system, psychiatric procedures, radiation therapy, endoscopic surgery, and pain management procedures.

The proposed amendment to §601.4 adds informed consent for anesthesia and/or perioperative pain management (analgesia).

The proposed amendment to §601.6 adds historical information from rules adopted in March 2007.

The proposed new §601.9 adds a form for anesthesia and/or perioperative pain management (analgesia).

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack has also determined that there are no anticipated economic costs to small businesses or micro-businesses that are required to comply with the amendments or new section as proposed because regulated facilities already have an obligation to disclose risks and hazards related to medical care and surgical procedures. The amendments and new section will not add additional costs.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There will be no economic costs to persons required to comply with the sections as proposed, and there will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be the assurance that the panel continues to monitor the risks and hazards related to medical care and surgical procedures that must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and the general form and substance of such disclosure.

REGULATORY ANALYSIS

The panel has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The panel 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Pamela Adams, Program Specialist, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6600, extension 2607, or by email to pamela.adams@dshs.state.tx.us. Comments will be accepted for 60 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

The amendments and new section are authorized under the Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the

form(s) for the treatments and procedures which do require disclosure.

The amendments and new section affect Civil Practice and Remedies Code, Chapter 74.

§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.

(a) (No change.)

(b) Cardiovascular system.

(1) Cardiac.

(A) (No change.)

(B) Non-Surgical--Coronary angioplasty, coronary stent insertion, pacemaker insertion, AICD insertion, and cardioversion.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) [~~(i)~~] Acute myocardial infarction (heart attack).

(iii) [~~(ii)~~] Rupture of myocardium (hole in wall of heart).

(iv) [~~(iii)~~] Life threatening arrhythmias (irregular heart rhythm).

(v) [~~(iv)~~] Need [~~Necessity~~] for emergency open heart surgery.

~~*[(v)* Hemorrhage.]~~

~~*[(vi)* Stroke.]~~

(vi) [~~(vii)~~] Sudden death.

(vii) [~~(viii)~~] Device related delayed onset infection (infection related to the device that happens sometime after surgery).

(C) Diagnostic.

(i) Cardiac catheterization.

(I) All associated risks as listed under paragraph (2)(B) of this subsection. [~~Allergic sensitivity reaction to injected contrast media.~~]

(II) Acute myocardial infarction (heart attack).

(III) Contrast nephropathy (injury to kidney function due to use of contrast material during procedure) [~~Kidney damage from IV contrast medium~~].

(IV) Heart arrhythmias (irregular heart rhythm), possibly life threatening [~~Arrhythmias~~].

(V) Need for emergency open heart surgery [~~Stroke~~].

~~*[(VI)* Injury to vessels that may require immediate surgical intervention.]~~

(ii) - *(iv)* (No change.)

(2) Vascular.

(A) (No change.)

(B) Angiography (inclusive of aortography, arteriography, venography) - Injection of contrast material into blood vessels.

(i) Injury to or occlusion (blocking) of artery which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

~~[(B) Endovascular stenting of any portion of the aorta, iliac or carotid artery.]~~

~~*[(i)* Hemorrhage.]~~

~~*[(ii)* Injury to vessels that may require immediate surgical intervention.]~~

~~*[(iii)* Conversion of procedure to open procedure.]~~

~~*[(iv)* Failure to deliver stent/endoluminal graft.]~~

~~*[(v)* Stent migration.]~~

~~*[(vi)* Paraplegia (for thoracic aorta procedures only).]~~

~~*[(vii)* Vessel occlusion.]~~

~~*[(viii)* Pseudo aneurysm.]~~

~~*[(ix)* Irreversible kidney damage.]~~

~~*[(x)* Impotence (for abdominal aorta and iliac artery procedures only).]~~

~~*[(xi)* Stroke (for carotid artery procedures only).]~~

~~*[(xii)* Seizure (for carotid artery procedures only).]~~

(C) Angioplasty (intravascular dilatation technique).

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

~~[(C) Vascular thrombolysis.]~~

~~*[(i)* Hemorrhage.]~~

~~*[(ii)* Embolus.]~~

~~*[(iii)* Pulmonary complications.]~~

~~*[(iv)* Shock.]~~

(D) Endovascular stenting (placement of permanent tube into blood vessel to open it) of any portion of the aorta, iliac or carotid artery or other (peripheral) arteries or veins.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Change in procedure to open surgical procedure.

(iii) Failure to place stent/endoluminal graft (stent with fabric covering it).

(iv) Stent migration (stent moves from location in which it was placed).

(v) Vessel occlusion (blocking).

(vi) Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures).

(E) Vascular thrombolysis (removal or dissolving of blood clots) - percutaneous (mechanical or chemical).

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(iii) For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue).

(iv) For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening).

(v) Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices).

(vi) Need for emergency surgery.

(F) Angiography with occlusion techniques (including embolization and sclerosis) - therapeutic.

(i) For all embolizations.

(I) Angiography risks (inclusive of aortography, arteriography, venography) - injection of contrast material into blood vessels.

(-a-) Unintended injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(-b-) Hemorrhage (severe bleeding).

(-c-) Damage to parts of the body supplied by the artery with resulting loss of use or amputation (removal of body part).

(-d-) Worsening of the condition for which the procedure is being done.

(-e-) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(-f-) Unintended thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(II) Loss or injury to body parts with potential need for surgery, including death of overlying skin for sclerotherapy/treatment of superficial lesions/vessels and nerve injury with associated pain, numbness or tingling or paralysis (inability to move).

(III) Infection in the form of abscess (infected fluid collection) or septicemia (infection of blood stream).

(IV) Nontarget embolization (blocking of blood vessels other than those intended) which can result in injury to tissues supplied by those vessels).

(ii) For procedures involving the thoracic aorta and/or vessels supplying the brain, spinal cord, head, neck or arms, these risks in addition to those under clause (i) of this subparagraph.

(I) Stroke.

(II) Seizure.

(III) Paralysis (inability to move).

(IV) Inflammation or other injury of nerves.

(V) For studies of the blood vessels of the brain: contrast-related, temporary blindness or memory loss.

(iii) For female pelvic arterial embolizations including uterine fibroid embolization, these risks in addition to those under clause (i) of this subparagraph.

(I) Premature menopause with resulting sterility.

(II) Injury to or infection involving the uterus which might necessitate hysterectomy (removal of the uterus) with resulting sterility.

(III) After fibroid embolization: prolonged vaginal discharge.

(IV) After fibroid embolization: expulsion/delayed expulsion of fibroid tissue possibly requiring a procedure to deliver/remove the tissue.

(iv) For male pelvic arterial embolizations, in addition to the risks under clause (i) of this subparagraph: impotence (difficulty with or inability to obtain penile erection).

(v) For embolizations of pulmonary arteriovenous fistulae/malformations, these risks in addition to those under clause (i) of this subparagraph.

(I) New or worsening pulmonary hypertension (high blood pressure in the lung blood vessels).

(II) Paradoxical embolizations (passage of air or an occluding divide beyond the fistula/malformation and into the arterial circulation) causing blockage of blood flow to tissues supplied by the receiving artery and damage to tissues served (for example the blood vessels supplying the heart (which could cause chest pain and/or heart attack) or brain (which could cause stroke, paralysis (inability to move) or other neurological injury)).

(vi) For varicocele embolization, these risks in addition to those under clause (i) of this subparagraph.

(I) Phlebitis/inflammation of veins draining the testicles leading to decreased size and possibly decreased function or affected testis and sterility (if both sides performed).

(II) Nerve injury (thigh numbness or tingling).

(vii) For ovarian vein embolization/pelvic congestion syndrome embolization: general angiography and embolization risks as listed in clause (i) of this subparagraph.

(viii) For cases utilizing ethanol (alcohol injection, in addition to the risks under clause (i) of this subparagraph: shock or severe lowering of blood pressure).

(ix) For varicose vein treatments (with angiography) see subparagraph (L) of this paragraph.

(G) Mesenteric angiography with infusional therapy (Vasopressin) for gastrointestinal bleeding.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by

blood vessels away from the treated site including heart, brain, bowel, extremities).

(iii) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(H) Inferior vena caval filter insertion and removal.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Injury to the inferior vena cava (main vein in the abdomen).

(iii) Filter migration or fracture (filter could break and/or move from where it was placed).

(iv) Caval thrombosis (clotting of the main vein in the abdomen and episodes of swelling of legs).

(v) Risk of recurrent pulmonary embolus (continued risk of blood clots going to blood vessels in the lungs despite filter).

(vi) Inability to remove filter (for "optional"/retrievable filters).

(I) Pulmonary angiography.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating).

(iii) Cardiac injury/perforation (heart injury).

(iv) Death.

(J) Percutaneous treatment of pseudoaneurysm (percutaneous thrombin injection versus compression).

(i) Thrombosis (clotting) of supplying vessel or branches in its territory.

(ii) Allergic reaction to thrombin (agent used for direct injection).

(K) Vascular access - nontunneled catheters, tunneled catheters, implanted access.

(i) Pneumothorax (collapsed lung).

(ii) Injury to blood vessel.

(iii) Hemothorax/hemomediastinum (bleeding into the chest around the lungs or around the heart).

(iv) Air embolism (passage of air into blood vessel and possibly to the heart and/or blood vessels entering the lungs).

(v) Vessel thrombosis (clotting of blood vessel).

(L) Varicose vein treatment (percutaneous via laser, RFA, chemical or other method) without angiography.

(i) Burns.

(ii) Deep vein thrombosis (blood clots in deep veins).

(iii) Hyperpigmentation (darkening of skin).

(iv) Skin wound (ulcer).

(v) Telangiectatic matting (appearance of tiny blood vessels in treated area).

(vi) Paresthesia and dysesthesia (numbness or tingling in the area or limb treated).

(vii) Injury to blood vessel requiring additional procedure to treat.

(c) Digestive system treatments and procedures.

(1) - (5) (No change.)

(6) Hepatobiliary drainage/intervention including percutaneous transhepatic cholangiography, percutaneous biliary drainage, percutaneous cholecystostomy, biliary stent placement (temporary or permanent), biliary stone removal/therapy.

(A) Leakage of bile at the skin site or into the abdomen with possible peritonitis (inflammation of the abdominal lining and pain or if severe can be life threatening).

(B) Pancreatitis (inflammation of the pancreas).

(C) Hemobilia (bleeding into the bile ducts).

(D) Cholangitis, cholecystitis, sepsis (inflammation/infection of the bile ducts, gallbladder or blood).

(E) Pneumothorax (collapsed lung) or other pleural complications (complication involving chest cavity).

(7) Gastrointestinal tract stenting.

(A) Stent migration (stent moves from location in which it was placed).

(B) Esophageal/bowel perforation (creation of a hole or tear in the tube from the throat to the stomach or in the intestines).

(C) Tumor ingrowth or other obstruction of stent.

(D) For stent placement in the esophagus (tube from the throat to the stomach).

(i) Tracheal compression (narrowing of windpipe) with resulting or worsening of shortness of breath.

(ii) Reflux (stomach contents passing up into esophagus or higher).

(iii) Aspiration pneumonia (pneumonia from fluid getting in lungs) (if stent in lower part of the esophagus).

(iv) Foreign body sensation (feeling like there is something in throat) (for stent placement in the upper esophagus).

(d) - (e) (No change.)

(f) Eye treatments and procedures.

(1) Eye muscle surgery.

(A) - (B) (No change.)

(C) Partial or total blindness [~~loss of vision~~].

(2) Surgery for cataract with or without implantation of intraocular lens.

(A) - (C) (No change.)

(D) Partial or total blindness [~~loss of vision~~].

(3) Retinal or vitreous surgery.

(A) - (B) (No change.)

(C) Partial or total blindness [~~loss of vision~~].

(4) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma.

(A) (No change.)

(B) Creation of additional problems.

(i) (No change.)

(ii) Nerve damage with loss of use and/or feeling.

(iii) (No change.)

(iv) Impairment of regional organs (inability or decreased ability of regional organs to work), such as eye or lip function.

(C) (No change.)

(5) Photocoagulation and/or cryotherapy.

(A) - (B) (No change.)

(C) Partial or total blindness [~~loss of vision~~].

(6) Corneal surgery, such as corneal transplant, refractive surgery and pterygium.

(A) (No change.)

(B) Pain [~~Possible pain~~].

(C) (No change.)

(D) Partial or total blindness [~~loss of vision~~].

(7) Glaucoma surgery by any method.

(A) - (C) (No change.)

(D) Partial or total blindness [~~loss of vision~~].

(8) (No change.)

(9) Surgery for penetrating ocular injury, including intraocular foreign body.

(A) Complications requiring additional treatment and/or surgery[~~, including removal of the eye~~].

(B) Possible removal of eye.

~~[(B) Chronic pain.]~~

(C) Pain.

(D) [~~(C)~~] Partial or total blindness [~~loss of vision~~].

(g) Female genital system treatments and procedures.

(1) - (14) (No change.)

(15) Selective salpingography and Fallopian tube recanalization.

(A) Perforation (hole) created in the uterus or Fallopian tube.

(B) Ectopic pregnancy (pregnancy outside of the uterus).

(C) Pelvic infection.

(16) Fallopian tube occlusion (for sterilization).

(A) Risks listed in selective salpingography and Fallopian tube recanalization.

(B) Failure to provide sterilization.

(C) Coil expulsion (coil falls out of Fallopian tube).

(h) - (i) (No change.)

(j) Male genital system.

(1) (No change.)

(2) Orchiectomy (removal of the testis(es)).

(A) - (B) (No change.)

(C) Permanent sterility (inability to father children) if both testes are removed.

(3) Vasectomy.

(A) (No change.)

(B) Failure to produce permanent sterility (inability to father children).

(k) Maternity and related cases.

(1) Delivery (vaginal).

(A) Injury to bladder and/or rectum, including a fistula (hole) [~~hole (fistula)~~] between bladder and vagina and/or rectum and vagina.

(B) Hemorrhage (severe bleeding) possibly requiring blood administration and/or hysterectomy (removal of uterus) and/or artery ligation (tying off) to control.

(C) Sterility (inability to get pregnant).

(D) (No change.)

(2) Delivery (cesarean section).

(A) (No change.)

(B) Sterility (inability to get pregnant).

(C) Injury to ureter (tube between kidney and bladder) [~~tube (ureter) between kidney and bladder~~].

(D) (No change.)

(E) Uterine disease or injury requiring hysterectomy (removal of uterus).

(3) Cerclage.

(A) Premature labor.

(B) Injury to bowel and/or bladder.

(l) Musculoskeletal system treatments and procedures.

(1) Arthroplasty of any [~~all~~] joints with mechanical device.

(A) Impaired function such as shortening or deformity [~~of an arm or leg, limp or foot drop~~].

(B) - (C) (No change.)

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs [~~Fat escaping from bone with possible damage to a vital organ~~].

(E) - (G) (No change.)

(H) Various functional or cosmetic growth deformities requiring additional surgery.

(2) Arthroscopy of any joint [~~Mechanical internal prosthetic device~~].

~~[(A) Impaired function such as shortening or deformity of an arm or leg, limp or foot drop.]~~

(A) [~~(B)~~] Blood vessel or nerve injury.

(B) Continued pain.

(C) Stiffness of joint.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

[(C) Pain or discomfort.]

[(D) Fat escaping from bone with possible damage to a vital organ.]

[(E) Failure of bone to heal.]

(E) [(F)] Joint [Bone] infection.

(F) Various functional or cosmetic growth deformities requiring additional surgery.

[(G) Removal or replacement of any implanted device or material.]

(3) Open reduction with internal fixation.

(A) Impaired function such as shortening or deformity [of an arm or leg, limp or foot drop].

(B) - (C) (No change.)

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs. [Fat escaping from bone with possible damage to a vital organ.]

(E) - (G) (No change.)

(H) Problems with appearance, use, or growth requiring additional surgery.

(4) Osteotomy.

(A) Impaired function such as shortening or deformity [of an arm or leg, limp or foot drop].

(B) - (C) (No change.)

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs. [Fat escaping from bone with possible damage to a vital organ.]

(E) - (G) (No change.)

(5) Ligamentous reconstruction of joints.

(A) (No change.)

(B) Continued instability [loosening] of the joint.

(C) - (D) (No change.)

(E) Stiffness of joint [Increased stiffening].

(F) (No change.)

(G) Impaired function and/or scarring [Cosmetic and/or functional deformity].

(H) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(6) All other orthopedic procedures on children age 12 or under. Problems with appearance, use, or growth requiring additional surgery. [Children's orthopedics (bone, joint, ligament or muscle).]

[(A) Growth deformity.]

[(B) Additional surgery.]

(7) Vertebroplasty/kyphoplasty.

(A) Nerve/spinal cord injury.

(B) Need for emergency surgery.

(C) Embolization of cement (cement used passes into blood vessels and possibly all the way to the blood vessels in the lungs).

(D) Fracture of adjacent vertebrae (bones in spine).

(E) Leak of cerebrospinal fluid (fluid around the brain and spinal cord).

(F) Pneumothorax (collapsed lung).

(G) Worsening of pain.

(H) Rib or vertebral (spine) fracture.

(m) (No change.)

(n) Radiology.

(1) Splenoportography (needle injection of contrast media into the spleen).

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Injury to the spleen requiring blood transfusion and/or removal of the spleen.

(2) Chemoembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Risks of the chemotherapeutic agent(s) utilized.

(E) Cholecystitis (inflammation of the gallbladder) (for liver or other upper GI embolizations).

(F) Abscess (infected fluid collection) in the liver or other embolized organ requiring further intervention.

(G) Biloma (collection of bile in or near the liver requiring drainage) (for liver embolizations).

(3) Radioembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Radiation complications: pneumonitis (inflammation of lung) which is potentially fatal; inflammation of stomach, intestines, gallbladder, pancreas; stomach or intestinal ulcer; scarring of liver.

(4) Thermal and other ablative techniques for treatment of tumors (for curative intent or palliation) including radiofrequency ablation, cryoablation, and high intensity focused ultrasound (HIFU), irreversible electroporation.

(A) Injury to tumor-containing organ or adjacent organs/structures.

(B) Injury to nearby nerves potentially resulting in temporary or chronic (continuing) pain and/or loss of use and/or feeling.

(C) Failure to completely treat tumor.

(5) TIPS (Transjugular Intrahepatic Portosystemic Shunt) and its variants such as DIPS (Direct Intrahepatic Portocaval Shunt).

(A) All associated risks as listed under subsection (b)(2)(B) - (D) of this section.

(B) Hepatic encephalopathy (confusion/decreased ability to think).

(C) Liver failure or injury.

(D) Gallbladder injury.

(E) Hemorrhage (severe bleeding).

(F) Recurrent ascites (fluid building up in abdomen) and/or bleeding.

(G) Kidney failure.

(H) Heart failure.

(I) Death.

(6) Myelography.

(A) Chronic (continuing) pain.

(B) Nerve injury with loss of use and/or feeling.

(C) Transient (temporary) headache, nausea, and/or vomiting.

(D) Numbness.

(E) Seizure.

(7) Percutaneous abscess/fluid collection drainage (percutaneous abscess/seroma/lymphocele drainage and/or sclerosis (inclusive of percutaneous, transgluteal, transrectal and transvaginal routes)).

(A) Sepsis (infection in the blood stream), possibly resulting in shock (severe decrease in blood pressure).

(B) Injury to nearby organs.

(C) Hemorrhage (severe bleeding).

(D) Infection of collection which was not previously infected, or additional infection of abscess.

(8) Procedures utilizing prolonged fluoroscopy.

(A) Skin injury (such as epilation (hair loss), burns, or ulcers).

(B) Cataracts (for procedures in the region of the head).

~~[(n) Radiology.]~~

~~[(1) Angiography, aortography, arteriography (arterial injection of contrast media-diagnostic).]~~

~~[(A) Injury to artery.]~~

~~[(B) Damage to parts of the body supplied by the artery with resulting loss of function or amputation.]~~

~~[(C) Swelling, pain, tenderness or bleeding at the site of the blood vessel perforation.]~~

~~[(D) Aggravation of the condition that necessitated the procedure.]~~

~~[(E) Allergic sensitivity reaction to injected contrast media.]~~

~~[(2) Myelography.]~~

~~[(A) Chronic pain.]~~

~~[(B) Transient headache, nausea, vomiting.]~~

~~[(C) Numbness.]~~

~~[(D) Impaired muscle function.]~~

~~[(3) Angiography with occlusion techniques-therapeutic.]~~

~~[(A) Injury to artery.]~~

~~[(B) Loss or injury to body parts.]~~

~~[(C) Swelling, pain, tenderness or bleeding at the site of the blood vessel perforation.]~~

~~[(D) Aggravation of the condition that necessitated the procedure.]~~

~~[(E) Allergic sensitivity reaction to injected contrast media.]~~

~~[(4) Angioplasty (intravascular dilatation technique).]~~

~~[(A) Swelling, pain tenderness, or bleeding at the site of vessel puncture.]~~

~~[(B) Damage to parts of the body supplied by the artery with resulting loss of function or amputation.]~~

~~[(C) Injury to the vessel that may require immediate surgical intervention.]~~

~~[(D) Recurrence or continuation of the original condition.]~~

~~[(E) Allergic sensitivity reaction to injected contrast media.]~~

~~[(5) Splenoportography (needle injection of contrast media into the spleen).]~~

~~[(A) Injury to the spleen requiring blood transfusion and/or removal of the spleen.]~~

~~[(B) No other risks are assigned at this time.]~~

(o) Respiratory system treatments and procedures.

(1) Biopsy and/or excision [~~Excision~~] of lesion of larynx, vocal cords, trachea. [~~No risks or hazards assigned at this time.~~]

(A) Loss or change of voice.

(B) Swallowing or breathing difficulties.

(C) Perforation (hole) or fistula (connection) in esophagus (tube from throat to stomach).

(2) Rhinoplasty or nasal reconstruction with or without septoplasty.

(A) (No change.)

(B) Creation of new problems, such as [~~septal~~] perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.

(3) Submucous resection of nasal septum or nasal septoplasty.

(A) (No change.)

(B) Perforation of nasal septum (hole in wall between the right and left halves of the nose) with dryness and crusting.

(C) (No change.)

(4) Lung biopsy.

(A) Pneumothorax (collapsed lung).

(B) Hemothorax (blood in the chest around the lung).

(5) Segmental resection of lung.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Insertion of tube into space between lung and chest wall or repeat surgery.

(D) Need for additional surgery.

(6) Thoracotomy.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Pneumothorax (collapsed lung).

(D) Need for additional surgery.

(7) Thoracotomy with drainage.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Pneumothorax (collapsed lung).

(D) Need for additional surgery.

(8) Open tracheostomy.

(A) Loss of voice.

(B) Breathing difficulties.

(C) Pneumothorax (collapsed lung).

(D) Hemothorax (blood in the chest around the lung).

(E) Scarring in trachea (windpipe).

(F) Fistula (connection) between trachea into esophagus (tube from throat to stomach) or great vessels.

(9) Respiratory tract/tracheobronchial balloon dilatation/stenting.

(A) Stent migration (stent moves from position in which it was placed).

(B) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(C) Mucosal injury (injury to lining of airways).

(p) Urinary system.

(1) Partial nephrectomy (removal of part of the kidney).

(A) (No change.)

(B) Blockage of urine [~~Obstruction of urinary flow~~].

(C) - (D) (No change.)

(E) Damage to [~~adjacent~~] organs next to kidney.

(2) Radical nephrectomy (removal of kidney and adrenal gland for cancer).

(A) Loss of the adrenal gland (gland on top of kidney that makes certain hormones/chemicals the body needs).

(B) (No change.)

(C) Damage to [~~adjacent~~] organs next to kidney.

(3) Nephrectomy (removal of kidney).

(A) (No change.)

(B) Damage to [~~adjacent~~] organs next to kidney.

(C) (No change.)

(4) Nephrolithotomy and pyelolithotomy (removal of kidney stone(s)).

(A) (No change.)

(B) Blockage of urine [~~Obstruction of urinary flow~~].

(C) - (D) (No change.)

(E) Damage to [~~adjacent~~] organs next to kidney.

(5) Pyeloureteroplasty (pyeloplasty or reconstruction of the kidney drainage system).

(A) Blockage of urine [~~Obstruction of urinary flow~~].

(B) - (C) (No change.)

(D) Damage to [~~adjacent~~] organs next to kidney.

(6) Exploration of kidney or perinephric mass.

(A) - (C) (No change.)

(D) Damage to [~~adjacent~~] organs next to kidney.

(7) Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).

(A) - (B) (No change.)

(C) Blockage of urine [~~Obstruction of urine flow~~].

(D) Damage to [~~other adjacent~~] organs next to ureter.

(E) (No change.)

(8) Ureterolithotomy (surgical removal of stone(s) from ureter (tube between kidney and bladder)).

(A) - (B) (No change.)

(C) Blockage of urine [~~Obstruction of urine flow~~].

(D) Damage to [~~other adjacent~~] organs next to ureter.

(E) (No change.)

(9) Ureterectomy (partial/complete removal of ureter (tube between kidney and bladder)).

(A) - (B) (No change.)

(C) Blockage of urine [~~Obstruction of urine flow~~].

(D) Damage to [~~other adjacent~~] organs next to ureter.

(10) Ureterolysis (partial/complete removal of ureter (tube between kidney and bladder from adjacent tissue)).

(A) (No change.)

(B) Blockage of urine [~~Obstruction to urine flow~~].

(C) Damage to [~~other adjacent~~] organs next to ureter.

(D) (No change.)

(11) Ureteral reimplantation (reinserting ureter (tube between kidney and bladder) into the bladder).

(A) (No change.)

(B) Blockage of urine [~~Obstruction to urine flow~~].

(C) - (D) (No change.)

(E) Damage to [~~other adjacent~~] organs next to ureter.

(12) Prostatectomy (partial or total removal of prostate).

(A) (No change.)

(B) Blockage of urine [~~Obstruction to urine flow~~].

(C) Incontinence (difficulty with [~~urinary~~] control of urine flow).

(D) - (E) (No change.)

(13) Total cystectomy (removal of [~~urinary~~] bladder).

(A) (No change.)

(B) Damage to [~~other adjacent~~] organs next to bladder.

(C) (No change.)

(14) Radical cystectomy.

(A) Probable loss of penile erection and ejaculation in the male.

(B) Damage to organs next to bladder.

(C) This procedure will require an alternate method of urinary drainage.

(D) Chronic (continuing) swelling of thighs, legs and feet.

(E) Recurrence or spread of cancer if present.

(15) [~~(14)~~] Partial cystectomy (partial removal of [~~urinary~~] bladder).

(A) Leakage or urine at surgical site.

(B) Incontinence (difficulty with [~~urinary~~] control of urine flow).

(C) Backward flow of urine from bladder into ureter (tube between kidney and bladder).

(D) Blockage of urine [~~Obstruction of urine flow~~].

(E) Damage to [~~other adjacent~~] organs next to bladder.

(16) [~~(15)~~] Urinary diversion (ileal conduit, colon conduit).

(A) Blood chemistry abnormalities requiring medication.

(B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).

[~~(C) Routine lifelong medical evaluation.~~]

(C) [~~(D)~~] Leakage of urine at surgical site.

(D) [~~(E)~~] This procedure will require an alternate method of urinary drainage. [~~Requires wearing a bag for urine collection.~~]

(17) [~~(16)~~] Ureterosigmoidostomy (placement of kidney drainage tubes into the large bowel (intestine)).

(A) Blood chemistry abnormalities requiring medication.

(B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).

[~~(C) Routine lifelong medical evaluation.~~]

(C) [~~(D)~~] Leakage of urine at surgical site.

(D) [~~(E)~~] Difficulty in holding urine in the rectum.

(18) [~~(17)~~] Urethroplasty (construction/reconstruction of drainage tube from bladder).

(A) Leakage of urine at surgical site.

(B) Stricture formation (narrowing of urethra (tube from bladder to outside)).

(C) Need for additional surgery [~~Additional operation(s)~~].

(19) Percutaneous nephrostomy/stenting/stone removal.

(A) Pneumothorax or other pleural complications (collapsed lung or filling of the chest cavity on the same side with fluid).

(B) Septic shock/bacteremia (infection of the blood stream with possible shock/severe lowering of blood pressure) when pyonephrosis (infected urine in the kidney) present.

(C) Bowel (intestinal) injury.

(D) Blood vessel injury with or without significant bleeding.

(20) Dialysis (technique to replace functions of kidney and clean blood of toxins).

(A) Hemodialysis.

(i) Hypotension (low blood pressure).

(ii) Hypertension (high blood pressure).

(iii) Air embolism (air bubble in blood vessel) resulting in possible death or paralysis.

(iv) Cardiac arrhythmias (irregular heart rhythms).

(v) Infections of blood stream, access site, or blood borne (for example: Hepatitis B, C, or HIV).

(vi) Hemorrhage (severe bleeding as a result of clotting problems or due to disconnection of the bloodline).

(vii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(viii) Allergic reactions.

(ix) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(x) Pyrogenic reactions (fever).

(xi) Hemolysis (rupture of red blood cells).

(xii) Graft/fistula damage including bleeding, aneurysm, formation (ballooning of vessel), clotting (closure) of graft/fistula.

(B) Peritoneal dialysis.

(i) Infections, including peritonitis (inflammation or irritation of the tissue lining the inside wall of abdomen and covering organs), catheter infection and catheter exit site infection.

(ii) Development of hernias of umbilicus (weakening of abdominal wall or muscle).

(iii) Hypertension (high blood pressure).

(iv) Hypotenstion (low blood pressure).

(v) Hydrothorax (fluid in chest cavity).

(vi) Arrhythmia (irregular heart rhythm).

(vii) Perforation of the bowel.

(viii) Sclerosis or scarring of the peritoneum.

(ix) Weight gain leading to obesity.

(x) Abdominal discomfort/distension.

(xi) Heartburn or reflux.

(xii) Increase in need for anti-diabetic medication.

(xiii) Muscle weakness.

(xiv) Dehydration (extreme loss of body fluid).

(xv) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(xvi) Allergic reactions.

(xvii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(q) - (s) (No change.)

(t) Pain management procedures.

(1) Neuroaxial procedures (injections into or around spine).

(A) Failure to reduce pain or worsening of pain.

(B) Nerve damage including paralysis (inability to move).

(C) Epidural hematoma (bleeding in or around spinal canal).

(D) Infection.

(E) Seizure.

(F) Persistent leak of spinal fluid which may require surgery.

(G) Breathing and/or heart problems including cardiac arrest (heart stops beating).

(2) Peripheral and visceral nerve blocks and/or ablations.

(A) Failure to reduce pain or worsening of pain.

(B) Bleeding.

(C) Nerve damage including paralysis (inability to move).

(D) Infection.

(E) Damage to nearby organ or structure.

(F) Seizure.

(3) Implantation of pain control devices.

(A) Failure to reduce pain or worsening of pain.

(B) Nerve damage including paralysis (inability to move).

(C) Epidural hematoma (bleeding in or around spinal canal).

(D) Infection.

(E) Persistent leak of spinal fluid which may require surgery.

§601.3. Procedures Requiring No Disclosure of Specific Risks and Hazards--List B.

(a) - (j) (No change.)

(k) Maternity and related cases--Intrauterine Devices (IUD). [~~No procedures assigned at this time.~~]

(l) Musculoskeletal system.

(1) Arthrotomy, arthrocentesis, or joint injection.

(2) (No change.)

(3) Wound debridement [~~Excision of lesion, muscle, tendon, fascia, bone~~].

[~~(4) Excision of semilunar cartilage of knee joint.~~]

(4) [~~(5)~~] Needle biopsy or aspiration, bone marrow.

(5) [~~(6)~~] Partial excision of bone.

(6) [~~(7)~~] Removal of external [~~internal~~] fixation device.

(7) [~~(8)~~] Traction or fixation without manipulation for reduction.

(m) - (n) (No change.)

(o) Respiratory system.

(1) (No change.)

[~~(2) Biopsy of lesion of larynx, trachea, bronchus, esophagus.~~]

[~~(3) Lung biopsy.~~]

[~~(4) Needle biopsy, lung.~~]

[~~(5) Segmental resection of lung.~~]

[~~(6) Thoracotomy.~~]

[~~(7) Thoracotomy with drainage.~~]

(2) [~~(8)~~] Reduction of nasal fracture.

(3) [~~(9)~~] Percutaneous tracheostomy [~~Tracheostomy~~].

(p) Urinary system.

(1) - (8) (No change.)

(9) Lithotripsy (sound wave removal of stones from kidney and ureter.

(q) Psychiatric procedures. No procedures assigned at this time.

(r) Radiation therapy. No procedures assigned at this time.

(s) Endoscopic surgery. No procedures assigned at this time.

(t) Pain management procedures.

(1) Trigger point injection (injection into tendon or muscle).

(2) Scar injection.

§601.4. Disclosure and Consent Form.

(a) (No change.)

(b) Informed consent for:

(1) (No change.)

(2) electroconvulsive therapy shall be provided in accordance with §601.7 of this title (relating to Informed Consent for Electroconvulsive Therapy); [~~and~~]

(3) hysterectomy procedures shall be provided in accordance with §601.8 of this title (relating to Disclosure and Consent Form for Hysterectomy); and[,]

(4) anesthesia and/or perioperative pain management (analgesia) procedures shall be in accordance with §601.9 of this title (relating to Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia)).

§601.6. History.

(a) - (l) (No change.)

(m) Effective March 4, 2007, §601.2 of this title (relating to Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A) was amended to include procedures and risks and hazards for anesthesia, the digestive system treatments and procedures, the endocrine system treatments and procedures, and the hematic and lymphatic system. Section 601.3 of this title (relating to Procedures Requiring No Disclosure of Specific Risks and Hazards--List B) was amended to add and rename procedures relating to the digestive system.

§601.9. Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia).

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in anesthesia and/or perioperative pain management (analgesia).
Figure: 25 TAC §601.9

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2011.

TRD-201102152
Noah Appel, M.D.
Chairman
Texas Medical Disclosure Panel
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§115.110, 115.112 - 115.114, and 115.119; the repeal of §§115.115 - 115.117; and new §§115.111 and 115.115 - 115.118.

If adopted, the amended, repealed, and new sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

During the second Texas Air Quality Study (May 2005), remote sensing work indicated that there were significant unreported and underreported emissions of volatile organic compounds (VOC) from storage tanks in the Houston-Galveston-Brazoria (HGB) area, including emissions from tanks storing crude oil and condensate prior to custody transfer and floating roof or cover landing loss emissions. The commission estimated that just the unreported and underreported VOC emissions from floating roof or cover landing loss emissions in the HGB area were approximately 7,250 tons in 2003. On May 23, 2007, the commission adopted revisions to the VOC storage rules in Chapter 115, Subchapter B, Division 1, specific to the HGB area to reduce these unreported and underreported VOC emissions from storage tanks (Rule Project Number 2006-038-115-EN).

Recent emissions inventory improvement projects, such as the Barnett Shale special inventory, have indicated that similar issues with VOC emissions from storage tanks exist in other areas subject to the VOC storage rules in Chapter 115, Subchapter B, Division 1, and that these VOC emissions are substantial. The commission's 2008 Area Source Emissions Inventory indicates that VOC emissions from oil and natural gas condensate storage at production sites in the 2008 area source emissions inventory for the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area were approximately 31.6 tons per day (tpd). This is approximately 10% of the total 2008 VOC area source emissions inventory and approximately 39% of the total VOC emissions from the oil and natural gas production sector in the area source emissions inventory. The primary purpose of this proposed rulemaking is to apply a more stringent version of VOC storage tank control requirements adopted for the HGB area in 2007 in the DFW area to reduce VOC emissions from storage tanks.

The Federal Clean Air Act (FCAA) requires states to submit plans that demonstrate progress toward reducing emissions for areas that are not attaining the National Ambient Air Quality Standards (NAAQS). On April 30, 2004, the DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) was designated a moderate nonattainment area for the 1997 eight-hour ozone NAAQS, with a June 15, 2010, attainment deadline. Attainment of the 1997 eight-hour ozone NAAQS (expressed as 0.08 parts per million) is achieved when an area's design value from the previous ozone season does not exceed 84 parts per billion (ppb), which is mathematically equivalent to 0.084 parts per million. Because the DFW area's 2009 design value of 86 ppb exceeded this standard, the EPA reclassified the DFW area as a serious nonattainment area under the 1997 eight-hour ozone NAAQS effective January 19, 2011 (75 FR 79302). As a result of this reclassification, FCCA, §182(c)(2)(b) requires the commission to submit a Reasonable Further Progress (RFP) SIP revision to demonstrate that the DFW area is continuing to reduce emissions of ozone precursors consistent with serious nonattainment area requirements. The commission estimates that additional reductions of VOC emissions will be necessary for the DFW area to meet the RFP requirements of the FCAA. An additional purpose of this proposed rulemaking is to make VOC reductions in the DFW area to assist in meeting this RFP requirement.

Additionally, FCAA, §172(c)(1) requires that SIP revisions incorporate all reasonably available control measures, including all reasonably available control technology (RACT), for sources of relevant pollutants. As a result of the reclassification of the DFW area to serious nonattainment for the 1997 eight-hour ozone NAAQS, the commission must perform an updated RACT analysis for the DFW area. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). FCAA, §182(b)(2) also requires that SIP revisions must include provisions to implement RACT for each category of VOC sources covered by a Control Technique Guideline (CTG) document issued by the EPA. Petroleum liquid storage is a VOC source category covered under FCAA, §182(b)(2, and the EPA has issued three CTG documents for petroleum liquid storage: EPA-450/2-77-036, EPA-450/2-78-047, and EPA-453/R-94-001 issued by the EPA in 1977, 1978, and 1994, respectively. The VOC storage rules in Chapter 115, Subchapter B, Division 1, are the commission's rules for implementing RACT for this category. FCAA, §182(b)(2) also requires that SIP revisions include provisions to implement RACT for major stationary sources of VOC emissions in the area that are not addressed by a CTG document issued by the EPA.

The control requirements for VOC storage tanks currently in effect for the HGB area under Chapter 115, Subchapter B, Division 1, have been demonstrated in the HGB area to be reasonably available, technologically feasible, and, as discussed in the Fiscal Note portion of this preamble, economically feasible.

The commission is required, at a minimum, to implement RACT for major stationary sources of VOC emissions in the DFW area that are not addressed by a CTG document issued by the EPA. The major source threshold in the DFW area is the potential to emit 50 tpy of VOC emissions.

The commission is proposing to implement the storage tank control requirements for crude oil and condensate tanks prior to custody transfer in the DFW area similar to the rules adopted for the HGB area in 2007. However, additional VOC emission reductions are anticipated to be necessary to meet the RFP requirements in the DFW area. Therefore, the commission is proposing this rulemaking with a 95% VOC control requirement on storage tanks in the DFW area over 25 tpy of VOC emissions to generate additional VOC reductions to assist in meeting the RFP requirement. The proposed 95% VOC control level is more stringent than the 90% level currently required in the HGB area and this additional stringency is being proposed for RFP purposes. The proposed 25-ton applicability is less than the major source threshold in the DFW area and these sources are included in the proposed rulemaking for RFP purposes. While the proposed rulemaking is more stringent than the current rules in the HGB area for RFP purposes, the proposed rulemaking also fulfills RACT for any major sources with crude oil and condensate tanks prior to custody transfer.

This expansion of control requirements is strengthened by a study (TCEQ Project 2010-43) the commission conducted in 2010 to evaluate emission control devices installed on crude oil and condensate tanks. The study found that all sources in the HGB area that are required to install controls capable of maintaining at least 90% VOC control efficiency on their tank batteries chose a vapor recovery unit, a flare, or both types of control devices. The choice to install these technologies when controls are required in the HGB area demonstrates their technological feasibility. The EPA allows flares designed and operated in compliance with 40 Code of Federal Regulations (CFR) §60.18 to claim 98% VOC control efficiency. Vapor recovery units designed and operated in accordance with the proposed requirements in this rulemaking are allowed to claim 95% VOC control efficiency in the TCEQ's oil and gas standard permit.

The commission estimates that the proposed rules will result in a reduction of 14.37 tpd of VOC in the DFW area in 2012 from crude oil and condensate storage tanks, based on 2008 crude oil and condensate production forecasted to increase in 2012, by requiring a 95% reduction from sources emitting over 25 tons of VOC per year. Additional VOC emission reductions that will be achieved from other requirements in the proposed rules, such as restrictions on floating roof or cover landings and more effective floating roof and cover fittings, have not been estimated. These reductions are needed during 2012. The commission is proposing a December 1, 2012, compliance date for new or expanded requirements for the DFW area to balance the need for VOC reductions with time necessary for affected sources to install controls. For the other areas subject to clarified requirements, the commission is proposing December 1, 2012, as the compliance date for sources in the Beaumont-Port Arthur 1997 eight-hour ozone maintenance area (BPA), the HGB area and Aransas, Bexar, Calhoun, El Paso, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties to comply with the clarified requirements. If the rulemaking is adopted, the commission anticipates that affected sources in these counties will have sufficient time to conduct any testing and make other changes, if necessary.

The proposed rulemaking would also address concerns raised by stakeholders by revising Chapter 115, Subchapter B, Division 1 to clarify the rule requirements for sources in all affected areas, including the HGB area, provide additional flexibility for affected owners or operators by allowing for the use of alternative control options, and facilitate rule enforcement.

General Clarification of Rule Requirements

The proposed rulemaking would reformat the existing rules in Chapter 115, Subchapter B, Division 1, to simplify and clarify the requirements. Some of these formatting changes include: clarifying rule applicability and definitions in §115.110; repealing §115.117 and proposing new §115.111 to move exemptions to the beginning of the division; repealing §115.115 and §115.116 and proposing new §115.115 and §115.118 to split monitoring and recordkeeping into separate sections; proposing new §115.116 to contain new clarifying requirements for testing; and proposing new §115.117 to move approved test methods after all test-related requirements. In addition, the proposed rulemaking would make other non-substantive revisions to update the rule language to current *Texas Register* style and format requirements. Additional details regarding the general reformatting and clarification changes are discussed in the Section by Section Discussion portion of this preamble.

Clarification of Control Options

The commission is proposing to require an initial control device efficiency demonstration for devices required to maintain 90% or 95% control efficiency; however, the proposed demonstration is intended to be a clarification of the existing requirements and is not intended to impose any additional requirements on affected sources. The commission is also proposing to require a control device to be retested within 60 days after any modification that

could reasonably be expected to affect the efficiency of a control device. The terms *vapor recovery system* and *control device* are used synonymously in portions of the existing rules. The proposed rulemaking clarifies requirements for devices that recover and devices that destroy VOC by defining *vapor recovery unit* and using this term in rule language applicable after the compliance date. Vapor recovery units are commonly used on crude oil and condensate storage tanks and this term is the industry standard phrase to describe this equipment. The proposed rulemaking specifies design, operational parameters, and monitoring requirements for vapor recovery units. Since flares are commonly used as control devices on affected sources, the proposed rulemaking also specifies design, verification, and operational requirements for flares.

The proposed rule revisions allow the use of flares that are designed and operated in accordance with 40 CFR §60.18(b) - (f) (as amended through December 22, 2008, (73 FR 78209)). In addition to complying with the operating parameters in 40 CFR §60.18, the commission is proposing that flares must be lit at all times when VOC vapors are routed to the device. Although 40 CFR §60.18 requires the pilot to be lit at all times and requires monitoring of the flare pilot flame, the commission is also specifically requiring the flare flame to be lit to clarify that the intent of the control requirement is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the device. The commission is requesting comments on other options to ensure the flare is lit at all times when VOC vapors are routed to the device.

An additional clarification is proposed in the requirements for emission reduction during the period when floating roofs and covers are landed. One proposed option is to send vapors to a control device from the time the storage tank has been emptied until it is within 10% of being refloated. This provides the time necessary for the feasible connection of control equipment.

Section by Section Discussion

In addition to the proposed amendments, the commission proposes grammatical, stylistic, and various other non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the *Texas Legislative Council Drafting Manual,* February 2011. Such changes include appropriate and consistent use of acronyms, punctuation, section references, and certain terminology like *that, which, shall* and *must.* References to the *Dallas/Fort Worth area,* the *Houston/Galveston area,* and the *Beaumont/Port Arthur area* have been updated to the *Dallas-Fort Worth area,* the *Houston-Galveston-Brazoria* area, and the *Beaumont-Port Arthur area,* respectively, to be consistent with current terminology for the region. Throughout this division the commission proposes to specify that *true vapor pressure* has the meaning defined in 30 TAC §101.1, the absolute aggregate partial vapor pressure, measured in pounds per square inch absolute (psia), of all VOC at the temperature of storage, handling, or processing. The commission proposes to delete caveats in this division that true vapor pressure is *at storage conditions* since this requirement is included in the definition. The commission proposes to replace the phrase internal floating *roof* with internal floating *cover* throughout this division. The commission contends that both phrases refer to the same equipment and *internal floating cover* is a defined term in §101.1. The commission also proposes to remove parenthetical equivalent metric units such as pressure measurements in kilopascals, volume measurements in liters, and distance measurements in meters. These units are not commonly used and omitting them improves rule readability. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble. The commission is requesting comment on any instance where these proposed technical corrections would inadvertently change the existing rule requirements.

Section 115.110, Applicability and Definitions

The commission proposes to change the title of §115.110 from *Definitions* to *Applicability and Definitions* to clarify the Chapter 115, Subchapter B, Division 1 rule. This title establishes consistency with other rules in Chapter 115 and improves the readability of the rule by first defining the sources affected by and terms used in the subsequent requirements.

The commission proposes subsection (a) to specify that, unless exempted in §115.111, the provisions in this division apply to any storage tank storing VOC that is located in the counties and areas listed in this subsection. Proposed paragraph (1) lists the BPA area. Proposed paragraph (2) lists the DFW area. Proposed paragraph (3) lists the El Paso area. Proposed paragraph (4) lists the HGB area. Proposed paragraph (5) lists Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties. This proposed subsection clearly states that all storage tanks in the affected counties are subject to this rule unless the tanks are exempt. This revision clarifies the applicability requirements that are currently only stated within the control requirements of §115.112(a)(1), (b)(1), (c)(1), and (d)(1).

To accommodate proposed subsection (a), the commission also proposes the definitions currently located in §115.110(1) - (9) and (10) be re-lettered as new §115.110(b)(1) - (9) and (b)(12), respectively, without revision.

Proposed subsection (b) indicates that unless the context clearly indicates otherwise or unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), or in 30 TAC §§3.2, 101.1, or 115.10, the terms used in this division have the meanings commonly used in the field of air pollution control. Proposed subsection (b) also indicates that in addition, the following meanings apply in this division unless the context clearly indicates otherwise. The commission is requesting comments on the definitions proposed in this subsection and any additional definitions that should be included.

Proposed paragraphs (1) - (9) incorporate the corresponding definitions in existing §115.110(1) - (9), respectively, without revision.

Proposed paragraph (10) defines *storage capacity* as the volume of a storage tank as determined by multiplying the internal cross-sectional area of the tank by the average internal height of the tank shell. The commission intends for the proposed definition to account for sloped floors and sumps in the average internal height component of this definition by assuming that the tank can be considered to be a cylinder whose volume is determined by area multiplied by an average height, or alternatively as the maximum amount of liquid the tank can hold if filled to the top of the tank shell with inflow and outflow pipes closed off and any floating roof or cover absent. Complicated tank geometries may require a calculus-based or integral calculation of the average height. The existing rules use several different undefined terms, including *capacity, storage capacity, and nominal storage capacity.* The commission is proposing to define *stor-*

age capacity and to use it consistently throughout this division. The proposed change is not intended to alter any existing rule requirements or to cause any additional sources to be subject to the existing rule requirements. The commission requests comments on alternative definitions of this term.

Proposed paragraph (11) defines *storage tank* as a stationary vessel, reservoir, or container used to store VOC. This definition excludes the following: components that are not directly involved in the containment of liquids or vapors, subsurface caverns, porous rock reservoirs, process tanks, and process vessels. Process tanks and process vessels are containers designed to contain liquids undergoing a chemical or physical reaction that is part of a process. This definition is a rephrasing of the parallel definition in 40 CFR §60.111b (as of July 1, 2010) altered for consistency with *Texas Register* formatting requirements. 40 CFR Part 60, Subpart Kb is titled *Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.* The proposed change is not intended to alter any existing rule requirements or to cause any additional sources to be subject to the existing rule requirements. The commission requests comments on alternative definitions of this term.

Proposed paragraph (12) incorporates the definition of *tank battery* in existing §115.110(10) without revision.

Proposed paragraph (13) defines *vapor recovery unit* as a device that transfers hydrocarbon vapors to a fuel liquid or gas system, a sales liquid or gas system, or a liquid storage tank. The commission intends for this term to apply to devices and associated piping that gather and transfer VOC for sale or other valuable use but not to devices that destroy VOC. The commission is requesting comments on alternative definitions for this term.

Section 115.111, Exemptions

The commission proposes new §115.111 that contains the exemptions currently listed in §115.117.

The commission proposes new subsection (a), moved from §115.117(a) and maintained without substantive changes, lists current exemptions that apply in the BPA, El Paso, and HGB areas, and in the DFW area through the compliance date. Except for the exemption in §115.117(a)(2), proposed to be moved to §115.111(a)(2), the exemptions in new subsection (a) are substantively the same. Sources that are currently exempt under §115.117(a)(1) and (3) - (9) should still qualify for exemption under proposed new §115.111(a), provided they still meet the appropriate conditions for exemption. Proposed exemptions in this subsection no longer apply in the DFW area after the compliance date referenced in §115.119(c). After the compliance date, the exemptions listed in proposed new §115.111(d) would apply.

Proposed new paragraph (1), contains the exemption currently located in §115.117(a)(1).

Proposed new paragraph (2), currently §115.117(a)(2), specifies that storage tanks with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer in the BPA, DFW, and El Paso areas are exempt from the requirements of this division. The exemption currently in §115.117(a)(2) is no longer applicable in the HGB area and will not be included in §115.111 since it specified a January 1, 2009, expiration date.

Proposed new paragraphs (3) - (9), contain the exemptions currently located in §115.117(a)(3) - (9), respectively. Proposed new paragraph (9) contains a clarification that it exempts storage tanks from control requirements only applicable in the HGB area.

The commission proposes new subsection (b), moved from §115.117(b) and maintained without substantive changes, listing exemptions that apply in Gregg, Nueces, and Victoria Counties.

Proposed new paragraphs (1) - (8), contains the exemptions currently located in §115.117(b)(1) - (8), respectively.

The commission proposes new subsection (c), moved from §115.117(c) and maintained without substantive changes, listing exemptions that apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

Proposed new paragraph (1), contains the exemption currently located in §115.117(c)(1).

Proposed new paragraph (2), currently §115.117(c)(2), specifies that slotted guidepoles installed in any floating roof or cover storage tank are exempt from the provisions of §115.112(c). The commission proposes to add *or cover* to *floating roof* to clarify that external floating roof and internal floating cover tanks are both included in this exemption. The commission proposes to use the term *slotted guidepoles* instead of the term *slotted sampling and gauge pipes* used in §115.117(c)(2). The commission contends that the definition of slotted guidepoles includes slotted sampling and gauge pipes, and this non-substantive change harmonizes terminology throughout this division. The commission requests comment on any situations where these changes are substantive.

Proposed new paragraphs (3) - (5) contain the exemptions currently located in §115.117(c)(3) - (5), respectively.

For clarity, the commission is proposing to place exemptions valid after the compliance date of the rule in proposed new subsection (d). While this proposed rule structure creates some redundancy, the commission expects that this approach will ultimately improve readability and facilitate a smooth transition to the new requirements of the rule.

Proposed new subsection (d) specifies exemptions that would apply in the DFW area after the compliance date. This subsection contains the exemptions currently listed in §115.117(a), applicable in the DFW area and changes described in this Section by Section Discussion.

Proposed new paragraph (1), currently §115.117(a)(1), specifies that, except as provided in §115.118, any storage tank storing VOC with a true vapor pressure, as defined in §101.1, less than 1.5 pounds psia is exempt from the requirements of this division.

The exemption currently in §115.117(a)(2) will not be included in subsection (d) since it expired on January 1, 2009, and was only applicable in the HGB area.

Proposed new paragraph (2), currently §115.117(a)(3), exempts storage tanks with a storage capacity less than 25,000 gallons located at motor vehicle fuel dispensing facilities from the requirements of this division.

Proposed new paragraph (3), currently §115.117(a)(4), specifies that a welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the storage tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

Proposed new paragraph (4), currently §115.117(a)(5), exempts external floating roof storage tanks storing waxy, high pour point crude oils from any secondary seal requirements of new §115.112(f). *Waxy, high pour point crude oils* is defined in §115.10(48) as a crude oil with a pour point of 50 degrees Fahrenheit or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

Proposed new paragraph (5), currently §115.117(a)(6), specifies that any welded storage tank storing VOC having a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the three types of primary seals listed in subparagraphs (A) - (C) were installed before August 22, 1980. Proposed new subparagraphs (A) - (C), currently §115.117(a)(6)(A) - (C), list the types of primary seals qualifying for the exemption: a mechanical shoe seal, a liquid-mounted foam seal, or a liquid-mounted liquid filled type seal.

Proposed new paragraph (6), currently §115.117(a)(7), specifies that any welded storage tank storing crude oil having a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the types of primary seals listed in proposed new subparagraphs (A) - (C) were installed before December 10, 1982. Proposed new subparagraphs (A) - (C), currently §115.117(a)(7)(A) - (C), list the types of primary seals qualifying for the exemption: a mechanical shoe seal, a liquid-mounted foam seal, or a liquid-mounted liquid filled type seal. The proposed exemption does not contain the clarification included in §115.117(a)(7) that true vapor pressure is measured at storage conditions since this requirement is included in the definition of *true vapor pressure* in §101.1.

Proposed new paragraph (7), currently §115.117(a)(8), exempts storage tanks with storage capacity less than 1,000 gallons from the requirements of this division.

Proposed new paragraph (8), currently §115.117(a)(9), specifies that storage tanks or tank batteries storing condensate, as defined in §101.1, with a throughput exceeding 1,500 barrels (63,000 gallons) per year are exempt from the requirement in §115.112(f)(4) to route flashed gases to a vapor recovery unit or control device if the owner or operator demonstrates, using test methods specified in §115.117, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tpy on a rolling 12-month basis. Stakeholders have expressed confusion between the meaning of the word *condensate* used in this division and its common use in the oil and gas exploration and production industry. Therefore, the commission proposes to add the phrase *as defined in §101.1 of this title* to clarify that *condensate* has the meaning defined in §101.1: liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer defined as condensates.

Section 115.112, Control Requirements

Throughout §115.112, the description *stationary tank, reservoir, or other container* has been changed to *storage tank.* The commission contends that the proposed definition of storage tank in §115.110(11) includes these items and its use harmonizes terminology in this division.

The commission proposes to amend subsection (a) to specify that the control requirements applicable prior to this rulemaking in the BPA, DFW, and El Paso areas, as defined in §115.10, would continue to apply except for the DFW area where the applicability would continue until the compliance date for the DFW area specified in §115.119(c)(2).

Throughout subsection (a), the proposed amendment includes adding *or cover* to *roof* wherever both external floating roofs and internal floating covers are described.

The commission proposes to replace Tables I(a) and II(a) in §115.112(a)(1) with new tables. The commission proposes to move the title of each table from the first several rows to before the table to improve the accessibility of the table and to harmonize the wording of both table titles to start with *Required Control for Storage Tanks.* The commission proposes to use terms consistent with the rest of this subsection in the proposed column headers. Specifically, the header of the first column of proposed Tables I(a) and II(a) in §115.112(a)(1) is *True Vapor Pressure* rather than *True Vapor Pressure of Compound at Storage Conditions.*The header of the second column of proposed Tables I(a) and II(a) in §115.112(a)(1) is *Storage Capacity* rather than *Nominal Storage Capacity.* The header of the third column of proposed Tables I(a) and II(a) in §115.112(a)(1) is *Control Requirements* rather than *Emission Control Requirements.* The commission proposes to remove parenthetical metric equivalent measurements of pressure and volume. The commission proposes to delete the rows from existing Tables I(a) and II(a) in §115.112(a)(1) that listed the required control requirement as *None* for tanks with storage capacity less than 1,000 gallons or storing VOC with true vapor pressure less than 1.5 psia since these situations are explicitly exempted in proposed §115.111. The commission also proposes to repeat the true vapor pressure range in each row to comply with *Texas Register* style and format requirements.

The commission proposes to amend paragraph (3) to add as *defined in §115.10 of this title* after *vapor recovery systems* to clarify that vapor recovery systems has the meaning specified in §115.10: any control system that utilizes vapor collection equipment to route VOC to a control device that reduces VOC emissions. The commission also proposes to explicitly require that any flare used must be designed and operated according to 40 CFR §60.18(b) - (f). In addition to complying with the operating parameters in 40 CFR §60.18, the commission is proposing that flares must be lit at all times when VOC vapors are routed to the device. Although 40 CFR §60.18 requires the pilot to be lit at all times and requires monitoring of the flare pilot flame, the commission is also specifically requiring the flare flame to be lit to clarify that the intent of the control requirement is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the device.

The commission contends that all changes proposed in subsection (a), except the applicability date and explicit requirements for flare design and operation, are non-substantive and requests comment on any instance where these proposed amendment would inadvertently change the existing rule requirements.

The commission proposes to amend subsection (b) to specify the control requirements in Gregg, Nueces, and Victoria Counties.

Throughout subsection (b), the proposed amendment includes adding *or cover* to *roof* wherever both external floating roofs and internal floating covers are described.

The commission proposes to add clarifying language in paragraph (1) that references to Tables I(a) and II(a) are to the tables in §115.112(a)(1). The commission also proposes to explicitly

require that any flare used must be designed and operated according to 40 CFR §60.18(b) - (f). In addition to complying with the operating parameters in 40 CFR §60.18, the commission is proposing that flares must be lit at all times when VOC vapors are routed to the device. Although 40 CFR §60.18 requires the pilot to be lit at all times and requires monitoring of the flare pilot flame, the commission is also specifically requiring the flare flame to be lit to clarify that the intent of the control requirement is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the device.

The commission contends that all changes proposed in subsection (b), except the applicability date and explicit requirements for flare design and operation, are non-substantive and requests comment on any instance where these proposed amendments would inadvertently change the existing rule requirements.

The commission proposes to amend subsection (c) to specify the control requirements in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

Throughout subsection (c), the proposed amendment includes adding *or cover* to *roof* wherever both external floating roofs and internal floating covers are described.

In the proposed amendment to paragraph (1), the commission explicitly requires that any flare used must be designed and operated according to 40 CFR §60.18(b) - (f). In addition to complying with the operating parameters in 40 CFR §60.18, the commission is proposing that flares must be lit at all times when VOC vapors are routed to the device. Although 40 CFR §60.18 requires the pilot to be lit at all times and requires monitoring of the flare pilot flame, the commission is also specifically requiring the flare flame to be lit to clarify that the intent of the control requirement is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the device.

The commission proposes to replace Table I(b) in §115.112(c)(1) and specify that references to Table I(b) are §115.112(c)(1). The commission proposes to move the title of the table from the first several rows to before the table to improve the accessibility of the table and to harmonize the wording of this table title with Tables I(a) and II(a) in subsection (a)(1) by starting all table titles with *Required Control for Storage Tanks.* The commission proposes to use terms consistent with the rest of this subsection in the proposed column headers. Specifically, the header of the first column of proposed Table I(b) in subsection (c)(1) is *True Vapor Pressure* rather than *True Vapor Pressure of Compound at Storage Conditions.* The proposed header of the second column of proposed Table I(b) in subsection (c)(1) is *Storage Capacity* rather than *Nominal Storage Capacity.* The header of the third column of proposed Table I(b) in subsection (c)(1) is *Control Requirements* rather than *Emission Control Requirements.* The commission proposes to delete the rows from existing Table I(b) in subsection (c)(1) that listed the required control requirement as *None* for tanks with storage capacity less than 1,000 gallons or storing VOC with true vapor pressure less than 1.5 psia since these situations are explicitly exempted in proposed §115.111. The commission also proposes to repeat the true vapor pressure range for each row to comply with *Texas Register* style and format requirements.

The commission proposes to amend paragraph (3) to replace the phrase *vapor-loss control devices* with *control devices.* The commission contends that the phrase *vapor-loss control device(s)* in paragraph (3) has the same meaning as the phrase *control device* used in §115.112(a)(1) and (b)(1) because both include floating roofs, floating covers, and vapor recovery systems.

The commission proposes to amend subparagraph (A) to replace the phrase *control equipment* with *control devices* because both phrases refer to internal floating covers and external floating roofs.

In the proposed amendment to subparagraph (B), the commission explicitly requires that any flare used must be designed and operated according to 40 CFR §60.18(b) - (f). In addition to complying with the operating parameters in 40 CFR §60.18, the commission is proposing that flares must be lit at all times when VOC vapors are routed to the device. Although 40 CFR §60.18 requires the pilot to be lit at all times and requires monitoring of the flare pilot flame, the commission is also specifically requiring the flare flame to be lit to clarify that the intent of the control requirement is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the device.

The commission contends that all changes proposed in subsection (c), except the applicability date and explicit requirements for flare design and operation, are non-substantive and requests comment on any instance where these proposed amendments would inadvertently change the existing rule requirements.

The commission proposes to amend subsection (d), to specify control requirements applicable in the HGB area until the compliance date specified in §115.119(e)(2). After that date, control requirements in §115.112(e) would apply. Throughout subsection (d), the proposed amendment includes adding *or cover* to *roof* wherever both external floating roofs and internal floating covers are described.

The commission proposes to amend paragraph (2)(H) to change clarifying references to a refill after the tank has been degassed and cleaned in accordance with §§115.541 - 115.547 to refer only to cleaning. This is a non-substantive change that harmonizes the language with degassing requirements in Subchapter F, Division 3. The original language was intended to clarify that the first time the tank is filled and any other time the tank is filled after cleaning are included exceptions. The proposed language accomplishes the same purpose while avoiding unnecessary connection between the two rules.

The commission proposes to amend paragraph (4) to specify that condensate has the meaning defined in §101.1 when used to determine the need for a vapor recovery unit or control device on a storage tank or tank battery storing condensate prior to custody transfer.

The commission contends that all changes proposed in subsection (d), except the applicability date, are non-substantive and requests comment on any instance where these proposed amendments would inadvertently change the existing rule requirements.

The commission proposes subsection (e) specifying control requirements applicable in the HGB area after the compliance dates specified in §115.119(e). These control requirements are based on requirements in §115.112(d) applicable prior to this rulemaking in the HGB area.

Proposed paragraph (1) specifies that no person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in either Table 1 in §115.112(e)(1) for VOC other than crude oil and condensate, or

Table 2 in §115.112(e)(1) for crude oil and condensate. Tables 1 and 2 in §115.112(e)(1) are amended versions of Tables I(a) and II(a) of §115.112(a)(1). The commission proposes to change the term *vapor recovery system* from the original language in Tables I(a) and II(a) of §115.112(a)(1) to *vapor recovery unit or control device.* The commission proposes this change because the combination of *vapor recovery unit* and *control device,* with the proposed definition of *vapor recovery unit* in §115.110 and the definition of *control device* in §101.1 is equivalent to the definition of *vapor recovery system* in §115.10, while more clearly distinguishing the two when used separately in other portions of this division.

The commission proposes paragraph (2) specifying that for floating roof or cover storage tanks subject to the provisions of subsection (e)(1), the requirements in proposed subparagraphs (A) - (J) apply. Proposed paragraph (2) contains requirements currently applicable in the HGB area and located in §115.112(d)(2). Proposed subparagraphs (A) and (B) together contain the requirements currently located in §115.112(d)(2)(A). Proposed subparagraphs (C) - (I) contain requirements currently applicable in the HGB area and located in §115.112(d)(2)(B) - (H), respectively, with only non-substantive changes except as described in this Section by Section Discussion.

Proposed subparagraph (A) specifies that all openings in an internal floating cover or external floating roof, as defined in §115.10, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface. This proposed subparagraph contains the portions of the requirements in §115.112(d)(2)(A), applicable in the HGB area prior to this rulemaking that are not in proposed subparagraph (B). The proposed subparagraph contains requirements that the deck cover be equipped with a gasket in good operating condition between the cover and the deck. It further specifies that the deck cover must be closed with a gap of no more than 1/8 inch, except when the cover must be open for access. The commission's intent is that the maximum gap requirement is an indication of a gasket in good operating condition.

Proposed subparagraph (B) states that all openings in an internal floating cover or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof or cover drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access. This proposed subparagraph contains the portions of the requirements in §115.112(d)(2)(A) applicable in the HGB area prior to this rulemaking that are not in proposed subparagraph (A).

Proposed subparagraph (C) specifies that automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design. This proposed subparagraph contains the same requirement as §115.112(d)(2)(B) applicable in the HGB area prior to this rulemaking.

The commission proposes subparagraph (D) allowing each opening into the internal floating cover for a fixed roof support column to be equipped with a flexible fabric sleeve seal instead of a deck cover. This proposed subparagraph contains the same requirement as §115.112(d)(2)(C) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (E) specifies that any roof or cover drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on internal floating cover tanks are not subject to this requirement. This proposed subparagraph contains the same requirement as §115.112(d)(2)(D) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (F) specifies there must be no visible holes, tears, or other openings in any seal or seal fabric. This proposed subparagraph contains the same requirement as §115.112(d)(2)(E) applicable in the HGB area prior to this rulemaking.

The commission proposes subparagraph (G) specifying that for external floating roof storage tanks, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall must be no greater than 1.0 square inch per foot of storage tank diameter. This proposed subparagraph contains the same requirement as §115.112(d)(2)(F) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (H) specifies that each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the control devices in this subparagraph. Proposed clause (i) lists the first option: a pole wiper and a pole float that has a seal at or above the height of the pole wiper. Proposed new (ii) lists the second option: a pole wiper and a pole sleeve. Proposed clause (iii) lists the third option: an internal sleeve emission control system. Proposed clause (iv) lists the fourth option: a retrofit to a solid guidepole system. Proposed clause (v) lists the fifth option: a flexible enclosure system. And proposed clause (vi) lists the sixth option: a cover on an external floating roof tank. Proposed subparagraph (H)(i) - (vi) is identical to the requirements in §115.112(d)(2)(G), except for non-substantive grammatical changes. Proposed clause (i) has been rephrased in a non-substantive manner; however, the commission solicits comments on situations when this wording would inadvertently differ from §115.112(d)(2)(G)(i).

The commission proposes subparagraph (I) that requires a floating roof or cover to be floating on the liquid surface at all times except when it is supported by the leg supports or other support devices (e.g., hangers from the fixed roof) during the initial fill or the refill after the tank has been cleaned or as allowed under the circumstances in the clauses of this subparagraph. The proposed subparagraph is substantively equivalent to current §115.112(d)(2)(H). Requirements in all of these proposed clauses, with the exception of clause (i), (iii), (iv), and (v), are substantively equivalent to clauses in current §115.112(d)(2)(H) in effect in the HGB area prior to this rulemaking. The phrase *roof* is proposed to be changed to *roof or cover* when it applies to both external floating roof and internal floating covers.

Proposed clause (i) allows a roof or cover landing when necessary for preventive maintenance, roof or cover repair, primary seal inspection, or removal and installation of a secondary seal,

if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days. Proposed clause (i) allows roof or cover landings for preventive maintenance, roof or cover repair, or removal and installation of a secondary seal. It clarifies the commission's intent that the existing allowance for maintenance or inspection in the HGB area means that product must not be transferred into or out of the storage tank, emissions must be minimized, and the repair must be completed within seven calendar days. The commission intends for the activities in this clause to harmonize with the exemption from applicable degassing requirements in Chapter 115, Subchapter F, Division 3.

Proposed clause (ii) allows a roof or cover landing when necessary for supporting a change in service to an incompatible liquid.

Proposed clause (iii) allows a roof or cover landing when the storage tank has a storage capacity less than 25,000 gallons. Proposed clause (iii) does not include the allowance for roof or cover landings on tanks storing VOC with vapor pressure less than 1.5 psia included in §115.112(d)(2)(H) because this situation is explicitly exempted in §115.111.

Proposed clause (iv) allows a roof or cover landing when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof or cover is within 10% by volume of being refloated. Proposed clause (iv) changes the start time of vapor control from the moment the floating roof or cover is landed to the time the storage tank has been emptied to the extent practical or the drain pump loses suction. This allows time for a control device to be connected to the tank in a manner that can capture VOC from the vapor space beneath the landed roof or cover. The current language requires the control device to be connected and operating the moment the vapor space develops, which is an infeasible condition. This requirement will not result in additional VOC emissions since VOC vapors are not emitted because the vapor space below the landed roof or cover is enlarging when the liquid level is dropping.

Proposed clause (v) allows a roof or cover landing when all VOC emissions from the tank, including emissions from roof or cover landings, have been included in a floating roof or cover storage tank emissions limit or cap approved under 30 TAC Chapter 116 prior to the compliance date of clause (v). The proposed end date for permit approval coincides with the compliance date of the rule in order to allow those entities who have permitted these emissions to continue to land their floating roofs or covers as authorized. When the current language in §115.112(d)(2)(H) was first adopted in 2007, the commission was beginning the process of including landing emissions in permits. The permitting schedule for these emissions required all regulated entities in Standard Industrial Classifications (SIC code) cited in 30 TAC §101.221 to seek authorization for these emissions by January 5, 2012, with the majority of affected entities required to apply for authorization by January 5, 2008, and any entities in uncited SIC codes to apply for authorization by January 5, 2013. Requiring these emissions to be authorized prior to the compliance date for this clause should provide ample time for all entities that desire to apply for and receive authorization for these emissions.

Proposed clause (vi) allows a roof or cover landing when all VOC emissions from floating roof or cover landings at the regulated entity, as defined in §101.1, are less than 25 tpy.

The commission proposes paragraph (3) specifying that control devices used to comply with subsection (e) must meet one of the conditions in paragraph (3) at all times when VOC vapors are routed to the device.

Proposed subparagraph (A) requires a control device, other than a vapor recovery unit or a flare, to maintain a minimum control efficiency of at least 90%. This proposed subparagraph contains the same requirement as §115.112(d)(3) applicable in the HGB area prior to this rulemaking except that this subparagraph applies to control devices other than vapor recovery units or flares.

Proposed subparagraph (B) requires a vapor recovery unit to be designed to process all VOC vapor generated by the maximum crude oil and condensate throughput of the storage tank and that it transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10. This proposed subparagraph contains requirements not currently applicable in the HGB area. The commission's intent is to assure that vapor recovery units will function effectively to capture and transfer all of the volatilizing VOC from a storage tank under normal operating conditions. The design capacity of the vapor recovery unit can be determined by applying the test methods in §115.117 for existing tanks or computer simulations of expected maximum throughput for new tanks. Owners or operators need to maintain records of the capacity determination in order to demonstrate compliance with this requirement. The requirement that the pipe or container be vapor-tight is designed to assure that the vapors are used for the beneficial purpose of sale or fuel rather than merely emitted to the atmosphere.

Proposed subparagraph (C) requires a flare to be designed and operated in accordance with 40 CFR §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare. This proposed subparagraph contains requirements not currently applicable in the HGB area. It separates flares from the 90% control efficiency requirement in §115.112(d)(3) currently applicable in the HGB area. Although 40 CFR §60.18 requires the pilot to be lit at all times and requires monitoring of the flare pilot flame, the commission is also specifically requiring the flare flame to be lit to clarify that the intent of the rule is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the device.

The commission proposes paragraph (4) requiring storage tanks storing condensate, as defined in §101.1, prior to custody transfer to route flashed gases to a vapor recovery unit or control device if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year. The commission uses a 1,500 barrel per year threshold because this equates to 25 tons of VOC per year using the 33.3 pound per barrel emission factor of proposed paragraph (5)(B). This proposed paragraph contains the same requirements as §115.112(d)(4) applicable in the HGB area prior to this rulemaking except that *condensate* has the definition from §101.1 and *vapor recovery unit* has been substituted for *vapor recovery system* to better differentiate these devices from other control devices.

The commission proposes paragraph (5) requiring that storage tanks storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must route flashed gases to a vapor recovery unit or control device if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, have the potential to equal or exceed 25 tpy on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the methods in paragraph (5); however, if emissions determined using direct measurements or

other methods approved by the executive director under paragraph (5)(A) or (B) is higher than emissions estimated using the default factors or charts in paragraph (5)(C) or (D), the higher values must be used. Proposed paragraph (5) contains the same requirements as §115.112(d)(5) applicable in the HGB area prior to this rulemaking except that *vapor recovery unit* has been substituted for *vapor recovery system* to better differentiate these devices from other control devices.

Proposed new subparagraph (A) lists the first option: direct measurement using the measuring instruments and methods specified in §115.117. This proposed subparagraph contains the same requirements as §115.112(d)(5)(A) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (B) lists the second opt simulations pre-approved by the executive director. The commission's Air Permits Division and Air Quality Division have produced guidance documents describing test methods and computer simulations to measure or estimate working, breathing, and flash emissions from storage tanks that are recommended for use in air permit applications and emissions inventory preparation. The guidance documents are Air Permits Division Reference Guide APDG 5942, *Calculating Volatile Organic Compounds Flash Emissions from Crude Oil and Condensate Tanks at Oil and Gas Production Sites,* and *Emission Inventory Guidelines, Appendix A, Technical Supplement 6,* TCEQ publication number RG-360A. Air Quality Division staff who review such calculations for emissions inventory reporting will review the simulation use. This proposed subparagraph contains the same requirements as §115.112(d)(5)(D) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (C) lists the third option: using a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced. These emission factors come from a commission-funded study, *VOC Emissions from Oil and Condensate Storage Tanks*, October 6, 2006. This proposed subparagraph contains the same requirements as §115.112(d)(5)(B) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (D) lists the fourth option available for crude oil storage only; using the chart in Exhibit 2 of the EPA publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks,* October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC. This proposed subparagraph contains the same requirements as §115.112(d)(5)(C) applicable in the HGB area prior to this rulemaking. The chart in Exhibit 2 of the Natural Gas Star publication is also included in the September, 2009, version of TCEQ Air Permits Division Reference Guide APDG 5942, *Calculating Volatile Organic Compounds Flash Emissions from Crude Oil and Condensate Tanks at Oil and Gas Production Sites.*

The commission proposes subsection (f) specifying control requirements applicable in the DFW area after the compliance dates specified in §115.119(c). These control requirements are more stringent than the requirements in §115.112(d) applicable prior to this rulemaking in the HGB area.

Proposed paragraph (1) specifies that no person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in either Table f1 in §115.112(f)(1) for VOC other than crude oil and condensate, or Table f2 in §115.112(f)(1) for crude oil and condensate. Tables f1 and f2 are amended versions of Tables I(a) and II(a) of §115.112(a)(1). The commission proposes to change the term *vapor recovery system* from the original language in Tables I(a) and II(a) of §115.112(a)(1) to *vapor recovery unit or control device.* The commission proposes this change because the combination of *vapor recovery unit* and *control device,* with the proposed definition of *vapor recovery unit* in §115.110 and the definition of *control device* in §101.1 is equivalent to the definition of *vapor recovery system* in §115.10, while more clearly distinguishing the two when used separately in other portions of this division.

The commission proposes paragraph (2) specifying that for floating roof or cover storage tanks subject to the provisions of subsection (f)(1), the requirements in proposed subparagraphs (A) - (J) apply. Proposed paragraph (2) contains requirements currently applicable in the HGB area and located in §115.112(d)(2). Proposed subparagraphs (A) and (B) together contain the requirements currently located in §115.112(d)(2)(A). Proposed subparagraphs (C) - (I) contain requirements currently applicable in the HGB area and located in §115.112(d)(2)(B) - (H), respectively, with only non-substantive changes except as described in this Section by Section Discussion.

Proposed subparagraph (A) specifies that all openings in an internal floating cover or external floating roof, as defined in §115.10, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface. This proposed subparagraph contains the portions of the requirements in §115.112(d)(2)(A) applicable in the HGB area prior to this rulemaking that are not in proposed subparagraph (B). The proposed subparagraph contains requirements that the deck cover be equipped with a gasket in good operating condition between the cover and the deck. It further specifies that the deck cover must be closed with a gap of no more than 1/8 inch, except when the cover must be open for access. The commission's intent is that the maximum gap requirement serves as an indication of a gasket in good operating condition.

Proposed subparagraph (B) states that all openings in an internal floating cover or external floating roof, except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof or cover drains, must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access. This proposed subparagraph contains the portions of the requirements in §115.112(d)(2)(A) applicable in the HGB area prior to this rulemaking that are not in proposed subparagraph (A).

Proposed subparagraph (C) specifies that automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design. This proposed subparagraph contains the same requirement as §115.112(d)(2)(B) applicable in the HGB area prior to this rulemaking.

The commission proposes subparagraph (D) allowing each opening into the internal floating cover for a fixed roof support column to be equipped with a flexible fabric sleeve seal instead of a deck cover. This proposed subparagraph contains the same requirement as §115.112(d)(2)(C) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (E) specifies that any roof or cover drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on internal floating cover tanks are not subject to this requirement. This proposed subparagraph contains the same requirement as §115.112(d)(2)(D) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (F) specifies there must be no visible holes, tears, or other openings in any seal or seal fabric. This proposed subparagraph contains the same requirement as §115.112(d)(2)(E) applicable in the HGB area prior to this rulemaking.

The commission proposes subparagraph (G) specifying that for external floating roof storage tanks, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall must be no greater than 1.0 square inch per foot of storage tank diameter. This proposed subparagraph contains the same requirement as §115.112(d)(2)(F) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (H) specifies that each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the control devices in this subparagraph. Proposed clause (i) lists the first option: a pole wiper and a pole float that has a seal at or above the height of the pole wiper. Proposed clause (ii) lists the second option: a pole wiper and a pole sleeve. Proposed clause (iii) lists the third option: an internal sleeve emission control system. Proposed clause (iv) lists the fourth option: a retrofit to a solid guidepole system. Proposed clause (v) lists the fifth option: a flexible enclosure system. Proposed clause (vi) lists the sixth option: a cover on an external floating roof tank. Proposed §115.112(f)(2)(H)(i) - (vi) is identical to the requirements in §115.112(d)(2)(G) except for non-substantive grammatical changes. Proposed clause (i) has been rephrased in a non-substantive manner; however the commission solicits comments on situations when this wording would inadvertently differ from §115.112(d)(2)(G)(i).

The commission proposes subparagraph (I) that requires a floating roof or cover to be floating on the liquid surface at all times except when it is supported by the leg supports or other support devices (e.g., hangers from the fixed roof) during the initial fill or the refill after the tank has been cleaned or as allowed under the circumstances in the clauses of this subparagraph. The proposed subparagraph is substantively equivalent to current §115.112(d)(2)(H). Requirements in all of these proposed new clauses, with the exception of clauses (i), (iii), (iv), and (v), are substantively equivalent to clauses in current §115.112(d)(2)(H) in effect in the HGB area prior to this rulemaking.

Proposed clause (i) allows a roof or cover landing when necessary for preventive maintenance, roof or cover repair, primary seal inspection, or removal and installation of a secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized and the repair is completed within seven calendar days. Proposed clause (i) allows roof or cover landings for preventive maintenance, roof or cover repair, or removal and installation of a secondary seal. It clarifies the commission's intent that the existing allowance for maintenance or inspection in the HGB area means that product must not be moved in or out of the storage tank, emissions must be minimized and the repair must be completed within seven calendar days. The commission intends for the activities in this clause to harmonize with the exemption from applicable degassing requirements in Chapter 115, Subchapter F, Division 3.

Proposed clause (ii) allows a roof or cover landing when necessary for supporting a change in service to an incompatible liquid.

Proposed clause (iii) allows roof or cover landings for storage tanks with storage capacity less than 25,000 gallons. Proposed clause (iii) does not include the allowance for roof or cover landings on tanks storing VOC with vapor pressure less than 1.5 psia included in §115.112(d)(2)(H) because this situation is explicitly exempted in §115.111.

Proposed clause (iv) allows a roof or cover landing when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof or cover is within 10% by volume of being refloated. The current language requires the control device to be connected and operating the moment the vapor space develops, which is an infeasible condition. Proposed clause (iv) changes the start time of vapor control from the moment the floating roof or cover is landed to the time the storage tank has been emptied to the extent practical or the drain pump loses suction. This process allows time for a control device to be connected to the tank in a manner that can capture VOC from the vapor space beneath the landed roof or cover. This requirement will not result in additional VOC emissions since VOC vapors are not released because the vapor space below the landed roof or cover is enlarging and air or blanket gas is flowing in when the liquid level is dropping.

Proposed clause (v) allows a roof or cover landing when all VOC emissions from the tank, including emissions from roof or cover landings, have been included in a floating roof or cover storage tank emissions limit or cap approved under Chapter 116 prior to the compliance date of this clause. The proposed end date for permit approval coincides with the compliance date of the rule in order to allow those entities who have permitted these emissions to continue to land their floating roofs or covers as authorized. When the current language in §115.112(d)(2)(H) was first adopted in 2007, the commission was beginning the process of including landing emissions in permits. The permitting schedule for these emissions required all regulated entities in SIC code cited in §101.221 to seek authorization for these emissions by January 5, 2012, with the majority of affected entities required to apply for authorization by January 5, 2008, and any entities in uncited SIC codes to apply for authorization by January 5, 2013. Requiring these emissions to be authorized prior to the compliance date for this clause should provide ample time for all entities that desire to apply for and receive authorization for these emissions.

Proposed clause (vi) allows a roof or cover landing when all VOC emissions from floating roof or cover landings at the regulated entity, as defined in §101.1, are less than 25 tpy.

The commission proposes paragraph (3) specifying that control devices used to comply with subsection (f) must meet one of the conditions in this paragraph at all times when VOC vapors are routed to the device.

Proposed subparagraph (A) requires a control device, other than a vapor recovery unit or a flare, to maintain a minimum control efficiency of at least 95%. The commission proposes to increase the stringency of the control efficiency beyond the 90% level currently required in the HGB area. The increased stringency is necessary to generate additional VOC reductions for inclusion in the proposed DFW Reasonable Further Progress State Implementation Plan Revision for the 1997 Eight-Hour Ozone Standard (Project Number 2010-023-SIP-NR), scheduled for proposal on June 8, 2011. The commission conducted a study (TCEQ Project 2010-43) in 2010 to evaluate emission control devices installed on crude oil and condensate tanks. The study found that all sources in the HGB area that are required to install controls on their tank batteries capable of exceeding a 90% control efficiency requirement chose a vapor recovery unit, a flare, or both types of control devices. When properly operated, each of these control devices can be expected to attain or exceed a 95% control efficiency requirement.

Proposed subparagraph (B) requires a vapor recovery unit to be designed to process all VOC vapor generated by the maximum crude oil and condensate throughput of the storage tank and that it transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10. This proposed subparagraph contains requirements not currently applicable in the HGB area. The commission's intent is to assure that vapor recovery units will function effectively to capture and transfer all of the VOC vapors from a storage tank under normal operating conditions. The design capacity of the vapor recovery unit can be determined by applying the test methods in §115.117 for existing tanks or computer simulations of expected maximum throughput for new tanks. Owners or operators need to maintain records of the capacity determination in order to demonstrate compliance with this requirement. The requirement that the pipe or container be vapor-tight is designed to assure that the vapors are used for the beneficial purpose of sale or fuel rather than merely emitted to the atmosphere.

Proposed subparagraph (C) requires a flare to be designed and operated in accordance with 40 CFR §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare. This proposed subparagraph separates flares from the 95% control efficiency requirement. Although 40 CFR §60.18 requires the pilot to be lit at all times and requires monitoring of the flare pilot flame, the commission is also specifically requiring the flare flame to be lit to clarify that the intent of the rule is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the device.

The commission proposes paragraph (4) requiring storage tanks storing condensate, as defined in §101.1, prior to custody transfer to route flashed gases to a vapor recovery unit or control device if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year. The commission uses a 1,500 barrel per year threshold because this equates to 25 tons of VOC emissions per year using the 33.3 pound per barrel emission factor of proposed paragraph (5)(B). This proposed paragraph contains the same requirements as §115.112(d)(4) applicable in the HGB area prior to this rulemaking except that *condensate* has the definition from §101.1 and *vapor recovery unit* has been substituted for *vapor recovery system* to better differentiate these devices from other control devices.

The commission proposes paragraph (5) requiring that storage tanks storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must route flashed gases to a vapor recovery unit or control device if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, have the potential to equal or exceed 25 tpy on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the methods in this paragraph; however, if emissions determined using direct measurements or other methods approved by the executive director under paragraph (5)(A) or (B) are higher than emissions estimated using the default factors or charts in paragraph (5)(C) or (D), the higher values must be used. This proposed paragraph contains the same requirements as §115.112(d)(5) applicable in the HGB area prior to this rulemaking except that *vapor recovery unit* has been substituted for *vapor recovery system* to better differentiate these devices from other control devices.

Proposed subparagraph (A) lists the first option: direct measurement using the measuring instruments and methods specified in §115.117. This proposed subparagraph contains the same requirements as §115.112(d)(5)(A) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (B) lists the second option: other test methods or computer simulations pre-approved by the executive director. The commission's Air Permits Division and Air Quality Division have produced guidance documents describing test methods and computer simulations to measure or estimate working, breathing, and flash emissions from storage tanks that are recommended for use in air permit applications and emission inventory preparation. The guidance documents are Air Permits Division Reference Guide APDG 5942, *Calculating Volatile Organic Compounds Flash Emissions from Crude Oil and Condensate Tanks at Oil and Gas Production Sites,* and *Emission Inventory Guidelines, Appendix A, Technical Supplement 6,* TCEQ publication number RG-360A. Air Quality Division staff who review such calculations for emissions inventory reporting will review the simulation use. This proposed subparagraph contains the same requirements as §115.112(d)(5)(D) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (C) lists the third option: using a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced. These emission factors come from a commission-funded study, *VOC Emissions from Oil and Condensate Storage Tanks,* October 6, 2006. This proposed subparagraph contains the same requirements as §115.112(d)(5)(B) applicable in the HGB area prior to this rulemaking.

Proposed subparagraph (D) lists the fourth option available for crude oil storage only; using the chart in Exhibit 2 of the EPA publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks,* October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC. This proposed subparagraph contains the same requirements as §115.112(d)(5)(C) applicable in the HGB area prior to this rulemaking. The chart in Exhibit 2 of the Natural Gas Star publication is also included in the September, 2009, version of TCEQ Air Permits Division Reference Guide APDG 5942, *Calculating Volatile Organic Compounds Flash Emissions*

from Crude Oil and Condensate Tanks at Oil and Gas Production Sites.

Section 115.113, Alternate Control Requirements

The commission proposes non-substantive changes to §115.113 necessary to comply with current rule formatting standards.

Section 115.114, Inspection Requirements

The commission proposes revisions to subsection (a) that amend inspection requirements effective prior to this rulemaking in the BPA, DFW, El Paso, and HGB areas.

Proposed paragraph (1) has been reformatted to increase clarity and readability. All requirements have been maintained. Proposed paragraph (1) requires an annual inspection of an internal floating cover and its primary and secondary seal. Proposed subparagraph (A) contains the specific items requiring inspection and the requirement to repair or degas within 60 days that are currently contained in paragraph (1). Proposed subparagraph (B) contains the requirements for an owner or operator to request extensions to the repair deadline. These requirements are currently located in paragraph (1).

Proposed paragraph (2) specifies that gaps in the secondary seal of an external floating roof tank must be measured annually. The proposed paragraph contains an amendment adding §115.112(e)(2)(G) and (f)(2)(G) to the list of control requirements for a secondary seal gap measurement due to the addition of proposed §115.112(e) and (f). Proposed paragraph (2) has also been reformatted to increase clarity and readability. Proposed subparagraph (A) contains the specific items requiring inspection and the requirement to repair or degas within 60 days that are currently contained in paragraph (2). Proposed subparagraph (B) contains the requirements for an owner or operator to request extensions for repair. These requirements are currently located in paragraph (2).

Proposed paragraph (3) contains an amendment that adds §115.112(e)(2)(G) and (f)(2)(G) to the list of control requirements for a secondary seal gap limit due to the addition of proposed §115.112(e) and (f).

Proposed paragraph (4) specifies that the secondary seal of an external floating roof tank must be inspected at least every six months. The proposed paragraph contains an amendment that adds §115.112(e)(2)(F) and (G), and (f)(2)(F) and (G) to the list of control requirements for seal integrity and a secondary seal gap limit due to the addition of proposed §115.112(e) and (f). Proposed paragraph (4) has also been reformatted to increase clarity and readability. Proposed subparagraph (A) contains the specific items requiring inspection and the requirement to repair or degas within 60 days that are currently contained in paragraph (4). Proposed subparagraph (B) contains the requirements for an owner or operator to request extensions for repair. These requirements are currently located in paragraph (4).

The commission proposes to amend subsection (b) to state inspection requirements applicable in Gregg, Nueces, and Victoria Counties.

Proposed paragraph (2) specifies annual secondary seal gap measurement requirements for external floating roof tanks. This proposed paragraph has been reformatted to increase clarity and readability. Proposed subparagraph (A) contains the specific items requiring inspection and the requirement to repair or degas within 60 days that are currently contained in paragraph (2). Proposed subparagraph (B) contains the requirements for an owner or operator to request extensions to the repair deadline. These requirements are currently located in paragraph (2).

Proposed paragraph (4) specifies annual visual inspection requirements for secondary seals on external floating roof tanks. This proposed paragraph has been reformatted to increase clarity and readability. Proposed subparagraph (A) contains the specific items requiring inspection and the requirement to repair or degas within 60 days that are currently contained in paragraph (4). Proposed subparagraph (B) contains the requirements for an owner or operator to request extensions to the repair deadline. These requirements are currently located in paragraph (4).

The commission proposes to amend subsection (c) to state inspection requirements applicable in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. No substantive changes are proposed for any of the paragraphs of subsection (c).

Section 115.115, Monitoring Requirements

The commission proposes new §115.115 that contains the monitoring requirements currently located in existing §115.116 and amendments to add requirements for additional control devices as described in this Section by Section Discussion.

Proposed new subsection (a) amends requirements currently located in §115.116(a). Proposed new subsection (a) also contains requirements currently in §115.116(a)(3), specifying that an affected owner or operator shall install and maintain monitors to continuously measure operational parameters of any of the control devices listed in paragraphs of this subsection installed to meet applicable control requirements. Such monitors must be sufficient to demonstrate proper functioning of those devices to design specifications.

The commission proposes new paragraph (1) that rephrases the requirement currently located in §115.116(a)(3)(A) without substantive change to specify that for a direct-flame incinerator, the owner or operator shall continuously monitor the exhaust gas temperature immediately downstream of the device.

Proposed new paragraph (2) amends the requirement currently located in §115.116(a)(3)(B) to require continuous monitoring of the outlet gas temperature of a condensation system to ensure that the temperature is below the system manufacturer's recommended operating temperature for controlling the VOC vapors routed to the device. The commission proposes to change the word *chiller* in existing §115.116(a)(3)(B) to *condensation system* for uniformity with recent revisions in this chapter. The commission contends that a maximum temperature is necessary to ensure that the condensation system is operating at a sufficiently low temperature to assure collection of VOC vapors. The commission is requesting comments on any instances when the manufacturer would not specify an appropriate operating temperature.

Proposed new paragraph (3) specifies that an owner or operator shall monitor a carbon adsorption system according to one of the options in proposed subparagraphs (A) or (B). The proposed language in this paragraph is a clarification of the language in existing §115.116(a)(3)(C) that required continuous VOC concentration measurement to determine if breakthrough has occurred and describes that for the purposes of this rule, breakthrough is defined as a VOC concentration measured over 100 parts per million by volume (ppmv) above background expressed as methane. The 100 ppmv concentration defining breakthrough is chosen to coincide with the definition of VOC breakthrough from

a carbon adsorption system in the commission's maintenance, startup, and shutdown model permit. The proposed language provides an alternative engineering safeguard to switch the vent gas flow to fresh carbon at an interval designed to assure continuous VOC adsorption at design specifications. The proposed alternative requirement will assure protection at least equivalent to the current language since owners or operators would be required to switch to fresh carbon before the system reaches its absorption capacity rather than switching after breakthrough is detected. The commission requests comments on situations when this proposed language may be less stringent than the existing requirement.

Proposed new subparagraph (A) requires continuous monitoring of the exhaust gas VOC concentration of a carbon adsorption system to determine breakthrough. For the purpose of paragraph (3), breakthrough is defined as a measured VOC concentration exceeding 100 ppmv expressed as methane above background.

Proposed new subparagraph (B) requires the owner or operator to switch the vent gas flow to fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorption system.

Proposed new paragraph (4) contains requirements currently located in existing §115.116(a)(3)(B) and specifies that for a catalytic incinerator, the owner or operator shall continuously monitor the inlet and outlet gas temperature.

Proposed new paragraph (5) specifies that the owner or operator of any stationary tank who is required to comply with §115.112(e)(3) or (f)(3) shall continuously monitor at least one of the operational parameters listed in proposed new subparagraphs (A), (B), or (C) sufficient to demonstrate proper functioning to design specifications. This requirement will only be applicable after the compliance date for §115.112(e)(3) or (f)(3) in affected areas, since compliance with the control requirement it references is only required after that date.

Proposed new subparagraphs (A) and (B) specify examples of operational parameters of a vapor recovery unit. Proposed subparagraph (A) specifies that the run-time of the compressor or motor in a vapor recovery unit is an operational parameter; proposed subparagraph (B) lists the amount of recovered vapors as another operational parameter; and proposed subparagraph (C) lists other parameters sufficient to demonstrate proper functioning to design specifications. The operational parameter in proposed subparagraph (A) will assure that a compressor or motor-driven vapor recovery unit is operating; proposed subparagraph (B) will assure that a vapor recovery unit is transferring vapors; and proposed subparagraph (C) provides flexibility for the owner or operator to identify other suitable parameters. The commission acknowledges that vapor recovery unit technology continues to evolve and chooses not to specify an operational parameter for each technology, but rather to require measurement of an appropriate operational parameter. The commission's standard permit for oil and gas sites includes examples of other parameters sufficient to demonstrate proper functioning to design specifications. The monitoring provisions for vapor recovery units claiming 95% VOC control in the oil and gas standard permit would be sufficient for the purposes of this proposed rulemaking. Specifically, a vapor recovery unit utilizing mechanical compression needs to have a sensing device set to capture the vapor at peak intervals. This device is included in the design of the equipment and no additional monitoring is required. A vapor recovery unit utilizing chemical absorption into a liquid needs to be tested to assure that the liquid is absorbing VOC vapors to at least the minimum required control efficiency. For crude oil tanks, the standard permit requires bi-weekly inlet and outlet monitoring and condensate tanks require weekly monitoring according to EPA Test Method 21 or modified Method 21 to demonstrate 95% control. The replacement of the liquid must follow manufacturer's recommended procedure. The commission requests comments on additional appropriate monitoring requirements for vapor recovery units.

Proposed new paragraph (6) specifies that one or more operational parameters of a control device not listed in subsection (a) must be measured continuously. This provision specifies uniform monitoring requirements for emerging control technologies not specifically listed in this division. Continuous monitoring is also necessary to assure consistency with monitoring requirements in effect prior to this rulemaking for other control devices listed in existing §115.116(a)(3).

Proposed new subsection (b) contains monitoring requirements currently located in §115.116(b)(3) and specifies that in Victoria County, affected persons shall continuously monitor operational parameters of any of the emission control devices listed in this subsection installed to meet applicable control requirements.

Proposed new paragraph (1) contains monitoring requirements currently located in §115.116(b)(3)(A) and lists the exhaust gas temperature immediately downstream of a direct-flame incinerator as an operational parameter requiring monitoring.

Proposed new paragraph (2) contains monitoring requirements currently located in §115.116(b)(3)(B) and lists the inlet and outlet gas temperature of a condensation system or catalytic incinerator. The commission proposes to change the word *chiller* from existing §115.116(b)(3)(B) to *condensation system* for uniformity with recent revisions in this chapter.

Proposed new paragraph (3) contains monitoring requirements currently located in §115.116(b)(3)(C) and lists the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10, as an operational parameter requiring monitoring to determine if breakthrough has occurred.

Section 115.116, Testing Requirements

The commission proposes new subsection (a) that specifies testing requirements that begin on the compliance date in affected areas for a control device, other than a flare, that must meet a numerical control percentage requirement in §115.112(a)(3), (e)(3)(A), or (f)(3)(A).

Proposed new paragraph (1) requires an initial control efficiency demonstration.

Proposed new paragraph (2) requires that the test be conducted prior to the compliance date or within 60 days if the device is placed into service after the compliance date.

Proposed new paragraph (3) requires that the test be conducted in accordance with the approved test methods in §115.117.

Proposed new paragraph (4) requires that the device be retested within 60 days after any modification that could reasonably be expected to decrease the efficiency of a control device.

The commission is proposing to require a control efficiency demonstration; however, the proposed demonstration is intended to be a clarification of the existing requirements and is

not intended to impose any additional requirements on affected sources. Although not explicitly included in rule language, a control efficiency demonstration has been expected at least since revisions were made to this division in 1990, as stated in the February 2, 1990, issue of the *Texas Register* (15 TexReg 561). Testing already performed on existing sources and documented in accordance with test methods and recordkeeping requirements in §115.117 and §115.118 will be sufficient for this requirement. The retesting provision is necessary to demonstrate that the control device continues to meet the control efficiency requirement after modification. The commission is requesting comments on the number of days allowed to conduct the control efficiency demonstration after a substantial modification.

The commission proposes new subsection (b) specifying testing requirements for a flare used to comply with control requirements in §115.112. The proposed control requirements for flares include compliance with 40 CFR §60.18, including the design verification test. The proposed design verification test is intended to be a clarification of the existing requirements and is not intended to impose any additional requirements on affected sources. Compliance with the proposed testing provisions is not required until the compliance dates specified in §115.119. The commission contends that ample time is available for any owners or operators who have not already conducted this design verification test.

Proposed new paragraph (1) specifies that the flare must pass the design verification test required by 40 CFR §60.18(f).

Proposed new paragraph (2) requires that the test be conducted prior to the compliance date or within 60 days if the flare is placed into service after the compliance date. Properly conducted testing already performed on existing sources will be sufficient for this requirement.

Section 115.117, Approved Test Methods

The commission proposes new §115.117 specifying that all affected persons shall determine compliance with the requirements in this division by applying the test methods in §115.117 as appropriate. Proposed §115.117 consolidates redundant requirements located in existing §115.115(a) that were applicable in the BPA, DFW, El Paso, and HGB areas; requirements in existing §115.115(b) that were applicable in Gregg, Nueces, and Victoria Counties; and requirements in existing §115.115(c) that contained additional test methods applicable only in the HGB area prior to this rulemaking. In addition, the proposed language expands the applicability of the test methods from compliance with certain control requirements to compliance with all requirements in this division. The commission contends that this assures a clear statement of the necessary test method in all situations.

Proposed new paragraph (1) contains language currently located in §115.115(a)(1) and (b)(1) specifying test methods for determining flow rate.

Proposed new paragraph (2) contains language currently located in §115.115(a)(2) and (b)(2) for determining gaseous organic compound emissions.

Proposed new paragraph (3) contains language currently located in §115.115(a)(3) and (b)(3) for determining visible emissions from flares. Proposed new paragraph (3) rephrases the applicability from *visual determination of fugitive emissions from material sources and smoke emissions from flares* to *determination of visible emissions from flares.* Although the current language contains the title of Method 22, the proposed language more accurately depicts applications of the test method in this division.

Proposed new paragraph (4) contains language currently located in §115.115(a)(4) and (b)(4) for determining total gaseous nonmethane organic emissions.

Proposed new paragraph (5) contains language currently located in §115.115(a)(5) and (b)(5) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.

Proposed new paragraph (6) contains language currently located in §115.115(a)(6) and (b)(6) for measuring storage tank seal gap.

Proposed new paragraph (7) contains test methods currently located in §115.115(a)(7) and (b)(7). In addition to the consolidation, the commission proposes to paragraph (7) to add use of standard reference texts and remove the 1989 reference year in American Society for Testing and Materials Test Method D323 in order to update the reference. The commission also proposes to specify that true vapor pressure must be corrected to storage temperature according to the procedure in American Petroleum Institute Publication 2517, using the measured actual storage temperature or the maximum local monthly average ambient temperature as reported by the National Weather Service. The National Weather Service data can be obtained from the Monthly Weather Summary published for each major observation location. These data are available online after the observation month in the Monthly Weather Summary for the nearest observation location. Since the temperature of a heated storage tank differs from ambient conditions, this temperature must be determined by either the measured temperature, if available, or the set point of the heating system. The commission requests comments on the use of standard reference texts instead of test methods and situations in which use of standard reference texts would be insufficient.

Proposed new paragraphs (8) and (9) were located in existing §115.115(c) prior to this rulemaking. The commission proposes minor phrasing amendments in paragraph (8) to clarify that working, breathing, and standing emissions must be measured along with flash emissions. The commission contends that this requirement is not new since the specified devices measuring flash emissions would, in practice, also be measuring working, breathing, and standing emissions.

The commission also proposes new paragraph (10), which was not in existing §115.115, allowing use of test methods other than those specified in this section if validated by 40 CFR Part 63, Appendix A, Test Method 301 and approved by the executive director. This proposed paragraph is added to allow additional flexibility for affected owners and operators and to harmonize this section with other portions of this chapter.

Proposed new paragraph (11) contains language currently located in §115.115(a)(8), (b)(8), and (c)(8) concerning use of modified test methods.

Section 115.118, Recordkeeping Requirements

The commission proposes new §115.118 that contains recordkeeping requirements.

The commission proposes new subsection (a) that amends recordkeeping requirements currently located in existing

§115.116(a) and applicable in the BPA, DFW, El Paso, and HGB areas prior to this rulemaking.

Proposed new paragraph (1) specifies that the owner or operator of a storage tank claiming an exemption in §115.111 shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. Where applicable, true vapor pressure, VOC content type, or a combination of the two shall be recorded initially and at every change of service, or when the storage tank is emptied and refilled. This requirement was not in existing §115.116 and is a clarification proposed to enhance enforceability of this division. Records of true vapor pressure and VOC content type of stored material are the basis for all exemptions in §115.111 that are not based on tank size, tank purpose, or construction date, and are the most commonly varying data.

Proposed new paragraph (2) contains the requirements located in existing §115.116(a)(1), that the owner or operator of any storage tank with an external floating roof that is exempt from the requirement for a secondary seal as specified in §115.111(a)(1), (6), and (7), and (d)(1), (5), and (6), and is used to store VOC with a true vapor pressure greater than 1.0 psia shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid. Tanks qualifying for exemptions in §115.111(a)(6) or (7) and (d)(5) or (6) must have had mechanical shoe, liquid-mounted foam, or liquid-mounted liquid filled seals installed prior to August 22, 1980, or December 10, 1982, respectively. The commission requests comments on the continued need for and phrasing of this requirement, specifically the desirability of a 1.0 psia threshold versus a 1.5 psia threshold.

Proposed new paragraph (3) contains the requirements currently located in existing §115.116(a)(2) specifying that the results of inspections required by §115.114(a) must be recorded. For secondary seal gaps that are required to be physically measured during inspection, these records must include a calculation of emissions for all secondary seal gaps that exceed 1/8 inch where the accumulated area of such gaps is greater than 1.0 square inch per foot of tank diameter. These calculated emissions inventory reportable emissions (EIReportable) must be reported in the annual emissions inventory submittal required by §101.10. The emissions must be calculated using the methodology described in the equation and explanation of this paragraph.

Proposed new paragraph (3) contains the equation to calculate EIReportable. This is a reformatting of the method currently located in existing §115.116(a)(2)(A) - (J) designed to increase clarity and is not intended to change the calculation method. The commission solicits comments on whether or not this reformatting replicates the existing language. Explanations of the variables follow the equation.

Proposed new paragraph (4) contains rephrasing of the requirements currently located in existing §115.116(a)(3) that specify recordkeeping requirements for operational parameters of certain specified control devices installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications.

Proposed new subparagraph (A) rephrases the requirement currently located in existing §115.116(a)(3)(A) to specify that for a direct-flame incinerator, the owner or operator shall continuously record the exhaust gas temperature immediately downstream of the device.

Proposed new subparagraph (B) expands upon some of the language currently located in existing §115.116(a)(3)(B). The former description for the control device was a chiller. The commission proposes to use the phrase *condensation system* to describe this equipment in order to maintain consistency with other portions of this chapter. The proposed language requires continuous recording of the outlet gas temperature of a condensation system to ensure that the temperature is below the system manufacturer's recommended operating temperature for controlling the VOC vapors routed to the device. The commission is requesting comments on the appropriate operating temperature for a condensation system and any instances when the manufacturer would not specify an appropriate operating temperature.

Proposed new subparagraph (C) expands upon some of the language currently located in existing §115.116(a)(3)(C) by specifying owners or operators using a carbon adsorption system shall maintain records of the system operation specified in clause (i) or (ii). Proposed new clause (i) requires the owner or operator to continuously record the exhaust gas VOC concentration of any carbon adsorption system monitored according to §115.115(a)(3)(A). Proposed new clause (ii) requires the owner or operator to record the date and time each carbon container is used if the carbon adsorption system is switched on a predetermined interval according to §115.115(a)(3)(B). The proposed language of subparagraph (C) is a clarification of the existing language that required continuous VOC concentration recording to determine if breakthrough has occurred because the option in §115.115(a)(3)(B) to switch the vent gas flow is designed to occur prior to breakthrough. The commission requests comments on situations when this proposed language is less stringent.

Proposed new subparagraph (D) contains some of the language currently located in existing §115.116(a)(3)(B) and specifies that for a catalytic incinerator, the owner or operator shall continuously record the inlet and outlet gas temperature.

Proposed new paragraph (5) specifies that the owner or operator of any stationary tank, reservoir, or container required to comply with the control requirements of §115.112(e)(3) or (f)(3) shall continuously record operational parameters of a vapor recovery unit monitored according to §115.115(a)(5) or (6) or a control device not listed in §115.115(a). The commission requests comments on the frequency and method of recording.

Proposed new paragraph (6) amends the requirements currently located in existing §115.116(a)(4) to specify that the results of any testing conducted in accordance with the provisions specified in §115.117 must be maintained at an affected site. A provision is proposed to allow off-site record storage under the condition that such records must be made available within 24 hours. This provides operational flexibility to owners or operators with unstaffed locations not equipped for record storage.

Proposed new paragraph (7) amends the language currently located in existing §115.116(a)(5) and specifies that all records must be maintained for two years and be made available for review upon request by authorized representatives of the executive director, the EPA, or any local air pollution control agency with jurisdiction. In the DFW area, any records created on or after two years prior to the compliance date, must be maintained for at least five years. The proposed language extends the record retention time from two years to five years starting with records that would be two years old on the compliance date of the proposed rule. The commission requests comments on record retention time and the transition between current and expanded requirements.

Proposed new subsection (b) contains language located in existing §115.116(b) specifying the recordkeeping requirements in effect in Gregg, Nueces, and Victoria Counties.

Proposed new paragraphs (1) - (5) contain the recordkeeping portions of requirements currently located in existing §115.116(b)(1) - (5) without revision except for updating references to the proposed new rules. The commission requests comments on the requirement in paragraph (1) for storage tanks exempt from a secondary seal requirement as specified in §115.111(b)(1), (6), and (7) to keep records of stored VOC with vapor pressure over 1.0 psia. Tanks qualifying for exemptions in §115.111(b)(6) or (7) must have had mechanical shoe, liquid-mounted foam, or liquid-mounted liquid filled seals installed prior to August 22, 1980, or December 10, 1982, respectively.

Proposed new subsection (c) contains the recordkeeping requirements currently located in existing §115.116(c) and expands them from the HGB area to the DFW area beginning on the compliance date specified in §115.119(c).

Proposed new paragraph (1) amends language currently located in existing §115.116(c)(1) and specifies that the owner or operator of any stationary tank, reservoir, or container with a fixed roof that is not required to be equipped with a floating roof, floating cover, vapor recovery system, vapor recovery unit, or other control device, as specified in either Table I(a) or Table II(a) of §115.112(a)(1), Table 1 or Table 2 of §115.112(e)(1), or Table f1 or Table f2 of §115.112(f)(1) shall maintain records of the type of VOC stored, the starting and ending dates when the material is stored, and the true vapor pressure at the average monthly storage temperature of the stored liquid. This requirement does not apply to storage tanks with storage capacity of 25,000 gallons or less storing volatile organic liquids other than crude oil or condensate, or to storage tanks with storage capacity of 40,000 gallons or less storing crude oil or condensate. The commission proposes to add references to Tables 1 and 2 of proposed §115.112(e)(1) and Tables f1 and f2 of proposed §115.112(f)(1) to include all applicable control requirements. These records are necessary to document that material stored in fixed roof tanks meets the criteria for exemption from control requirements.

Proposed new paragraph (2) amends language currently located in existing §115.116(c)(2) and specifies that the owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station and is not equipped with a vapor recovery unit or other device that recovers VOC vapors shall maintain records of the estimated annual uncontrolled emissions from the storage. The records must be updated annually and must be made available for review within 72 hours upon request by authorized representatives of the executive director, the EPA, or any local air pollution control agency with jurisdiction. The commission intends for this requirement to document that the entity is not required to install a vapor recovery unit or a control device because the entity is below an applicability threshold for VOC emissions. The proposed addition to the former language lists both vapor recovery units that transfer VOC and other control devices so this recordkeeping requirement mirrors the corresponding control requirement. Records must be sufficient to allow investigators to determine whether emissions have been calculated by an appropriate method. If a computer simulation is used, records of the input and output must be retained.

Section 115.119, Compliance Schedules

The commission proposes minor, non-substantive changes to subsections (a) and (b) including a statement of the language in §115.930 instead of a reference in subsection (a).

The commission proposes subsection (c) to specify that the compliance date for new requirements in the DFW area will be December 1, 2012, and that compliance with §115.112(a) will no longer be applicable after that date, but that compliance with §§115.114(a), 115.115(a), and 115.118(a) is still required.

Proposed paragraph (1) specifies that compliance with these requirements is not required until the next time the storage tank is emptied or degassed but no later than December 1, 2021, if emptying and degassing the tank is required. Additional emissions that would arise from emptying and degassing a tank could negate the benefit of the emission controls and therefore would not be required solely for the purpose of installing controls. Because tanks are generally taken out of service at least once every ten years, the controls must be installed no later than ten years from the date these rules are adopted. The delay in compliance would apply only to the installation of equipment; monitoring and recordkeeping requirements must be observed beginning December 1, 2012. Regulated entities that use the delay of compliance provision should be prepared to justify why tank emptying and degassing was necessary to comply with the rules.

The commission proposes to reletter existing subsection (c) as proposed subsection (d). Proposed subsection (d) specifies requirements that have applied in the HGB area since January 1, 2009.

Proposed subsection (e) specifies that §115.112(d) will no longer be applicable in the HGB area as of December 1, 2012. It specifies that §§115.114(a), 115.115(a), and 115.118(a) and (c) will continue to be applicable. It also specifies that the compliance date for new requirements in §115.112(e) and §115.116 will be December 1, 2012. Compliance with requirements that would require emptying and degassing a storage tank is not required until the next emptying and degassing event or January 1, 2017, except for tanks under 210,000 gallons storing crude oil or condensate prior to custody transfer that must comply with new requirements by December 1, 2012. Additional emissions that would arise from emptying and degassing a tank could negate the benefit of the emission controls and therefore would not be required solely for the purpose of installing controls. Because tanks are generally taken out of service at least once every ten years, the controls must be installed no later than ten years from the date these rules are adopted. The delay in compliance would apply only to the installation of equipment; monitoring and recordkeeping requirements must be observed beginning December 1, 2012. Regulated entities that use the delay of compliance provision should be prepared to justify why tank emptying and degassing was necessary to comply with the rules.

Proposed subsection (f) specifies that §§115.114(a), 115.115(a), and 115.118(a) will continue to be applicable in the BPA area. It also specifies that the compliance date for §115.116 will be December 1, 2012.

Proposed subsection (g) specifies that §§115.114(a), 115.115(a), and 115.118(a) will continue to be applicable in El Paso County. It also specifies that the compliance date for §115.116 will be December 1, 2012.

The commission proposes subsection (h) to specify that the compliance date for §115.116(b) in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties will be December 1, 2012.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules affect owners or operators of storage tanks located in the state. Units of state or local government do not typically own storage tanks that emit VOC, and the proposed rules will not have a fiscal impact on them.

The proposed rules amend Chapter 115 regarding the storage of VOC by clarifying existing requirements in the HGB area, including the addition of explicit testing and monitoring requirements. The proposed rules extend a more stringent version of these control requirements (along with the clarified testing, monitoring, and recordkeeping requirements) to storage tanks in the DFW area. The proposed rules also clarify definitions, reorganize requirements, include more detail to address questions and concerns raised by stakeholders, and include detail to enhance compliance with VOC storage rules. The principal intent of the proposed rules is to reduce VOC emissions in the DFW area. If adopted, the rules would be submitted as a SIP revision to the EPA.

HGB Area

In 2007, more stringent VOC storage tank regulations were implemented in the counties that make up the HGB 1997 eight-hour ozone nonattainment area. Affected counties were: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. The proposed rules will affect the HGB area by: requiring monitoring of vapor recovery units in the HGB 1997 eight-hour ozone nonattainment area; by adding a requirement that flares be compliant with 40 CFR §60.18; by requiring initial tests of flares; and by explicitly requiring compliance demonstration tests on control devices, other than flares or vapor recovery units, currently required to meet 90% control of emissions. The proposed rules also clarify issues raised by stakeholders regarding the operation of controls, testing, and other monitoring requirements. In addition, the proposed rules increase the categories of records that must be kept. However, increased recordkeeping is not expected to have a significant fiscal impact on the owners or operators of storage tanks.

DFW Area

The proposed rules will impose a more stringent version of the clarified HGB 1997 eight-hour ozone nonattainment area VOC storage tank rules on the DFW area with a more stringent control device efficiency because additional VOC reductions may be needed for the RFP SIP revision. Specifically, the proposed rules will require storage tank facilities in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties to comply with the revised rules by December 1, 2012.

Additional Counties

Storage tank facilities in the BPA eight-hour ozone nonattainment area and Aransas, Bexar, Calhoun, El Paso, Gregg, Hardin, Jefferson, Matagorda, Nueces, Orange, San Patricio, Travis, and Victoria Counties will be required to comply with clarified control device and flare verification demonstration by December 1, 2012.

The proposed rules will not have significant fiscal impacts on state agencies and units of local government in any of the affected counties since these entities do not typically own or operate storage tanks. Storage tanks affected by the proposed rules are typically owned by petroleum refineries, chemical plants, gasoline storage terminal, bulk terminals storing VOC, and oil and gas production sites.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the DFW area and other affected counties along with greater protection of the environment and public health.

The proposed rules are not expected to have a significant fiscal impact on individuals in the affected counties unless market conditions allow storage tank owners to pass any increase in operating cost to consumers.

Storage tanks can be classified as those with fixed roofs and those with floating roofs. These tanks can be found at chemical plants, petroleum refineries, gasoline storage terminals, bulk storage terminals, oil and gas production sites, and other locations. The proposed rules will have the greatest impact on owners or operators of storage tanks in the DFW area, with lesser affect on owners or operators of storage tanks in the HGB area and other affected counties.

HGB Area

Large businesses, those with 100 or more employees or more than $6 million in annual gross receipts, that own storage tanks in the HGB 1997 eight-hour ozone nonattainment area are not expected to experience significant fiscal impact as a result of the proposed rules since control requirements were already applied to them in 2009. The proposed rules clarify the 2009 control requirements. Multiple control options are still available to storage tank owners and operators in the HGB area, and controls that are installed as a result of clarification in the proposed rules are expected to be the options that best fit the operation and minimize any cost impacts. Estimated costs presented in this section of the fiscal note are for convenience of storage tank owners or operators that may be required to install additional controls as a result of clarification of the 2009 control requirements.

The proposed rules will clarify that storage tank owners in the HGB area are required to: monitor vapor recovery units; operate flares compliant with 40 CFR §60.18; perform initial tests of flares; and perform compliance demonstration tests on control devices (other than flares or vapor recovery units) required to meet 90% control of emissions. Monitoring costs for vapor recovery units could range from $300 for a run time meter to $3,000 for a totalizing flow meter. These monitoring requirements should ensure that tank owners or operators are recovering additional product, the sale of which is expected to help offset the costs of the vapor recovery units. Design verification of a flare to assure compliance with 40 CFR §60.18 could cost as much as $4,000. Retrofitting a flare by adding a flame temperature monitor to ensure compliance could cost as much as $500 to $1,000 per monitor. Storage tank owners in the HGB area are not expected to install flares on tanks if they have not already done so but a flare compliant with 40 CFR §60.18 sized for use at an affected site could cost up to $60,000 with an initial testing cost of up to $4,000. For control devices (other than flares and vapor recovery units) required to meet 90% control efficiency, compliance demonstration tests could cost as much as $10,000 to $15,000 per test.

DFW Area

Large businesses that own storage tanks in the DFW 1997 eight-hour ozone nonattainment area are expected to experience fiscal impacts as a result of the proposed rules. Businesses are expected to choose the options that best fit their operations and minimize any cost impacts. The proposed rules will require storage tank owners in the DFW area to: install a control device such as a vapor recovery unit or flare; monitor vapor recovery units; operate flares compliant with 40 CFR §60.18; perform initial tests of flares; and perform compliance demonstration tests on control devices (other than flares or vapor recovery units) required to meet 95% control of emissions. Installation costs for a vapor recovery unit can be as much as $110,000, including a sensing device to capture vapors at peak intervals. Monitoring costs for vapor recovery units could be as much as $300 to install a run time meter, $3,000 to install a totalizing flow meter, or up to $10,000 for a hydrocarbon analyzer plus $50 per measurement for labor. These monitoring requirements should ensure that tank owners or operators are recovering additional product, the sale of which is expected to help offset the costs of the vapor recovery units. Initial testing of a flare to assure compliance with 40 CFR §60.18 could cost as much as $4,000. Retrofitting a flare by adding a flame temperature monitor to ensure compliance could cost as much as $500 to $1,000 per monitor. Storage tank owners in the DFW area may need to install flares on tanks if they have not already done so and a flare compliant with 40 CFR §60.18 sized for use at an affected site could cost up to $60,000 with design verification costs of up to $4,000. For control devices (other than flares and vapor recovery units) required to meet 95% control efficiency, compliance demonstration tests could cost as much as $10,000 to $15,000 per test.

Additional Counties

The proposed rules will have a fiscal impact on businesses that own or operate storage tanks in Aransas, Bexar, Calhoun, El Paso, Gregg, Hardin, Jefferson, Matagorda, Nueces, Orange, San Patricio, Travis, and Victoria Counties as they comply with revised storage tank rules. If a business needs to upgrade a flare, adding a pilot flame temperature monitor to existing flares to ensure compliance with federal regulations could cost as much as $500 to $1,000 per flare. If not previously completed, design verification of a flare to assure compliance with 40 CFR §60.18(f) could cost as much as $4,000.

Floating Roof or Cover Tanks Storing VOC Other Than Crude Oil or Condensate

Floating roof tanks storing VOC in the DFW area will have several options to comply with more stringent requirements under the proposed rules. Storage tank owners are expected to choose the most economically viable option for their operations; and, therefore, the proposed rules are not expected to have a significant fiscal impact on businesses with floating roof tanks. Changes contained in the proposed rules include: retrofitting tanks with required fittings and seals; retrofitting for controls on slotted guidepoles; using flares compliant with 40 CFR §60.18; using portable control devices to control VOC vapors during tank landings; performing an initial control efficiency demonstration test for certain control devices; installing vapor recovery units; and constructing additional tank capacity if a tank roof is never landed. Estimated costs to retrofit tanks with required fittings and seals are $900 per tank. Estimated retrofits of controls on slotted guidepoles could be as much as $10,000 per tank. Adding pilot flame temperature monitors to demonstrate existing flare compliance could cost as much as $500 to $1,000 per monitor. Installation of a flare compliant with 40 CFR §60.18 that is sized for use at an affected site could cost up to $60,000. Design verification of a flare to assure compliance with 40 CFR §60.18(f) could cost as much as $4,000. Contracted use of a portable control device to control VOC vapors during roof landings could be as much as $25,000 per day. The proposed compliance demonstration test on a control device required to meet 95% control efficiency could cost $10,000 - $15,000 per test. If vapor recovery units are used, it could cost as much as $60,000 to $110,000 per vapor recovery unit plus the monitoring costs of $300 for a run time meter or $3,000 for a totalizing flow meter. If vapor recovery units are used, it is expected that product recovery would offset these types of control costs. If a decision is made to never land a tank roof, more tank capacity could be needed. Although it is not expected that this option would be used, the agency estimates that this option could cost as much as $610,400 per tank to construct a one million gallon capacity tank.

Tanks Storing Crude Oil or Condensate Prior to Custody Transfer or at a Pipeline Breakout Station

Typically, tanks used for this purpose are fixed roof tanks or tank batteries (a grouping of fixed roof tanks). Tanks storing crude oil or condensate prior to custody transfer or at a pipeline breakout station in the DFW area are expected to experience fiscal impacts as a result of the proposed rules. However, the fiscal impact of the proposed rules is not expected to be significant for owners or operators of these tanks since the proposed rules either allow them to recover product for sale or allow owners to choose among several control options to control emissions. Storage tank owners are expected to choose the most economically viable option for their operations.

The proposed rules will require owners or operators of these tanks that have more than 25 tpy of uncontrolled VOC emissions to control these emissions by installing vapor recovery units; by using flares compliant with 40 CFR §60.18; or by using other control devices that reduce emissions by at least 95%. The proposed rules also require an initial control efficiency demonstration test for certain control devices. Adding a pilot flame temperature monitor to existing flares to demonstrate compliance with federal regulations could cost as much as $500 to $1,000 per flare. If a business chooses to install a flare, one compliant with 40 CFR §60.18 sized for use at an affected site could cost up to $60,000. Design verification of a flare to assure compliance with 40 CFR §60.18(f) could cost as much as $4,000. The proposed compliance demonstration test on a control device required to meet 95% control efficiency could cost $10,000 - $15,000 per test. Installation of a vapor recovery unit and necessary monitoring equipment could cost as much as $60,000 to $110,000 for the unit plus $300 for a run time meter or $3,000 for a totalizing flow meter for each vapor recovery unit. However, the costs for vapor recovery units and monitoring are expected to be offset by the sale of product recovered.

Recordkeeping Requirements

Recordkeeping requirements will also increase for storage tank owners or operators as a result of the proposed rules, but any increase in costs is not expected to be significant.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses do not typically own or operate tanks of the size that might require additional costs to be incurred for controls, monitoring, and testing. If a small business does own or operate the

size and type of tank affected by the proposed rules, it can expect to incur the same costs as a large business.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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. Although the proposed rulemaking is intended to protect air quality in ozone nonattainment areas, it is not expected to have any material adverse affect on 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. Instead, the primary purpose of the proposed rules is to increase the level of control for VOC storage in the DFW ozone nonattainment area. The proposed rules will result in VOC reductions that will be used to demonstrate RFP toward the attainment of the 1997 eight-hour ozone standard in the DFW ozone nonattainment area. The proposed rules are also intended to clarify the rule requirements for sources in all affected areas; provide additional flexibility for affected owners or operators by allowing for the use of alternative control options; and facilitate rule enforcement. This includes a clarification that flares used to meet the requirements of this division must meet 40 CFR §60.18, including requirements to verify the design of flare and ensure that the flare flame must be lit at all times when VOC vapors are routed to the device.

Additionally, the proposed rulemaking also 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. FCAA, §172(c)(1) requires that the DFW SIP revision incorporate all reasonably available control measures, including all RACT, for sources of relevant pollutants. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). The proposed rulemaking will implement RACT for VOC storage in the DFW area as required by FCAA, §172(c)(1).

In 2007, the stringency of the VOC storage regulations in the HGB 1997 eight-hour ozone nonattainment area was increased after results from the second Texas Air Quality Study (May 2005) indicated unreported and underreported VOC emissions from storage tanks, including flash emissions and floating roof or cover landing loss emissions. On May 23, 2007, the commission adopted revisions to the VOC storage rules in Chapter 115, Subchapter B, Division 1, specific to the HGB area to reduce these unreported and underreported VOC emissions from storage tanks. Other recent emissions inventory improvement projects, such as the Barnett Shale special inventory, have indicated that similar issues with VOC emissions from storage tanks exist in other areas subject to the VOC storage rules in Chapter 115, Subchapter B, Division 1, and that these VOC emissions are substantial. The current level of control for VOC storage required by the commission in the HGB 1997 eight-hour ozone nonattainment area has been demonstrated to be reasonably available and technologically feasible through the installation and use of controls to meet those requirements since the implementation of the 2007 rule revisions. The commission is proposing to increase the stringency of the required controls for the DFW 1997 eight-hour ozone nonattainment area. This increased stringency, as discussed in the Fiscal Note section of the preamble, is also economically feasible. Therefore, the commission is proposing that these rules be implemented as RACT for VOC storage controls in the DFW ozone nonattainment area. The proposed rulemaking will apply these more stringent VOC storage tank control requirements in the DFW area to reduce VOC emissions from storage tanks, which will result in VOC reductions that will be used to demonstrate RFP toward the attainment of the 1997 eight-hour ozone standard in the DFW ozone nonattainment area. The proposed rulemaking would also address the concerns raised by stakeholders by revising Chapter 115, Subchapter B, Division 1 by clarifying the rule requirements for sources in all affected areas; providing additional flexibility for affected owners or operators by allowing for the use of alternative control options; and facilitating rule enforcement. This includes a clarification that flares used to meet the requirements of this division must meet 40 CFR §60.18, including requirements to verify the design of flare and ensure that the flare flame must be lit at all times when VOC vapors are routed to the device.

The proposed rulemaking implements requirements of 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, Air Pollution Prevention and Control). 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 schedule. Additionally, FCAA §172(c)(1) provides that SIPs for nonattainment areas must include "reasonably available control measures", including RACT, for sources of emissions. The proposed rules would be implemented as RACT in the DFW ozone nonattainment area.

The requirement to provide a fiscal analysis of proposed 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 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 proposed 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 attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed 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 and do not exceed, federal law, including the approved SIP. In addition, these rules do not exceed any contract between the state and a federal agency.

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 unamended. 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); Bullock v. Marathon Oil Co., 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). Cf. Humble Oil & Refining Co. v. Calvert, 414 S.W.2d 172 (Tex. 1967); Dudney 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); 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 defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." The proposed rules would be implemented as RACT for VOC storage in the DFW 1997 eight-hour ozone nonattainment area. The proposed rules would implement a more stringent level of VOC control with a lower applicability threshold and a higher control device efficiency that will result in VOC reductions that will be used to demonstrate reasonable further progress toward the attainment of the 1997 eight-hour ozone standard in the DFW ozone nonattainment area. The proposed rules would also clarify the rule requirements for sources in all affected areas; provide additional flexibility for affected owners or operators by allowing for the use of alternative control options; and facilitate rule enforcement. This includes a clarification that flares used to meet the requirements of this division must meet 40 CFR §60.18, including requirements to verify the design of flare and ensure that the flare flame must be lit at all times when VOC vapors are routed to the device. This rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the NAAQS established under federal law and authorized under Texas Health and Safety Code, §§382.011, 382.012, and 382.017, as well as under 42 USC, §7410(a)(2)(A).

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed rules would be implemented as RACT in the DFW ozone nonattainment area. RACT is required by FCAA §172(c)(1) to be included in SIPs for nonattainment areas. Furthermore, the increased level of control for VOC storage that will result from the proposed rules will result in VOC reductions that will be used to demonstrate reasonable further progress toward the attainment of the 1997 eight-hour ozone standard in the DFW ozone nonattainment area. The proposed rules would also clarify the rule requirements for sources in all affected areas; provide additional flexibility for affected owners or operators by allowing for the use of alternative control options; and facilitate rule enforcement. This includes a clarification that flares used to meet the requirements of this division must meet 40 CFR §60.18, including requirements to verify the design of flare and ensure that the flare flame must be lit at all times when VOC vapors are routed to the device. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that 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 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 specific intent of the proposed rulemaking is to apply more stringent VOC storage tank control requirements in the DFW area to reduce VOC emissions from storage tanks. The proposed rules will result in VOC reductions that will be used to demonstrate reasonable further progress toward the attainment of the 1997 eight-hour ozone standard in the DFW ozone nonattainment area. These requirements are control measures for VOC, a precursor of ozone, and are essential for attainment and maintenance of the ozone NAAQS. The proposed rules will also clarify the rule requirements for sources in all affected areas, including clarification of the requirements for using flares as a control device under this division; provide additional flexibility for affected owners or operators by allowing for the use of alternative control options; and facilitate rule enforcement.

Consequently, the proposed 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 proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). The proposed rulemaking would not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Effects on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the Chapter 115 rulemaking is adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the proposed Chapter 115 requirements.

Announcement of Hearings

The commission will hold public hearings on this proposal in Arlington on July 14, 2011 at 10:00 a.m. and 6:30 p.m. in the City Council Chambers located at 101 West Abram Street; in Houston on July 18, 2011, at 6:30 p.m. in Room C at the Houston-Galveston Area Council located at 3555 Timmons; and in Austin on July 22, 2011, at 10:00 a.m. and 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www.tceq.texas.gov/rules/ecomments.html/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-025-115-EN. The comment period closes July 25, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/rules/prop.html.* For further information, please contact Dr. Robert Gifford, Air Quality Planning Section, (512) 239-3149.

Statutory Authority

The amendments and new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments and new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendments and new sections are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe sampling methods. The amendments and new sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amendments and new sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

§115.110. Applicability and Definitions.

(a) Applicability. Except as specified in §115.111 of this title (relating to Exemptions), this division applies to any storage tank in which volatile organic compounds are placed, stored, or held that is located in:

(1) the Beaumont-Port Arthur area, as defined in §115.10 of this title (relating to Definitions);

(2) the Dallas-Fort Worth area, as defined in §115.10 of this title;

(3) the El Paso area, as defined in §115.10 of this title;

(4) the Houston-Galveston-Brazoria area, as defined in §115.10 of this title; and

(5) Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise. [~~The following words and terms, when used in this division (relating to Storage of Volatile Organic Compounds), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§3.2, 101.1, and 115.10 of this title (relating to Definitions).~~]

(1) Deck cover--A device that covers an opening in a floating roof deck. Some deck covers move horizontally relative to the deck (i.e., a sliding cover).

(2) Flexible enclosure system--A system that includes all of the following: a flexible device that completely encloses the slotted guidepole and eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (e.g., pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

(3) Incompatible liquid--A liquid that is a different chemical compound, a different chemical mixture, a different grade of liquid material, or a fuel with different regulatory specifications provided that the chemical compound, chemical mixture, grade of liquid material, or fuel would be unusable for its intended purpose due to contamination from the previously stored liquid.

(4) Internal sleeve emission control system--An emissions control system that includes all of the following: an internal guidepole sleeve that eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (e.g., pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

(5) Pipeline breakout station--A facility along a pipeline containing storage vessels used to relieve surges or receive and store crude oil or condensate from the pipeline for reinjection into the pipeline and continued transportation by pipeline or to other facilities.

(6) Pole float--A float located inside a guidepole that floats on the surface of the stored liquid. The rim of the float has a wiper or seal that extends to the inner surface of the pole.

(7) Pole sleeve--A device that extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening. The sleeve must extend [~~extends~~] into the stored liquid.

(8) Pole wiper--A seal that extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening.

(9) Slotted guidepole--A guidepole or gaugepole that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

(10) Storage capacity--The volume of a storage tank as determined by multiplying the internal cross-sectional area of the tank by the average internal height of the tank shell.

(11) Storage tank--A stationary vessel, reservoir, or container used to store volatile organic compounds. This definition does not include: components that are not directly involved in the containment of liquids or vapors; subsurface caverns or porous rock reservoirs; or process tanks or vessels.

(12) [~~(10)~~] Tank battery--A collection of equipment used to separate, treat, store, and transfer crude oil, condensate, natural gas, and produced water. A tank battery typically receives crude oil, condensate, natural gas, or some combination of these extracted products from several production wells for accumulation and separation prior to transmission to a natural gas plant or petroleum refinery. A collection of storage tanks at a pipeline breakout station, petroleum refinery, or petrochemical plant is not considered to be a tank battery.

(13) Vapor recovery unit--A device that transfers hydrocarbon vapors to a fuel liquid or gas system, a sales liquid or gas system, or a liquid storage tank.

§115.111. Exemptions.

(a) The following exemptions apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), except as noted in paragraphs (2) and (9) of this subsection. In the Dallas-Fort Worth area, the exemptions in this subsection no longer apply after the date in §115.119(c) of this title (relating to Compliance Schedules).

(1) Except as provided in §115.118 of this title (relating to Recordkeeping Requirements), any storage tank storing volatile organic compounds (VOC) with a true vapor pressure less than 1.5 pounds per square inch absolute (psia) is exempt from the requirements of this division.

(2) Storage tanks with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer in the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas are exempt from the requirements of this division.

(3) Storage tanks with a storage capacity less than 25,000 gallons located at motor vehicle fuel dispensing facilities are exempt from the requirements of this division.

(4) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) External floating roof storage tanks storing waxy, high pour point crude oils are exempt from any secondary seal requirements of §115.112(a) and (d) of this title (relating to Control Requirements).

(6) Any welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) Any welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) Storage tanks with storage capacity less than 1,000 gallons are exempt from the requirements of this division.

(9) Storage tanks or tank batteries in the Houston-Galveston-Brazoria area storing condensate, as defined in §101.1 of this title (relating to Definitions), with a throughput exceeding 1,500 barrels (63,000 gallons) per year are exempt from the requirement in §115.112(d)(4) or (e)(4) of this title, to route flashed gases to a vapor recovery system or control device if the owner or operator demonstrates, using test methods specified in §115.117 of this title (relating to Approved Test Methods), that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(b) The following exemptions apply in Gregg, Nueces, and Victoria Counties.

(1) Except as provided in §115.118 of this title, any storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) Storage tanks with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer are exempt from the requirements of this division.

(3) Storage tanks with storage capacity less than 25,000 gallons located at motor vehicle fuel dispensing facilities are exempt from the requirements of this division.

(4) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) External floating roof storage tanks storing waxy, high pour point crude oils are exempt from any secondary seal requirements of §115.112(b) of this title.

(6) Any welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) Any welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) Storage tanks with storage capacity less than 1,000 gallons are exempt from the requirements of this division.

(c) The following exemptions apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) Any storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) Slotted guidepoles installed in any floating roof or cover storage tank are exempt from the provisions of §115.112(c) of this title.

(3) Storage tanks with storage capacity between 1,000 gallons and 25,000 gallons are exempt from the requirements of §115.112(c)(1) of this title if construction began before May 12, 1973.

(4) Storage tanks with storage capacity less than or equal to 420,000 gallons are exempt from the requirements of §115.112(c)(3) of this title.

(5) Storage tanks with storage capacity less than 1,000 gallons are exempt from the requirements of this division.

(d) The following exemptions apply in the Dallas-Fort Worth area as of the date in §115.119(c) of this title.

(1) Except as provided in §115.118 of this title, any storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) Storage tanks with a storage capacity less than 25,000 gallons located at motor vehicle fuel dispensing facilities are exempt from the requirements of this division.

(3) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the storage tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(4) External floating roof storage tanks storing waxy, high pour point crude oils are exempt from any secondary seal requirements of §115.112(f) of this title.

(5) Any welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(6) Any welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) Storage tanks with storage capacity less than 1,000 gallons are exempt from the requirements of this division.

(8) Storage tanks or tank batteries storing condensate, as defined in §101.1 of this title, with a throughput exceeding 1,500 barrels (63,000 gallons) per year are exempt from the requirement in §115.112(f)(4) of this title to route flashed gases to a vapor recovery unit or control device if the owner or operator demonstrates, using test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

§115.112. Control Requirements.

(a) The following requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas, as defined in §115.10 of this title (relating to Definitions). The control requirements in this subsection no longer apply in the Dallas-Fort Worth area as of the date in §115.119(c)(2) of this title (relating to Compliance Schedules). [~~For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and until January 1, 2009, in the Houston/Galveston/Brazoria areas as defined in §115.10 of this title (relating to Definitions), the following requirements apply.~~]

(1) No person shall place, store, or hold in any storage tank [~~stationary tank, reservoir, or other container~~] any volatile organic compounds [~~compound~~] (VOC) unless the storage tank [~~such container~~] is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in Table I(a) of this paragraph for VOC other than crude oil and condensate, or Table II(a) of this paragraph for crude oil and condensate.
Figure: 30 TAC §115.112(a)(1)
[~~Figure: 30 TAC §115.112(a)(1)~~]

(2) For floating roof or cover storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating cover or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof or cover is being floated off or landed on the roof or cover leg supports.

(C) Rim vents, if provided, must be set to open only when the roof or cover is being floated off the roof or cover leg supports or at the manufacturer's recommended setting.

(D) Any roof or cover drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For external floating roof storage tanks, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch [~~(0.32 centimeter)~~] in width between the secondary seal and storage tank wall must be no greater than 1.0 square inch per foot [~~(21 square centimeters permeter)~~] of tank diameter.

(3) Vapor recovery systems, as defined in §115.10 of this title, used as a control device on any storage tank [~~stationary tank, reservoir, or other container~~] must maintain a minimum control efficiency of 90%. If a flare is used, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008, (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(b) The following requirements apply [~~For all persons~~] in Gregg, Nueces, and Victoria Counties. [~~, the following requirements shall apply:~~]

(1) No person shall place, store, or hold in any storage tank [~~stationary tank, reservoir, or other container~~] any VOC [~~volatile organic compound (VOC)~~], unless the storage tank [~~such container~~] is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in Table I(a) in subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a)

in subsection (a)(1) of this section for crude oil and condensate. If a flare is used as a vapor recovery system, as defined in §115.10 of this title, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008, (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(2) For floating roof or cover storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements [~~shall~~] apply.

(A) All openings in an internal floating cover or external floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times, except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must [~~are to~~] be closed at all times except when the roof or cover is being floated off or landed on the roof or cover leg supports.

(C) Rim vents, if provided, must [~~are to~~] be set to open only when the roof or cover is being floated off the roof or cover leg supports or at the manufacturer's recommended setting.

(D) Any roof or cover drain that empties into the stored liquid must [~~shall~~] be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must [~~shall~~] be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For external floating roof storage tanks, secondary seals must [~~shall~~] be the rim-mounted type (the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch [~~(0.32 centimeter)~~] in width between the secondary seal and tank wall must [~~shall~~] be no greater than 1.0 square inch per foot [~~(21 square centimeters/meter)~~] of tank diameter.

(c) The following requirements apply [~~For all persons~~] in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. [~~, the following requirements shall apply.~~]

(1) No person may place, store, or hold in any storage tank [~~stationary tank, reservoir, or other container~~] any VOC, other than crude oil or condensate, unless the storage tank [~~such container~~] is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is designed and equipped with at least the control device specified in Table I(b) of this paragraph for VOC other than crude oil and condensate. If a flare is used as a vapor recovery system, as defined in §115.10 of this title, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008, (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

Figure: 30 TAC §115.112(c)(1)

[~~Figure: 30 TAC §115.112(c)(1)~~]

(2) For floating roof or cover storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements [~~shall~~] apply.

(A) There must [~~shall~~] be no visible holes, tears, or other openings in any seal or seal fabric.

(B) All tank gauging and sampling devices must [~~shall~~] be vapor-tight except when gauging and sampling is taking place.

(3) No person in Matagorda or San Patricio Counties shall place, store, or hold crude oil or condensate in any storage tank [~~stationary tank, reservoir, or other container,~~] unless the storage tank [~~such tank, reservoir, or other container~~] is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is equipped with one of the following [~~vapor loss~~] control devices, properly maintained and operated:

(A) an internal floating cover or external floating roof, as defined in §115.10 of this title [~~(relating to Definitions)~~]. These control devices will [~~This control equipment shall~~] not be permitted if the VOC has a true vapor pressure of 11.0 psia or greater. All tank-gauging and tank-sampling devices must [~~shall~~] be vapor-tight, except when gauging or sampling is taking place; or

(B) a vapor recovery system as defined in §115.10 of this title [~~(relating to Definitions)~~]. If a flare is used, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008, (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(d) The following requirements apply [~~For all persons~~] in the Houston-Galveston-Brazoria [~~Houston/Galveston/Brazoria~~] area, as defined in §115.10 of this title [~~the following requirements apply beginning January 1, 2009~~]. The requirements in this subsection no longer apply as of the date in §115.119(e)(2) of this title.

(1) No person shall place, store, or hold in any storage tank [~~stationary tank, reservoir, or other container~~] any VOC unless the storage tank [~~such container~~] is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in either Table I(a) of subsection (a)(1) of this section for VOC other than crude oil and condensate, or Table II(a) of subsection (a)(1) of this section for crude oil and condensate.

(2) For floating roof or cover storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating cover or external floating roof as defined in §115.10 of this title [~~(relating to Definitions)~~] except for automatic bleeder vents (vacuum breaker vents), and rim space vents must provide a projection below the liquid surface. All openings in an internal floating cover or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof or cover drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access.

(B) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum[~~,~~] in accordance with the manufacturer's design.

(C) Each opening into the internal floating cover for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(D) Any roof or cover drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on internal floating cover [~~roof~~] tanks are not subject to this requirement.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For external floating roof storage tanks, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch [~~(0.32 centimeter)~~] in width between the secondary seal and storage tank wall must be no greater than 1.0 square inch per foot [~~(21 square centimeters per meter)~~] of storage tank diameter.

(G) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations: [~~specified in clauses (i) - (vi) of this subparagraph.~~]

(i) a pole wiper and pole float that has a seal at or above the height of the pole wiper; [~~A pole wiper and a pole float. The wiper or seal of the pole float must be at or above the height of the pole wiper.~~]

(ii) a [~~A~~] pole wiper and a pole sleeve; [~~.~~]

(iii) an [~~An~~] internal sleeve emission control system; [~~.~~]

(iv) a retrofit [~~Retrofit~~] to a solid guidepole system; [~~.~~]

(v) a [~~A~~] flexible enclosure system; or [~~.~~]

(vi) a [~~A~~] cover on an external floating roof tank.

(H) The floating roof or cover must be floating on the liquid surface at all times except as specified in this subparagraph. The [~~when the~~] floating roof or cover may be [~~is~~] supported by the leg supports or other support devices, such as [~~(e.g.,~~] hangers from the fixed roof, [~~)~~] during the initial fill or [~~(including~~] refill after the storage tank has been cleaned [~~degassed and cleaned in accordance with §§115.541 - 115.547 of this title (relating to Degassing or Cleaning of Stationary, Marine, and Transport Vessels)~~] or as allowed under the following circumstances:

(i) when necessary for maintenance or inspection;

(ii) when necessary for supporting a change in service to an incompatible liquid[~~)~~];

(iii) when the storage tank has a storage capacity [~~of~~] less than 25,000 gallons or the vapor pressure of the material stored is less than 1.5 psia;

(iv) when the vapors are routed to a control device from the time the floating roof or cover is landed until the floating roof or cover is within ten percent by volume of being refloated;

(v) when all VOC emissions from the tank, including emissions from roof or cover landings, have been included in a floating roof or cover storage tank emissions limit or cap approved under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or

(vi) when all VOC emissions from floating roof or cover landings at the regulated entity, as defined in §101.1 of this title, [~~(relating to Definitions)~~] are less than 25 tons per year.

(3) Vapor recovery systems, as defined in §115.10 of this title, used as a control device on any storage tank [~~stationary tank, reservoir, or other container~~] must maintain a minimum control efficiency of 90%.

(4) Storage tanks storing condensate, as defined in §101.1 of this title, prior to custody transfer must route flashed gases to a vapor recovery system or control device if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year.

(5) Storage tanks storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must route flashed gases to a vapor recovery system or control device if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, have the potential to equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods; however, if emissions determined using direct measurements or other methods approved by the executive director under subparagraphs (A) or (D) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraphs (B) or (C) of this paragraph, the higher values must be used. [~~:~~]

(A) Make direct measurements [~~direct measurement~~] using the measuring instruments and methods specified in §115.117 [~~§115.115~~] of this title (relating to Approved Test Methods). [~~;~~]

(B) Use [~~using~~] a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced. [~~;~~]

(C) For [~~for~~] crude oil storage only, use [~~using~~] the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star [~~STAR~~] Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC. [~~; or~~]

(D) Other test methods or computer simulations may be allowed if [~~other test method or computer simulation~~] approved by the executive director.

(e) The control requirements in this subsection apply in the Houston-Galveston-Brazoria area as of the date in §115.119(e) of this title.

(1) No person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is equipped with at least the control device specified in either Table 1 of this paragraph for VOC other than crude oil and condensate, or Table 2 of this paragraph for crude oil and condensate.
Figure: 30 TAC §115.112(e)(1)

(2) For external floating roof or internal floating cover storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating cover or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface.

(B) All openings in an internal floating cover or external floating roof, except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof or cover drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access.

(C) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve

excess pressure or vacuum in accordance with the manufacturer's design.

(D) Each opening into the internal floating cover for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(E) Any roof or cover drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on internal floating cover tanks are not subject to this requirement.

(F) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(G) For external floating roof storage tanks, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall must be no greater than 1.0 square inch per foot of storage tank diameter.

(H) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(I) The floating roof or cover must be floating on the liquid surface at all times except as allowed in this subparagraph. The floating roof or cover may be supported by the leg supports or other support devices such as hangers from the fixed roof, during the initial fill or refill after the tank has been cleaned or as allowed under the following circumstances:

(i) when necessary for preventive maintenance, roof or cover repair, primary seal inspection, or removal and installation of a secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days;

(ii) when necessary for supporting a change in service to an incompatible liquid;

(iii) when the storage tank has a storage capacity less than 25,000 gallons;

(iv) when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof or cover is within 10% by volume of being refloated;

(v) when all VOC emissions from the tank, including emissions from floating roof or cover landings, have been included in a floating roof or cover storage tank emissions limit or cap approved under Chapter 116 of this title prior to the compliance date; or

(vi) when all VOC emissions from floating roof or cover landings at the regulated entity are less than 25 tons per year.

(3) Control devices used to comply with this subsection must meet one of the following conditions at all times when VOC vapors are routed to the device.

(A) A control device, other than a vapor recovery unit or a flare, must maintain a minimum control efficiency of at least 90%.

(B) A vapor recovery unit must be designed to process all VOC vapor generated by the maximum crude oil and condensate throughput of the storage tank and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10 of this title.

(C) A flare must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008, (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(4) Storage tanks storing condensate prior to custody transfer must route flashed gases to a vapor recovery unit or control device if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year.

(5) Storage tanks storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must route flashed gases to a vapor recovery unit or control device if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, have the potential to equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods; however, if emissions determined using direct measurements or other methods approved by the executive director under subparagraphs (A) or (B) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraphs (C) or (D) of this paragraph, the higher values must be used.

(A) Make direct measurements using the measuring instruments and methods specified in §115.117 of this title.

(B) Use other test methods or computer simulations approved by the executive director.

(C) Use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(D) For crude oil storage only, use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks,* October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(f) The control requirements in this subsection apply in the Dallas-Fort Worth area as of the date in §115.119(c) of this title.

(1) No person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in either Table f1 of this paragraph for VOC other than crude oil and condensate, or Table f2 of this paragraph for crude oil and condensate.
Figure: 30 TAC §115.112(f)(1)

(2) For external floating roof or internal floating cover storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating cover or external floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface.

(B) All openings in an internal floating cover or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof or cover drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access.

(C) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(D) Each opening into the internal floating cover for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(E) Any roof or cover drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on internal floating cover tanks are not subject to this requirement.

(F) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(G) For external floating roof storage tanks, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall must be no greater than 1.0 square inch per foot of storage tank diameter.

(H) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(I) The floating roof or cover must be floating on the liquid surface at all times except as allowed in this subparagraph. The floating roof or cover may be supported by the leg supports or other support devices such as hangers from the fixed roof, during the initial fill or refill after the tank has been cleaned or as allowed under the following circumstances:

(i) when necessary for preventive maintenance, roof or cover repair, primary seal inspection, or removal and installation of a secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days;

(ii) when necessary for supporting a change in service to an incompatible liquid;

(iii) when the storage tank has a storage capacity less than 25,000 gallons;

(iv) when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof or cover is within 10% by volume of being refloated;

(v) when all VOC emissions from the tank, including emissions from floating roof or cover landings, have been included in a floating roof or cover storage tank emissions limit or cap approved under Chapter 116 of this title prior to the compliance date; or

(vi) when all VOC emissions from floating roof or cover landings at the regulated entity are less than 25 tons per year.

(3) Control devices used to comply with this subsection must meet one of the following conditions at all times when VOC vapors are routed to the device.

(A) A control device, other than a vapor recovery unit or a flare, must maintain a minimum control efficiency of at least 95%.

(B) A vapor recovery unit must be designed to process all VOC vapor generated by the maximum crude oil and condensate throughput of the storage tank and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10 of this title.

(C) A flare must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008, (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(4) Storage tanks storing condensate prior to custody transfer must route flashed gases to a vapor recovery unit or control device if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year.

(5) Storage tanks storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must route flashed gases to a vapor recovery unit or control device if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, have the potential to equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods; however, if emissions determined using direct measurements or other methods approved by the executive director under subparagraphs (A) or (B) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraphs (C) or (D) of this paragraph, the higher values must be used.

(A) Make direct measurements using the measuring instruments and methods specified in §115.117 of this title.

(B) Use other test methods or computer simulations approved by the executive director.

(C) Use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(D) For crude oil storage only, use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

§115.113. Alternate Control Requirements.

Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division [~~(relating to Storage of Volatile Organic Compounds)~~] may be approved by the executive director in accordance with §115.910

of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.114. Inspection Requirements.

(a) The following inspection requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions). [~~For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas, the following inspection requirements apply.~~]

(1) For internal floating cover [~~roof~~] storage tanks, the internal floating cover [~~roof~~] and the primary seal or the secondary seal (if one is in service) must be visually inspected through a fixed roof inspection hatch at least once every 12 months.

(A) If the internal floating cover [~~roof~~] is not resting on the surface of the volatile organic compounds (VOC) inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the internal floating cover [~~roof~~]; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 of this title (relating to Degassing of Storage Tanks, Transport Vessels, and Marine Vessels) [~~§§115.541 - 115.547 of this title (relating to Degassing or Cleansing of Stationary, Marine, and Transport Vessels)~~].

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(2) For external floating roof storage tanks, the secondary seal gap must be physically measured at least once every 12 months to insure compliance with §115.112(a)(2)(F), (d)(2)(F), (e)(2)(G), and (f)(2)(G) [~~and 115.112(d)(2)(F)~~] of this title (relating to Control Requirements).

(A) If the secondary seal gap exceeds the limitations specified by §115.112(a)(2)(F), (d)(2)(F), (e)(2)(G), or (f)(2)(G) [~~or §115.112(d)(2)(F)~~] of this title, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 [~~§§115.541 - 115.547~~] of this title.

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(3) If the tank is equipped with a mechanical shoe or liquid-mounted primary seal, compliance with §115.112(a)(2)(F), (d)(2)(F), (e)(2)(G), and (f)(2)(G) [~~and §115.112(d)(2)(F)~~] of this title can be determined by visual inspection.

(4) For external floating roof storage tanks, the secondary seal must be visually inspected at least once every six months to ensure compliance with §115.112(a)(2)(E) and (F), (d)(2)(E) and (F), (e)(2)(F) and (G), and (f)(2)(F) and (G) [~~and §115.112(d)(2)(E) and (F)~~] of this title.

(A) If the external floating roof is not resting on the surface of the VOC [~~volatile organic compounds (VOC)~~] inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the external floating roof; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 [~~§§115.541 - 115.547~~] of this title.

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(b) The following inspection requirements apply [~~For all persons~~] in Gregg, Nueces, and Victoria Counties[~~, the following inspection requirements shall apply~~].

(1) If during an inspection of an internal floating cover [~~roof~~] storage tank, the internal floating cover [~~roof~~] is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the internal floating cover [~~roof~~]; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank. If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must [~~shall~~] include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(2) For external floating roof storage tanks, the secondary seal gap shall be physically measured at least once every 12 months to insure compliance with §115.112(b)(2)(F) of this title.

(A) If the secondary seal gap exceeds the limitations specified by §115.112(b)(2)(F) of this title, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank.

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must [~~shall~~] include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(3) If the tank is equipped with a mechanical shoe or liquid-mounted primary seal, compliance with §115.112(b)(2)(F) of this title can be determined by visual inspection.

(4) For external floating roof storage tanks, the secondary seal shall be visually inspected at least once every 12 months to insure compliance with §115.112(b)(2)(E) - (F) of this title.

(A) If the external floating roof is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the external floating roof; or

the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank.

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must [~~shall~~] include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(c) The following inspection requirements shall apply for [~~For~~] all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties[~~, the following inspection requirements shall apply~~].

(1) If during an inspection of an internal floating cover [~~roof~~] storage tank, the internal floating cover [~~roof~~] is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the internal floating cover [~~roof~~]; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank. If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must [~~shall~~] include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(2) If during an inspection of an external floating roof storage tank, the external floating roof is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the external floating roof; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank. If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must [~~shall~~] include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

§115.115. Monitoring Requirements.

(a) The following monitoring requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions). An affected owner or operator shall install and maintain monitors to continuously measure operational parameters of any of the following control devices installed to meet applicable control requirements. Such monitors must be sufficient to demonstrate proper functioning of those devices to design specifications.

(1) For a direct-flame incinerator, the owner or operator shall continuously monitor the exhaust gas temperature immediately downstream of the device.

(2) For a condensation system, the owner or operator shall continuously monitor the outlet gas temperature to ensure the temperature is below the manufacturer's recommended operating temperature for controlling the volatile organic compounds (VOC) vapors routed to the device.

(3) For a carbon adsorption system, the owner or operator shall:

(A) continuously monitor the exhaust gas VOC concentration of any carbon adsorption system that regenerates the carbon bed directly to determine breakthrough. For the purpose of this paragraph, breakthrough is defined as a measured VOC concentration exceeding 100 parts per million by volume above background expressed as methane; or

(B) switch the vent gas flow to fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorption system.

(4) For a catalytic incinerator, the owner or operator shall continuously monitor the inlet and outlet gas temperature.

(5) For a vapor recovery unit used to comply with §115.112(e)(3) or (f)(3) of this title (relating to Control Requirements), the owner or operator shall continuously monitor at least one of the following operational parameters:

(A) run-time of the compressor or motor in a vapor recovery unit;

(B) total volume of recovered vapors; or

(C) other parameters sufficient to demonstrate proper functioning to design specifications.

(6) For a control device not listed in this subsection, the owner or operator shall continuously monitor one or more operational parameters sufficient to demonstrate proper functioning of the control device to design specifications.

(b) In Victoria County, the owner or operator shall continuously monitor operational parameters of any of the emission control devices listed in this subsection installed to meet applicable control requirements.

(1) Continuously monitor the exhaust gas temperature immediately downstream of a direct-flame incinerator.

(2) Continuously monitor the inlet and outlet gas temperature of a condensation system or catalytic incinerator.

(3) Continuously monitor the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine if breakthrough has occurred.

§115.116. Testing Requirements.

(a) The testing requirements in this subsection apply in the Dallas-Fort Worth area as of the date in §115.119(c) of this title (relating to Compliance Schedules). The testing requirements in this subsection apply in the Houston-Galveston-Brazoria area as of the date in §115.119(e) of this title. The testing requirements in this subsection apply in the Beaumont-Port Arthur area as of the date in §115.119(f) of this title. The testing requirements in this subsection apply in the El Paso area as of the date in §115.119(g) of this title. The following requirements apply to a control device, other than a vapor recovery unit or a flare, used to comply with the control requirements in §115.112(a)(3), (e)(3)(A), and (f)(3)(A) of this title (relating to Control Requirements).

(1) An initial control efficiency test must be conducted.

(2) The test must be conducted prior to the compliance date for this subsection. Control devices placed into service after the compliance date for this subsection, must be tested no later than 60 days after being placed into service.

(3) The test must be performed in accordance with the approved test methods in §115.117 of this title (relating to Approved Test Methods).

(4) If the device is modified in any way that could reasonably be expected to decrease the efficiency of a control device, the device must be retested within 60 days of the modification.

(b) The testing requirements in this subsection apply in the Dallas-Fort Worth area as of the date in §115.119(c) of this title. The testing requirements in this subsection apply in the Houston-Galveston-Brazoria area as of the date in §115.119(e) of this title. The testing requirements in this subsection apply in the Beaumont-Port Arthur area as of the date in §115.119(f) of this title. The testing requirements in this subsection apply in the El Paso area as of the date in §115.119(g) of this title. The testing requirements in this subsection apply in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties as of the date in §115.119(h) of this title. The following requirements apply to a flare used to comply with the control requirements in §115.112 of this title.

(1) A flare must meet the design verification test requirements in 40 Code of Federal Regulations §60.18(f) (as amended through December 22, 2008, (73 FR 78209)).

(2) The testing must be conducted prior to the compliance date for this subsection. Flares placed into service after the compliance date for this subsection, must be tested no later than 60 days after being placed into service.

§115.117. Approved Test Methods.

Compliance with the requirements in this division must be determined by applying the following test methods, as appropriate:

(1) Methods 1 - 4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates, as necessary;

(2) Method 18 (40 CFR Part 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(3) Method 22 (40 CFR Part 60, Appendix A) for determination of visible emissions from flares;

(4) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(5) Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(6) test method described in 40 CFR §60.113a(a)(1)(ii) (effective April 8, 1987) for measurement of storage tank seal gap;

(7) true vapor pressure must be determined using standard reference texts or American Society for Testing and Materials Test Method D323, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989. For the purposes of temperature correction, the owner or operator shall use the actual storage temperature. Actual storage temperature of an unheated tank or vessel may be determined using the maximum local monthly average ambient temperature as reported by the National Weather Service. Actual storage temperature of a heated tank or vessel must be determined using either the measured temperature or the temperature set point of the tank or vessel;

(8) mass flow meter, positive displacement meter, or similar device for measuring the volumetric flow rate of flash, working, breathing, and standing emissions from crude oil and condensate over a 24-hour period representative of normal operation. For crude oil and natural gas production sites, volumetric flow rate measurements must be made while the producing wells are operational;

(9) test methods referenced in paragraphs (2), (4), and (5) of this section or Gas Processors Association Method 2286, Tentative Method of Extended Analysis for Natural Gas and Similar Mixtures by Temperature Programmed Gas Chromatography, to measure the concentration of volatile organic compounds in flashed gases from crude oil and condensate storage;

(10) test methods other than those specified in this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301 and approved by the executive director; or

(11) minor modifications to these test methods approved by the executive director.

§115.118. Recordkeeping Requirements.

(a) The following recordkeeping requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions).

(1) The owner or operator of storage tank claiming an exemption in §115.111 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. Where applicable, true vapor pressure, volatile organic compounds (VOC) content type, or a combination of the two must be recorded initially and at every change of service or when the storage tank is emptied and refilled.

(2) The owner or operator of any storage tank with an external floating roof that is exempt from the requirement for a secondary seal as specified in §115.111(a)(1), (6), and (7) and (d)(1), (5), and (6) of this title and is used to store VOC with a true vapor pressure greater than 1.0 pounds per square inch absolute (psia) shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid.

(3) The owner or operator shall maintain records of the results of inspections required by §115.114(a) of this title (relating to Inspection Requirements). For secondary seal gaps that are required to be physically measured during inspection, these records must include a calculation of emissions for all secondary seal gaps that exceed 1/8 inch where the accumulated area of such gaps is greater than 1.0 square inch per foot of tank diameter. These calculated emissions inventory reportable emissions must be reported in the annual emissions inventory submittal required by §101.10 of this title (relating to Emissions Inventory Requirements). The emissions must be calculated using the following equation.

Figure: 30 TAC §115.118(a)(3)

(4) The owner or operator shall continuously record operational parameters of any of the following emission control devices installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications.

(A) For a direct-flame incinerator, the owner or operator shall continuously record the exhaust gas temperature immediately downstream of the device.

(B) For a condensation system, the owner or operator shall continuously record the outlet gas temperature to ensure the tem-

perature is below the manufacturer's recommended operating temperature for controlling the VOC vapors routed to the device.

(C) For a carbon adsorption system, the owner or operator shall:

(i) continuously record the exhaust gas VOC concentration of any carbon adsorption system monitored according to §115.115(a)(3)(A) of this title (relating to Monitoring Requirements); or

(ii) record the date and time of each switch between carbon containers if the carbon adsorption system is switched according to §115.115(a)(3)(B) of this title.

(D) For a catalytic incinerator, the owner or operator shall continuously record the inlet and outlet gas temperature.

(5) The owner or operator of any storage tank required to comply with §115.112(e)(3) or (f)(3) of this title (relating to Control Requirements) shall continuously record the operational parameters of a vapor recovery unit or other control device not listed in §115.115(a) of this title monitored according to §115.115(a)(5) or (6).

(6) The owner or operator shall maintain the results of any testing conducted in accordance with the provisions specified in §115.117 of this title (relating to Approved Test Methods) at an affected site. Results may be maintained at an off-site location if they are made available within 24 hours.

(7) All records must be maintained for two years and be made available for review upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction. In the Dallas-Fort Worth area, any records created on or after two years prior to the date in §115.119(c) of this title (relating to Compliance Schedules) must be maintained for at least five years.

(b) The following recordkeeping requirements apply in Gregg, Nueces, and Victoria Counties.

(1) The owner or operator of any storage vessel with an external floating roof which is exempted from the requirement for a secondary seal as specified in §115.111(b)(1), (6), and (7) of this title and used to store VOC with a true vapor pressure greater than 1.0 psia shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid.

(2) The owner or operator shall record the results of inspections required by §115.114(b) of this title.

(3) In Victoria County, the owner or operator shall continuously record operational parameters of any of the following emission control devices installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:

(A) the exhaust gas temperature immediately downstream of a direct-flame incinerator;

(B) the inlet and outlet gas temperature of a condensation system or catalytic incinerator; and

(C) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine if breakthrough has occurred.

(4) The owner or operator shall maintain records of the results of any testing conducted in accordance with the provisions specified in §115.117 of this title at an affected site.

(5) All records shall be maintained for two years and be made available for review upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction.

(c) The following recordkeeping requirements apply in the Houston-Galveston-Brazoria area in addition to those specified in subsection (a) of this section. Beginning on the date in §115.119(c) of this title, these requirements also apply in the Dallas-Fort Worth area.

(1) The owner or operator of any storage tank with a fixed roof that is not required to be equipped with a floating roof, floating cover, vapor recovery unit, or other control device, as specified in either Table I(a) or Table II(a) of §115.112(a)(1) of this title; or Table 1 or Table 2 of §115.112(e)(1) of this title; or Table f1 or Table f2 of §115.112(f)(1) of this title, shall maintain records of the type of VOC stored, the starting and ending dates when the material is stored, and the true vapor pressure at the average monthly storage temperature of the stored liquid. This requirement does not apply to storage tanks with storage capacity of 25,000 gallons or less storing VOC other than crude oil or condensate, or to storage tanks with storage capacity of 40,000 gallons or less storing crude oil or condensate.

(2) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station and is not equipped with a vapor recovery unit or other control device shall maintain records of the estimated annual uncontrolled emissions from the storage tank. The records must be updated annually and must be made available for review within 72 hours upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction.

§115.119. [~~Counties and~~] Compliance Schedules.

(a) The owner or operator of each storage tank [~~stationary tank, reservoir, or other container~~] in which any volatile organic compounds [~~compound~~] (VOC) is placed, stored, or held in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division as of the original compliance date which is in the past. [~~(relating to Storage of Volatile Organic Compounds) as required by §115.930 of this title (relating to Compliance Dates).~~]

(b) The owner or operator of each storage tank [~~stationary tank, reservoir, or other container~~] in which any VOC is placed, stored, or held in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division [~~as soon as practicable, but~~] no later than March 1, 2009.

(c) The owner or operator of each storage tank in which any VOC is placed, stored, or held in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties shall comply with §§115.112(f), 115.116, and 115.118(c) of this title (relating to Control Requirements; Testing Requirements; and Recordkeeping Requirements, respectively) no later than December 1, 2012.

(1) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied or degassed but no later than December 1, 2021.

(2) The owner or operator is no longer required to comply with §115.112(a) of this title as of December 1, 2012.

(3) The owner or operator shall continue to comply with §§115.114(a), 115.115(a), 115.118(a) of this title (relating to Inspection Requirements; Monitoring Requirements; and Recordkeeping Requirements, respectively).

(4) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than December 1, 2012, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(d) [~~(c)~~] The owner or operator of each storage tank [~~stationary tank, reservoir, or other container~~] in which any VOC is placed, stored, or held in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall comply with the requirements of §§115.112(d), 115.115(a), 115.117, and 115.118(a) [~~115.115(c), and 115.116(c)~~] of this title (relating to Control Requirements; Monitoring Requirements; Approved Test Methods; and [~~Monitoring and~~] Recordkeeping Requirements, respectively) [~~as soon as practicable, but~~] no later than January 1, 2009. [~~If compliance with these requirements would require emptying and degassing of the stationary tank, reservoir, or container, compliance is not required until the next time the stationary tank, reservoir, or container is emptied or degassed but no later than January 1, 2017. The owner or operator of each stationary tank, reservoir, or container with a nominal capacity less than 210,000 gallons (794,850 liters) storing crude oil and condensate prior to custody transfer in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall comply with the requirements of this division as soon as practicable but no later than January 1, 2009, regardless if compliance with these requirements would require emptying and degassing of the stationary tank, reservoir, or container.~~]

(1) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied or degassed but no later than January 1, 2017.

(2) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with the requirements of this division no later than January 1, 2009, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(e) The owner or operator of each storage tank in which any VOC is placed, stored, or held in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall comply with §115.112(e) and §115.116 of this title no later than December 1, 2012.

(1) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied or degassed but no later than January 1, 2017.

(2) The owner or operator is no longer required to comply with §115.112(d) of this title as of December 1, 2012.

(3) The owner or operator shall continue to comply with §§115.114(a), 115.115(a), and 115.118(a) and (c) of this title.

(4) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than December 1, 2012, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(f) The owner or operator of each storage tank in which any VOC is placed, stored, or held in Hardin, Jefferson, and Orange Counties shall continue to comply with §§115.114(a), 115.115(a), and 115.118(a) of this title and shall comply with §115.116 of this title no later than December 1, 2012.

(g) The owner or operator of each storage tank in which any VOC is placed, stored, or held in El Paso County shall continue to comply with §§115.114(a), 115.115(a), and 115.118(a) of this title and shall comply with §115.116 of this title no later than December 1, 2012.

(h) The owner or operator of each storage tank in which any VOC is placed, stored, or held in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties shall comply with the requirements of §115.116(b) of this title no later than December 1, 2012.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102110
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 239-0779

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30 TAC §§115.115 - 115.117

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under THSC, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The repeals are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe sampling methods. The repeals are also proposed under FCAA, 42 USC, §§7401, *et seq.,* which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The proposed repeals implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, and FCAA, 42 USC, §§7401 *et seq.*

§115.115. Approved Test Methods.

§115.116. Monitoring and Recordkeeping Requirements.

§115.117. Exemptions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0779

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SUBCHAPTER E. SOLVENT-USING PROCESSES

The Texas Commission on Environmental Quality (commission) proposes the repeal of §115.437; amendments to §§115.422, 115.427, 115.429, 115.430, 115.432, 115.433, 115.435, 115.436, and 115.439; and new §§115.431, 115.450, 115.451, 115.453 - 115.455, 115.458 - 115.461, 115.463 - 115.465, 115.468 - 115.471, 115.473 - 115.475, 115.478, and 115.479.

If adopted, the repealed, amended, and new sections 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 Proposed Rules

The 1990 Federal Clean Air Act (FCAA) Amendments (42 United States Code (USC), §§7401 *et seq.)* require the EPA to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas exceeding the NAAQS as nonattainment areas. For each designated nonattainment area, the state is required to submit a SIP revision to the EPA that provides for attainment and maintenance of the NAAQS.

FCAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). For nonattainment areas classified as moderate and above, FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for sources of volatile organic compounds (VOC) addressed in a control techniques guidelines (CTG) document issued between November 15, 1990, and the area's attainment date.

The CTG documents provide information to assist states and local air pollution control authorities in determining RACT for specific emission sources. The CTG documents describe the EPA's evaluation of available information, including emission control options and associated costs, and provide the EPA's RACT recommendations for controlling emissions from these sources. The CTG documents do not impose any legally binding regulations or change any applicable regulations. The EPA's guidance on RACT indicates that states can choose to implement the CTG recommendations, implement an alternative approach, or demonstrate that additional control for the CTG emission source category is not technologically or not economically feasible in the area.

FCAA, §183(e) directs the EPA to regulate VOC emissions from certain consumer and commercial product categories by issuing national regulations or by issuing CTG documents in lieu of regulations. The EPA published CTG documents in lieu of national regulations for VOC emissions in 2006 from Industrial Cleaning Solvents (EPA 453/R-06-001) and Flexible Package Printing (EPA 453/R-06-003); in 2007 from Paper, Film, and Foil Coatings (EPA 453/R-07-003), Large Appliance Coatings (EPA 453/R-07-004), and Metal Furniture Coatings (EPA 453/R-07-005); and in 2008 from Miscellaneous Metal and Plastic Parts Coatings (EPA-453/R-08-003), Miscellaneous Industrial Adhesives (EPA-453/R-08-005), and Automobile and Light-Duty Truck Assembly Coatings (EPA-453/R-08-006).

Flexible Package Printing CTG, Group II Issued in 2006

The proposed rules include restricting the VOC content limits of materials, increasing the overall control efficiency of add-on controls used in flexible package printing operations, and establishing work practice procedures for associated cleaning activities. Additionally, the proposed rules would expand rule applicability beginning March 1, 2013, to include flexible package printing lines that were previously exempt from these rules.

The commission is not proposing to implement the EPA's 2006 Flexible Package Printing CTG recommendation to exempt flexible package printing operations from all VOC coating content limits if the operations have total actual VOC emissions less than 15 pounds per day from inks, coatings, and adhesives. For the Houston-Galveston-Brazoria 1997 eight-hour ozone nonattainment area (HGB area) (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties), the existing Chapter 115 rules provide an exemption for combined flexographic and rotogravure printing operations with the potential to emit less than 25 tons per year (tpy) of VOC from inks. For the Dallas-Fort Worth 1997 eight-hour ozone nonattainment area (DFW area) (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties), the existing Chapter 115 rules provide an exemption for combined flexographic and rotogravure printing operations with the potential to emit less than 50 tpy of VOC emissions from inks. Calculating only the VOC emissions resulting from flexible package printing operations to determine exemption from the required controls may create backsliding issues for properties already complying with the current Chapter 115 rules. The existing Chapter 115 exemption limit is equal to or potentially more stringent than the 2006 CTG-recommended exemption threshold for properties conducting multiple flexographic and rotogravure printing operations and is retained in the proposed rules.

Additionally, the commission is not proposing to implement the EPA's 2006 CTG recommendation to exempt a flexible package printing line from complying with VOC coating content limits if the line has the potential to emit less than 25 tpy of uncontrolled VOC emissions from the dryer, from inks, coatings, and adhesives. As previously stated, the current Chapter 115 rules require combining the VOC emissions from all flexographic and rotogravure printing lines to determine exemption from the VOC

coating content limits. Implementing the 2006 CTG recommendation may exempt flexible package printing lines co-located on a property with other flexographic and rotogravure printing lines that are currently required to comply with the VOC control limits. The proposed Chapter 115 rules would retain the existing VOC content limits for a flexible package printing line with VOC emissions below the 2006 CTG-recommended exemption threshold.

The EPA's 2006 CTG recommends requiring control equipment first installed before the effective date of rules implementing the CTG recommendations to have an overall control efficiency ranging from 65% to 75% and control equipment first installed after the effective date of the rules implementing the CTG recommendations to have an overall control efficiency of 80%. The commission disagrees with the 2006 CTG recommendation to correlate control device efficiency requirements with the first installation date of the control device regardless of where the equipment was first installed. Imposing this policy may encourage the installation of older, less efficient equipment and may create potential backsliding issues. The policy may also create significant practical enforceability issues for commission investigators with regard to verifying the first installation date of the control equipment. Instead, the commission proposes to implement the CTG-recommended 80% overall control efficiency, regardless of the first installation date.

The proposed rulemaking would implement the recommendations in the EPA's 2006 Flexible Package Printing CTG that the commission has determined are RACT in the DFW and HGB areas, except as specifically discussed in this preamble. The commission requests comment on the technological and economic feasibility of the proposed rules.

Industrial Cleaning Solvents CTG, Group II Issued in 2006

The proposed rules would establish VOC content limits for cleaning solvents used in general cleaning activities, provide exemptions for certain cleaning operations from all or portions of the rule, and require certain work practice procedures for the use, storage, and disposal of cleaning solvents. The proposed rules would affect industrial cleaning solvent operations in the DFW and HGB areas beginning March 1, 2013, located on a property with total actual VOC emissions of at least 3.0 tpy, when uncontrolled, from all cleaning solvents.

The proposed rulemaking would implement the recommendations in the EPA's 2006 Industrial Cleaning Solvents CTG that the commission has determined are RACT in the DFW and HGB areas, except as specifically discussed in this preamble. The commission requests comment on the technological and economic feasibility of the proposed rules.

Large Appliance Coatings CTG, Group III Issued in 2007

The proposed Chapter 115 rulemaking would reduce VOC content limits of coatings, increase the overall control efficiency for add-on controls used in large appliance coating operations, and establish minimum transfer efficiency for coating application methods. The proposed rules would also require certain work practice procedures for coating-related activities and materials used during associated cleaning operations.

The EPA's 2007 CTG recommends exempting large appliance coating processes from the coating VOC content limits and work practice standards if total uncontrolled VOC emissions from coatings and associated cleaning solvents are less than 15 pounds per day. The current Chapter 115 rules provide an exemption from the coating VOC content limits for large appliance coating operations if total uncontrolled VOC emissions from all applicable coating processes on a property subject to Chapter 115, Subchapter E, Division 2, Surface Coating Processes are less than 3.0 pounds per hour and 15 pounds per day. The existing exemption from the required VOC controls may be more stringent for properties conducting multiple coating processes specified in Division 2 because the exemption is not based on VOC emissions from a single coating category. To prevent potential backsliding for properties already required to comply with the state's regulations, the proposed Chapter 115 rules would retain the existing exemption approach.

The existing Chapter 115 large appliance coating limits are based on the original CTG recommendations issued by the EPA in 1977. Several of the recommended VOC content limits for specific coating categories listed in the 2007 CTG document are less stringent than the limits specified in the EPA's original CTG recommendations for this coating category. The 2007 CTG also recommends minimum solids transfer efficiency for coating application equipment. Despite the higher VOC content limits for the specialty coatings, the EPA's 2007 CTG claims that implementing the limits as recommended would result in an overall emissions reduction and provides documentation containing the methodology used to estimate the reduction. The commission has conducted a comprehensive comparison of the 2007 CTG recommendations to the existing VOC coating content limit and determined that proposing the 2007 CTG-recommended coating VOC content limits will not negatively impact the status of the state's attainment with the 1997 eight-hour ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

The EPA's 2007 CTG document recommends exempting the following types of large appliance coatings and coating operations from the coating VOC limit requirements: stencil coatings; safety-indicating coatings; solid-film lubricants; electric-insulating and thermal-conducting coatings; and touch-up and repair coatings. The commission is not proposing to provide exemption from the coating VOC limits for these coatings and coating operations because they are not provided specific exemption from the coating VOC emission limits in the commission's existing rules. The commission requests comment on whether these large appliance coatings and coating operations should be exempt from the large appliance VOC limit requirements.

Additionally, the commission proposes to retain the applicability of affected sources in the existing Chapter 115 rules for large appliance coating operations. In the 2007 CTG, the EPA recommends restricting the rule applicability to large appliance manufacturers; however, the existing Chapter 115 rules extend beyond the manufacturer to include any operation that coats large appliances.

The proposed rulemaking would implement the recommendations in the EPA's 2007 Large Appliance Coatings CTG that the commission has determined are RACT in the DFW and HGB areas, except as specifically discussed in this preamble. The commission requests comment on the technological and economic feasibility of the proposed rules.

Metal Furniture Coatings CTG, Group III Issued in 2007

The proposed Chapter 115 rulemaking would reduce VOC content limits of coatings, increase the overall control efficiency for add-on controls used in metal furniture coating processes, and establish minimum transfer efficiency of coating application

methods. The proposed rules would also require certain work practice procedures for coating-related activities and materials used during associated cleaning operations.

The EPA's 2007 CTG recommends exempting metal furniture coating operations from the coating VOC content limits and work practice standards if total uncontrolled VOC emissions from coatings and associated cleaning solvents are less than 15 pounds per day. The current Chapter 115 rules provide an exemption from the coating VOC content limits for metal furniture coating operations if total uncontrolled VOC emissions from coatings in all applicable coating processes located on a property subject to Chapter 115, Subchapter E, Division 2, are less than 3.0 pounds per hour and 15 pounds per day. In the commission's existing rules, exemption from the required VOC controls may be more stringent for properties conducting multiple coating processes specified in Division 2 because the exemption is not based on VOC emissions from a single coating category. To prevent potential backsliding for properties already required to comply with the state's regulations, the proposed Chapter 115 rules would retain the exemption approach in the commission's existing rules.

The existing Chapter 115 metal furniture coating limits are based on the original CTG recommendations issued by the EPA in 1977. Several of the recommended VOC content limits for specific coating categories listed in the 2007 CTG document are less stringent than the limits specified in the EPA's original CTG recommendations for this coating category. The 2007 CTG also recommends minimum solids transfer efficiency for coating application equipment. Despite the higher VOC content limits for the specialty coatings, the EPA's 2007 CTG claims that implementing the limits as recommended would result in an overall emissions reduction and provides documentation containing the methodology used to estimate the reduction. The commission has conducted a comprehensive comparison of the 2007 CTG recommendations to the VOC coating content limits in the commission's existing rules and determined that proposing the 2007 CTG-recommended coating VOC content limits will not negatively impact the status of the state's attainment with the 1997 eight-hour ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

The EPA's 2007 CTG document recommends exempting the following types of metal furniture coatings and coating operations from the coating VOC limit requirements: stencil coatings; safety-indicating coatings; solid-film lubricants; electric-insulating and thermal-conducting coatings; and touch-up and repair coatings. The commission is not proposing to provide exemption from the coating VOC limits for these coatings and coating operations because they are not provided specific exemption from the coating VOC emission limits in the commission's existing rules. The commission requests comment on whether these metal furniture coatings and coatings operations should be exempt from the metal furniture VOC limit requirements.

Additionally, the commission proposes to retain the applicability of affected sources in the existing Chapter 115 rules for metal furniture coating operations. In the 2007 CTG, the EPA recommends restricting the rule applicability to metal furniture manufacturers; however, the existing Chapter 115 rules extend beyond the manufacturer to include any operation that coats metal furniture.

The proposed rulemaking would implement the recommendations in the EPA's 2007 Metal Furniture Coatings CTG that the commission has determined are RACT in the DFW and HGB areas, except as specifically discussed in this preamble. The commission requests comment on the technological and economic feasibility of the proposed rules.

Paper, Film, and Foil Coatings CTG, Group III Issued in 2007

The proposed rulemaking would incorporate new requirements in Chapter 115, Subchapter E, Division 5, affecting individual paper, film, and foil coating lines with the potential to emit from coatings, equal to or greater than 25 tpy of VOC, when uncontrolled. The proposed Chapter 115 rulemaking would reduce the VOC content limits of coatings, increase the overall control efficiency for add-on controls used in paper, film, and foil coating processes, and establish work practice procedures for materials used during cleaning operations associated with paper, film, and foil coating.

The proposed rulemaking would also revise Chapter 115, Subchapter E, Division 2 to incorporate new work practice procedures for materials used during cleaning operations associated with paper, film, and foil coating processes that are specifically exempt from the proposed new Subchapter E, Division 5 rules in the DFW and HGB areas.

The EPA's 2007 CTG recommends exempting all paper, film, and foil coating operations on a property from the coating VOC content limits and work practice standards if total uncontrolled VOC emissions from paper, film, and foil coatings and associated cleaning solvents are less than 15 pounds per day. The current Chapter 115 rules provide an exemption from the coating VOC content limits for paper, film, and foil coating operations if total uncontrolled VOC emissions from all applicable surface coating processes on a property subject to Chapter 115, Subchapter E, Division 2, are less than 3.0 pounds per hour and 15 pounds per day. The exemption from the required VOC controls in the commission's existing rules may be more stringent for properties conducting multiple coating processes specified in Division 2 because the exemption is not based on VOC emissions from a single coating category. To prevent potential backsliding for properties conducting paper, film, and foil coating operations already required to comply with the state's regulations, the proposed Chapter 115 rules would retain the exemption approach in the commission's existing rules.

Additionally, the commission is not proposing to implement the EPA's 2007 CTG recommendation to exempt a paper, film, and foil coating line from complying with VOC coating content limits if the line has the potential to emit less than 25 tpy of uncontrolled VOC emissions from coatings. As previously stated, the current Chapter 115 rules require combining the VOC emissions from all applicable surface coating processes located on a property subject to Subchapter E, Division 2 to determine exemption from the VOC coating content limits. Implementing the 2007 CTG recommendation may exempt paper, film, and foil coating lines co-located on a property with other coating lines subject to Division 2 that are currently complying with the VOC coating content limits. To prevent backsliding, the proposed Chapter 115 rules would retain the VOC content limits in the commission's existing rules for a paper, film, and foil coating line with VOC emissions below the 2007 CTG-recommended exemption threshold.

The proposed rulemaking would implement the recommendations in the EPA's 2007 Paper, Film, and Foil Coatings CTG that the commission has determined are RACT in the DFW and HGB areas, except as specifically discussed in this preamble. The

commission requests comment on the technological and economic feasibility of the proposed rules.

Miscellaneous Industrial Adhesives CTG, Group IV Issued in 2008

The proposed rules would establish VOC content limits used during specific adhesive application processes; provide various exemptions from all or portions of the rules for certain adhesives and adhesive application processes; and require certain work practice procedures for the use, storage, and disposal of adhesives, adhesive-related waste, solvent, and cleaning materials. The proposed rules would affect adhesive application processes in the DFW and HGB areas beginning March 1, 2013, located on a property with total actual VOC emissions of at least 3.0 tpy when uncontrolled from adhesives and solvents.

The proposed rulemaking would implement the recommendations in the EPA's 2008 Miscellaneous Industrial Adhesives CTG that the commission has determined are RACT in the DFW and HGB areas, except as specifically discussed in this preamble. The commission requests comment on the technological and economic feasibility of the proposed rules.

Miscellaneous Metal and Plastic Parts Coatings CTG, Group IV Issued in 2008

The proposed Chapter 115 rulemaking would expand the scope of the existing rule applicability to include the new coating categories recommended in the EPA's 2008 CTG and implement the recommendations for those coating categories. The proposed Chapter 115 rulemaking would reduce VOC content limits of coatings and increase the overall control efficiency of add-on controls used in miscellaneous metal and plastic part coating operations, establish minimum transfer efficiency of coating application methods, and incorporate a new test method. The proposed rules would also require certain work practice procedures for coating-related activities and cleaning operations associated with miscellaneous metal and plastic parts coating.

The EPA's 2008 CTG recommends exempting miscellaneous metal and plastic parts coating operations from the VOC control requirements if total uncontrolled VOC emissions from coatings and cleaning solvents are less than 15 pounds per day. The current Chapter 115 rules exempt miscellaneous metal parts and products coating operations from the required VOC coating limits if located on a property where total uncontrolled VOC emissions from all applicable surface coating processes subject to Chapter 115, Subchapter E, Division 2 are less than 3.0 pounds per hour and 15 pounds per day. In the commission's existing rules, exemption from the required controls may be more stringent for properties conducting multiple coating processes specified in Division 2 because the exemption is not based on VOC emissions from a single coating category. To prevent potential backsliding for sources already subject to the Chapter 115 rules, the proposed rulemaking would integrate the new 2008 CTG coating categories into the exemption in the commission's existing rules from the VOC control requirements. The proposed Chapter 115 rules would retain the state's approach to maintain consistency with the current exemption criteria.

The existing Chapter 115 miscellaneous metal part and product coating limits are based on the original CTG recommendations issued by the EPA in 1978. Several of the recommended VOC content limits for specific coating categories listed in the EPA's 2008 CTG document are less stringent than the limits specified in the EPA's original CTG recommendations for this coating category. The EPA's 2008 CTG also recommends minimum solids transfer efficiency for coating application equipment. Although the EPA's 2008 CTG does not quantify the estimated VOC emissions reduced as a result of implementing the recommended VOC content limits, the commission applied an approach consistent with the Large Appliance Coating and Metal Furniture Coating CTG emission reduction memo documents to estimate the VOC emissions reduction. The commission has determined that proposing the EPA's 2008 CTG-recommended coating VOC content limits will not negatively impact the status of the state's attainment with the 1997 eight-hour ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the 1997 eight-hour ozone NAAQS.

The EPA's 2008 CTG document recommends exempting the following types of miscellaneous metal part and product coatings and coating operations from the coating VOC limits and the coating application system requirements: stencil coatings; safety-indicating coatings; solid-film lubricants; electric-insulating and thermal-conducting coatings; magnetic data storage disk coatings; and plastic extruded onto metal parts to form a coating. The commission is not proposing to provide exemption from the coating VOC limits for these coatings and coating operations because they are not provided specific exemption from the coating VOC emission limits in the commission's existing rules; however, the proposed Chapter 115 rules do provide exemptions from the new coating application system requirements. The commission requests comment on whether these metal part coatings and coating should be exempt from the miscellaneous metal part and product coating VOC limit requirements.

Additionally, the EPA's 2008 CTG document recommends structuring RACT rule requirements to provide properties that coat heavy-duty truck bodies or body parts with the option of meeting either the miscellaneous metal and plastic parts coatings regulations or automobile and light-duty truck assembly coatings regulations. The EPA's CTG recommendation is inconsistent with the general regulatory approach in Chapter 115 and is not being proposed. The commission requests comment on whether operations coating heavy-duty trucks should be provided the option to comply with either the miscellaneous metal and plastic parts coatings regulations or automobile and light-duty truck assembly coatings regulations.

The proposed rulemaking would implement the recommendations in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG that the commission has determined are RACT in the DFW and HGB areas, except as specifically discussed in this preamble. The commission requests comment on the technological and economic feasibility of the proposed rules.

Automobile and Light-Duty Truck Assembly Coatings CTG, Group IV Issued in 2008

The proposed Chapter 115 rulemaking would reduce the VOC content limits of coatings applied to automobile and light-duty trucks during manufacturing and establish certain work practice procedures for cleaning operations associated with automobile and light-duty truck assembly coatings.

The EPA's 2008 CTG acknowledges that the coating of other parts on coating lines separate from automobile and light-duty truck assembly, such as bumpers, aftermarket parts, and repair parts, are classified under the miscellaneous metal parts and products coating category. The EPA's 2008 CTG recommends allowing the separate coating of the previously described parts to be classified under the automobile and light-duty truck assembly

coatings regulations since it is common in the industry for automobile and light-duty truck manufacturers to coat these parts at their sites. The commission requests comment on the appropriate applicability for these coating operations.

The proposed rulemaking would implement the recommendations in the EPA's 2008 Automobile and Light-Duty Truck Assembly Coatings CTG that the commission has determined are RACT in the DFW area, except as specifically discussed in this preamble. The commission requests comment on the technological and economic feasibility of the proposed rules.

Demonstrating Noninterference Under FCAA, Section 110(l)

The commission provides the following information to demonstrate that the inclusion of the Large Appliance Coatings, Metal Furniture Coatings, and Miscellaneous Metal and Plastic Parts Coatings CTG recommendations will not negatively impact the status of the state's attainment with the 1997 eight-hour ozone NAAQS, will not interfere with control measures or any other applicable requirement, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

By letter dated December 8, 2008, the commission requested clarification from the EPA regarding several issues related to the recommendations in the following three CTG categories: Large Appliance Coatings; Metal Furniture Coatings; and Miscellaneous Metal and Plastic Parts Coatings. A number of the recommended VOC content limits for specific coatings categories in the CTG documents are less stringent than the more general VOC content limits specified in the EPA's original CTG recommendations. The commission requested clarification to assure that implementing the CTG recommendations would not be considered as backsliding and to be certain that the commission has the appropriate information to determine whether the CTG recommendations actually represent RACT for Texas. On March 17, 2011, the EPA issued a guidance memorandum regarding these three CTG categories entitled, *Approving SIP Revisions Addressing VOC RACT Requirements for Certain Coatings Categories.* The EPA stated in the memorandum: ". . . if a state believes the volume usage distribution among the general and specialty categories in the docket is representative of the distribution in the nonattainment area, we believe that if a state undertakes wholesale adoption of the new categorical limits in a specific CTG, the state may rely on the assessments in the docket to demonstrate that the range of new limits will result in an overall reduction in emissions from the collection of covered coatings."

As discussed elsewhere in this preamble, estimated percent reductions for these CTG categories supports the EPA's position that applying the new recommended limits as a whole result in net reductions. In addition, as discussed elsewhere in this preamble, the current Chapter 115 rules for these CTG categories have exemption thresholds more stringent than recommended by the CTG documents and the proposed rulemaking would retain the more stringent exemption thresholds of the current rules to prevent potential backsliding. This approach also results in an overall control level greater than the new CTG recommendations and supports the commission's position that the proposed rulemaking provides equivalent or better VOC control for these CTG categories and is not backsliding under the FCAA. The commission contends that the proposed rulemaking is consistent with the EPA's guidance in the March 17, 2011, memorandum and meets RACT requirements for these three CTG categories.

In *Control Techniques Guidelines for Large Appliance Coatings* (EPA 453/R-07-004), the Large Appliance Coatings CTG issued in 2007, the EPA claims the CTG recommendations will reduce VOC emissions from large appliance coatings by about 30%. Although the basis for the emission reduction estimate is not specifically discussed in the published CTG document, the EPA docket for the CTG provides some information demonstrating an overall 30% reduction in VOC emissions from implementing the updated CTG recommendations. The document can be found online at *www.regulations.gov,* using document identifier EPA-HQ-OAR-2007-0329-0009.

In the 2007 Large Appliance Coatings CTG, the EPA recommends VOC content limits for 16 coating categories. There are 12 specialty coating categories and four general coating categories. The CTG-recommended VOC content limits are expressed in pounds of VOC per gallon (lb VOC/gal) of coating, minus water and exempt solvents. The CTG also recommends requiring the use of application equipment with a minimum coating solids transfer efficiency of 65%. The existing VOC content limits for large appliance coatings in §115.421(a)(1) were implemented to satisfy RACT requirements under the FCAA based on recommendations in the EPA's 1977 Large Appliance Coatings CTG, *Control of Volatile Organic Emissions from Existing Stationary Sources - Volume V: Surface Coating of Large Appliances* (EPA-450/2-77-034). The existing Chapter 115 regulations limit the VOC content of large appliance coatings to 2.8 lb VOC/gal of coating, minus water and exempt solvents, as delivered to the application system. There is no required minimum coating solids transfer efficiency.

Since the transfer efficiency determines the amount of coating used to produce a particular product, the Chapter 115 limits and CTG recommendations must be converted to a common unit that describes the emissions from the regulated activity, such as lb VOC/gal solids deposited.

In the calculation of emission reductions from the 2007 Large Appliance Coatings CTG, *Percentage Emission Reductions Estimate for Large Appliances,* which can be found online at *www.regulations.gov,* using document identifier EPA-HQ-OAR-2007-0329-0009, the EPA assumes that the VOC solvents used in coatings have a density of 7.36 lb VOC/gal VOC. Using this assumption, the EPA calculated the volume volatile content of a Chapter 115-compliant coating as (2.8 lb VOC/gal coating) / (7.36 lb VOC/gal VOC) = 0.38 or 38% VOC by volume. If, as assumed by the EPA, all non-VOC material are solids, the solids content is 62% by volume.

In the 2007 Large Appliance Coatings CTG, the EPA claimed that the 1977 Large Appliance Coatings CTG assumed a 60% coating solids transfer efficiency. If the commission uses this assumption, the current Chapter 115 large appliance coating VOC content limit is equivalent to 7.5 lb VOC/gal of solids deposited = (2.8 lb VOC/gal coating applied) / {(0.62 gallon solids applied/per gallon coating applied) x (0.60 gallon solids deposited/per gallon solids applied)}.

Using the EPA assumptions for solvent density, solid non-VOC material, and the minimum transfer efficiency of 65%, the 2007 Large Appliance Coatings CTG recommendations are between 5.2 and 10.3 lb VOC/gal of solids deposited, with 11 coating categories over 7.5 lb VOC/gal of solids deposited and five categories under 7.5 lb VOC/gal of solids deposited.

In the 2007 Large Appliance Coatings CTG emission reduction document, the EPA asserted that general, one-component and

general, multi-component baked coatings with the lowest VOC content limit equivalent to 5.2 (lb VOC/gal solids deposited) comprise most of the coatings used on large appliances. The EPA calculated emission reductions from these general coatings as 31% = (7.5 - 5.2)/(7.5). If the commission assumes the lowest VOC coatings categories comprise 96.7% of all use and the remainder is evenly divided between the other categories, the overall emission reduction equals the 30% claimed by the EPA.

Using identical assumptions as the EPA, the commission contends that the 2007 Large Appliance Coatings CTG recommendations are more stringent than the current large appliance VOC content limit in Chapter 115. The commission requests comments on the comparative stringency of the 2007 Large Appliance Coatings CTG recommendations and the current Chapter 115 rule.

The existing VOC content limits for metal furniture coatings in §115.421(a)(2) were implemented to satisfy RACT requirements under the FCAA based on the EPA's 1977 Metal Furniture Coatings CTG, *Control of Volatile Organic Emissions from Existing Stationary Sources - Volume III: Surface Coating of Metal Furniture* (EPA-450/2-77-032). The current Chapter 115 metal furniture coating content limit is 3.0 lb VOC/gal of coating, minus water and exempt solvents, as delivered to the application system. There is no required minimum coating solids transfer efficiency.

The 2007 Metal Furniture Coatings CTG, *Control Techniques Guidelines for Metal Furniture Coatings* (EPA 453/R-07-005), recommends VOC content limits for the same 16 coating categories as the 2007 Large Appliance Coatings CTG. There are 12 specialty coating categories and four general coating categories. These CTG-recommended VOC content limits are expressed as lb VOC/gal of coating, minus water and exempt solvents. The CTG also recommends requiring the use of application equipment with a minimum coating solids transfer efficiency of 65%. The EPA applied the same assumptions that produced emission estimates for the 2007 Large Appliance Coatings CTG to estimate VOC reductions for the 2007 Metal Furniture Coatings CTG, which can be found online at *www.regulations.gov,* using document identifier EPA-HQ-OAR-2007-0334-0010.

In the 2007 Metal Furniture Coatings CTG, the EPA claimed that the 1977 Metal Furniture Coatings CTG assumed a 60% transfer efficiency. If the commission assumes this coating solids transfer efficiency and all non-VOC material are solids, the current Chapter 115 metal furniture coating content limit is equivalent to 8.4 lb VOC/gal of solids deposited. Using the EPA assumptions for solvent density, solid non-VOC material, and the minimum transfer efficiency of 65%, the 16 category limits of the 2007 Metal Furniture Coatings CTG vary from 5.2 to 10.3 lb VOC/gal solids deposited, with eight specialty categories over 8.4 lb VOC/gal solids deposited and the four general categories and four specialty categories under 8.4 lb VOC/gal solids deposited.

In the 2007 Metal Furniture Coatings CTG emission reduction memo, the EPA asserted that general, one-component air-dried and baked and general, multi-component baked coatings with the lowest VOC content limit equivalent to 5.2 lb VOC/gal solids deposited account for most of the coatings used on metal furniture. The EPA calculated emission reductions from these general coatings as 38% = (8.4 - 5.2)/(8.4). If the commission assumes the lowest VOC category coatings comprise 91.1% of total use and the remainder is evenly divided between all other categories, the overall emission reduction equals the 35% claimed by the EPA.

Using identical assumptions as the EPA, the commission contends that the 2007 Metal Furniture Coatings CTG recommendations are more stringent than the current metal furniture VOC content limit in Chapter 115. The commission requests comments on the comparative stringency of the 2007 Metal Furniture Coatings CTG recommendations and the current Chapter 115 rule.

The existing VOC content limits for miscellaneous metal parts coatings in §115.421(a)(9) were implemented to satisfy RACT requirements under the FCAA based on the EPA's 1978 Miscellaneous Metal Parts and Products CTG, *Control of Volatile Organic Emissions from Existing Stationary Sources - Volume VI: Surface Coating of Miscellaneous Metal Parts and Products* (EPA-450/2-78-015). The current Chapter 115 miscellaneous metal parts and products coating content limits for the four specified categories are 3.0, 3.5, and 4.3 lb VOC/gal of coating, minus water and exempt solvents, as delivered to the application system. There is no required minimum coating solids transfer efficiency. Using the EPA assumptions for solvent density, solid non-VOC material, and a transfer efficiency of 60%, these limits are equivalent to 8.4, 11.1, and 17.2 lb VOC/gal solids deposited, respectively.

The 2008 Miscellaneous Metal and Plastic Parts Coating CTG, *Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings* (EPA 453/R-08-003), recommends VOC content limits divided into 50 categories. These CTG-recommended VOC content limits are between 2.3 and 6.2 lb VOC/gal of coating, minus water and exempt solvents. The CTG also recommends requiring the use of application equipment with a minimum coating solids transfer efficiency of 65%. Using this transfer efficiency and the EPA assumptions for solvent density and solid non-VOC materials, these limits are between 5.2 and 60.5 lb VOC/gal solids deposited. Twenty-one of the CTG categories are more stringent than their Chapter 115 counterparts, while 29 are less stringent.

In the 2007 Metal Furniture and Large Appliance Coatings CTG documents, the EPA asserted that the general category coatings with the lowest VOC content limit equivalent to 5.2 (lb VOC/gal solids deposited), general, one-component baked and general, multi-component baked coatings, account for most of the coatings used on affected products. If the commission assumes these coatings comprise 94.2% of total use on miscellaneous metal parts and the remainder is evenly divided between the other categories, the overall emission reduction for miscellaneous metal parts coatings equals the 35% claimed by the EPA for the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG, which includes reductions from coating plastic products.

Using identical assumptions as the EPA, the commission contends that the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG recommendations are more stringent than the current VOC content limits for miscellaneous metal parts in Chapter 115. The commission requests comments on the comparative stringency of the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG recommendations and the current Chapter 115 rule.

Based on this analysis, the commission has determined the proposed inclusion of the Large Appliance Coatings, Metal Furniture Coatings, and Miscellaneous Metal and Plastic Parts Coatings CTG recommendations will not interfere with the state's attainment of demonstration with the 1997 eight-hour ozone NAAQS, reasonable further progress towards attainment, or any other applicable requirement of the FCAA.

Section by Section Discussion

The commission proposes to create new Division 5 in Chapter 115, Subchapter E, entitled *Control Requirements for Surface Coating Processes,* to accommodate new coating categories and rule requirements being proposed in response to the Large Appliance Coatings; Metal Furniture Coatings; Automobile and Light-Duty Truck Assembly Coatings; Paper, Film, and Foil Coatings; and Miscellaneous Metal and Plastic Parts Coatings CTG documents. Proposed new Division 5 would apply in the DFW and HGB areas and would contain the Chapter 115 rules applicable to the surface coating categories that are currently located in Division 2 except where the commission has determined the controls in the commission's existing rules are not RACT for these areas. Proposed new Division 5 improves readability of the Chapter 115 rules by separating the requirements for the surface coating processes in the DFW and HGB areas affected by the proposed rulemaking from the requirements applicable to locations not affected by the proposed rulemaking.

The commission proposes to create new Division 6 in Chapter 115, Subchapter E, entitled *Industrial Cleaning Solvents,* to implement the EPA's 2007 Industrial Cleaning Solvents CTG recommendations for this new emission source category in the DFW and HGB areas.

The commission proposes to create new Division 7 in Chapter 115, Subchapter E, entitled *Miscellaneous Industrial Adhesives,* to implement the CTG recommendations for this new emission source category in the DFW and HGB areas.

In addition to proposed amendments to implement RACT for the specified surface coating processes, flexible package printing processes, industrial cleaning solvents, and miscellaneous industrial adhesives, the commission proposes grammatical, stylistic, and various other non-substantive changes to update the rule in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the *Texas Legislative Council Drafting Manual,* February 2011. Such changes include appropriate and consistent use of acronyms, punctuation, section references, and certain terminology like *that*, *which, shall,* and *must.* References to the *Dallas/Fort Worth area* and the *Houston/Galveston area* have been updated to the *Dallas-Fort Worth area* and the *Houston-Galveston-Brazoria area,* respectively to be consistent with current terminology for the region. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble. The commission is requesting comment on any instance where these proposed technical corrections would inadvertently change the requirements in the commission's existing rules.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 2, SURFACE COATING PROCESSES

Section 115.422, Control Requirements

The commission proposes minor non-substantive changes to the introductory paragraph of existing §115.422 and to §115.422(6) to update rule language to comply with current rule formatting standards. These changes are not intended to alter the meaning of §115.422.

The commission proposes §115.422(7) to indicate that beginning March 1, 2013, the owner or operator of a paper surface coating line subject to this division and located in the DFW or HGB areas would be required to implement the work practices specified in subparagraphs (A) - (E) to limit VOC emissions from storage, mixing, and handling of cleaning and cleaning-related waste materials. The work practices in proposed subparagraphs (A) - (E) include: storing all VOC-containing cleaning materials in closed containers; ensuring that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials; minimizing spills of VOC-containing cleaning materials; conveying VOC-containing cleaning materials from one location to another in closed containers or pipes; and minimizing VOC emissions from cleaning of storage, mixing, and conveying equipment.

Section 115.427, Exemptions

The commission proposes amending §115.427(a)(3) to clarify that the emission calculations used in surface coating activities that are not addressed by the surface coating categories of proposed new §115.453 are excluded. The proposed amendment is necessary to ensure the coatings and solvents used in the surface coating processes transitioning from applicability in this division to proposed new Division 5 continue to be included in the emissions calculations that determine exemption for the surface coating categories that are not transitioning to applicability in Division 5.

The commission proposes §115.427(a)(7) to indicate that beginning March 1, 2013, in the DFW and HGB areas the surface coating categories listed in subparagraphs (A) - (D) would be exempt from the requirements in Division 2 if they are subject to the requirements in proposed new Division 5. Proposed subparagraphs (A) - (C) list large appliance coating, metal furniture coating, and miscellaneous metal parts and products coating, respectively. Proposed subparagraph (D) lists each paper coating line with the potential to emit equal to or greater than 25 tpy of VOC emissions from all coatings applied. For reasons discussed elsewhere in this preamble, the commission is not proposing to implement the EPA's CTG recommendation to completely exempt individual paper coating lines from all VOC emission limits if the emissions generated are less than 25 tpy. Paper coating lines may already be required to comply with the existing requirements in this division and exempting them from the VOC emission limits may result in backsliding. The paper coating lines that remain subject to this division on or after the March 1, 2013, compliance date would not be subject to any portion of the Division 5 rules affecting paper, film, and foil coating processes. Proposed subparagraph (E) lists automobile and light-duty truck manufacturing coating. Proposed §115.427(a)(7) is necessary to clarify that beginning March 1, 2013, the surface coating categories proposed for regulation in new Division 5 are no longer required to comply with any portion of the requirements in Division 2 and minimize potential dual applicability between Divisions 2 and 5. The commission acknowledges that it is possible that some facilities may still be subject to both divisions if the facilities perform coatings operations for multiple categories subject to Division 2.

Section 115.429, Counties and Compliance Schedules

The commission proposes subsection (d) to indicate the owner or operator of a paper surface coating process shall comply with the requirements in §115.422(7) no later than March 1, 2013. The March 1, 2013, compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that any VOC emission reductions achieved by the proposed rule will occur prior to the ozone season in the DFW area.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 3, FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

Section 115.430, Applicability and Definitions

The commission proposes changing the title of §115.430 from *Flexographic and Rotogravure Printing Definitions* to *Applicability and Definitions* to reflect the proposed changes to the content of this section to include the rule applicability.

The commission proposes subsection (a) to indicate that the requirements in this division apply to the specified flexographic and rotogravure printing processes in paragraphs (1) - (4) that are located in the Beaumont-Port Arthur (BPA), DFW, El Paso, and HGB areas and in Gregg, Nueces, and Victoria Counties, unless exempted in proposed new §115.431. The BPA and El Paso areas and Gregg, Nueces, and Victoria Counties are included in proposed subsection (a) because these locations are affected by the existing flexographic and rotogravure printing rules; however, no new requirements are being proposed for printing processes in these locations. Proposed subsection (a) establishes consistency with other Chapter 115 rules and improves the readability of the rule by first describing the units affected by the subsequent requirements.

Proposed paragraph (1) specifies that packaging rotogravure printing lines are included in the rule applicability. Proposed paragraph (2) specifies that publication rotogravure printing lines are included in the rule applicability. Proposed paragraph (3) specifies that flexographic printing lines are included in the rule applicability. Proposed paragraph (4) specifies that flexible package printing lines are included in the rule applicability. The proposed new applicability format is not intended to alter the existing applicability for this division. The commission requests comment on whether the existing applicability of flexographic and rotogravure printing is inadvertently impacted by specifying the applicable units in the proposed format.

To accommodate proposed subsection (a), the commission proposes the flexographic and rotogravure printing definitions currently located in §115.430(1) - (4) be re-lettered as proposed §115.430(b)(2), (4), (5), and (6), respectively.

Proposed subsection (b) includes the existing definitions in §115.430 and new definitions related to flexible package printing. Proposed subsection (b) also specifies that unless the context clearly indicates otherwise or unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), in 30 TAC §§3.2, 101.1, or 115.10, the terms used in this division have the meanings commonly used in the field of air pollution control.

The commission proposes to delete existing §115.430 and replace with updated language for consistency with other Chapter 115 rules.

Proposed §115.430(b)(3) - (6) incorporates the corresponding definitions in existing §115.430(1) - (4) respectively, with only non-substantive changes necessary to comply with current rule formatting standards.

Proposed paragraph (1) defines *Daily weighted average* as the total weight of VOC emissions from all inks and coatings subject to the same VOC content limit in §115.432, divided by the total volume or weight of those materials (minus water and exempt solvent), or divided by the total volume or weight of solids applied to each printing line per day. The proposed definition is intended to clarify the term as used in the existing monitoring and recordkeeping requirements. Additionally, the proposed definition is intended to facilitate compliance with the proposed new control requirements applicable to flexible package printing processes.

Proposed paragraph (2) defines *Flexible package printing* as flexographic or rotogravure printing on any package or part of a package the shape of which can be readily changed including, but not limited to, bags, pouches, liners, and wraps using paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials. Although flexible package printing is not specifically defined in the current rule, the process is represented under the existing definition of packaging rotogravure printing if the package materials are printed on a rotogravure press, or represented under the existing definition of flexographic printing if the package materials are printed on a flexographic press. The commission requests comment on alternative definitions for flexible package printing.

The existing definitions in §115.430(1) - (4) are proposed to be renumbered as §115.430(b)(3) - (6). The commission also proposes revising the term *Flexographic printing process* remove the word *process* for consistency with the other defined terms in this subsection.

Section 115.431, Exemptions

The commission proposes new §115.431 to list the exemptions currently contained in §115.437 that apply to all flexographic and rotogravure printing processes subject to this division and to incorporate the proposed exemptions recommended in the EPA's 2006 Flexible Package Printing CTG. Proposed new §115.431 establishes consistency with other Chapter 115 rules and makes the rule easier to read by clearly identifying the flexographic and rotogravure printing lines that are exempt from all or portions of the subsequent rule requirements. The commission seeks comment on appropriate exemptions for flexible package printing processes in the DFW and HGB areas.

Proposed new subsection (a) lists the exemptions that apply for the BPA, DFW, El Paso, and HGB areas. Proposed new paragraph (1) is the existing exemption in §115.437(a)(1) with non-substantive changes necessary to comply with rule formatting standards.

Proposed new paragraph (2) is the existing exemption in §115.437(2) with non-substantive changes necessary to comply with rule formatting standards.

Proposed new paragraph (3) provides an exemption from the requirements in proposed new §115.432(c) and (d) beginning March 1, 2013, in the DFW and HGB areas for all flexible package printing lines located on a property that have a combined weight of total actual VOC emissions less than 3.0 tpy from all coatings and associated cleaning operations. Properties qualifying for this exemption would not be subject to the more stringent proposed VOC control requirements for flexible package printing but would remain applicable to the existing controls in §115.432(a), unless the property meets another exemption under this section. As discussed elsewhere in this preamble, the commission is not proposing to provide the EPA's 2006 CTG recommendation to completely exempt these flexible package printing processes from the rule requirements. Flexible package printing processes co-located on a property with other flexographic and rotogravure printing processes may already be required to comply with the current Chapter 115 rules; therefore, providing the CTG-recommended exemption could result in backsliding.

Proposed new paragraph (4) provides an exemption from the coating VOC content limits in proposed new §115.432(c) for individual flexible package printing lines with the maximum potential to emit from all coatings less than 25 tpy in the DFW and HGB areas beginning March 1, 2013. As discussed elsewhere in this preamble, the commission is not proposing to incorporate the EPA's 2006 CTG recommendation to exempt these printing lines from all coating VOC content limits. Flexible package printing lines qualifying for this exemption would remain subject to the existing ink VOC control requirements, unless the printing line or printing process meets another exemption under this section, to prevent potential backsliding for units currently required to comply with the Chapter 115 regulations.

Proposed new subsection (b) is the existing exemption in §115.437(b), related to sources in Gregg, Nueces, and Victoria Counties, with only non-substantive edits necessary to comply with current rule formatting standards.

Section 115.432, Control Requirements

The commission proposes amending subsection (a) to clarify that beginning March 1, 2013, the subsection no longer applies to flexible package printing lines in the DFW and HGB areas that are required to comply with the requirements in proposed subsection (c). The proposed amendment prevents flexible package printing lines from being subject to duplicative control requirements. Additionally, proposed subsection (a) incorporates other non-substantive edits necessary to comply with current rule formatting standards.

The commission proposes paragraph (1) to replace the text in existing paragraph (1) with updated language to require that the owner or operator shall limit the VOC emissions from solvent-containing ink used on each packaging rotogravure, publication rotogravure, flexible package, and flexographic printing lines by using one of the options in subparagraphs (A), (B), or (C). Proposed paragraph (1) affects the same printing lines as existing paragraph (1) but adds flexible package printing lines to clarify that these printing lines remain subject to the control requirements in this paragraph if not subject to the new control requirements in subsection (c). The commission solicits comment on whether proposed paragraph (1) changes the printing lines affected by the existing requirements in §115.432(a)(1).

The commission proposes non-substantive changes to subparagraphs (A) - (C) necessary to comply with current rule formatting standards. In addition, the commission proposes minor amendments to subparagraph (C) to replace the phrase *shall be required to provide for* with *must achieve* and *reduction in VOC emissions* with *control efficiency.* The proposed changes update the existing language to establish consistency with terminology used in the proposed requirements for this division and other Chapter 115 rules. The proposed changes are not intended to alter the meaning of this requirement.

Proposed clause (iv) would specify that flexible package printing processes using a vapor control system must continue to comply with the overall control efficiency requirement corresponding to the type of press used to conduct the printing. The proposed clause (iv) is intended to provide clarification and is not intended to impose additional requirements on flexible package printing owners and operators.

The commission proposes amending paragraph (2) to replace *Any graphic arts facility that becomes* with *All flexographic and rotogravure printing lines that become.* The proposed change more appropriately refers to the processes affected by this provision. The commission also proposes to revise this paragraph to indicate that the project must meet one of the requirements in subparagraphs (A) or (B). The proposed non-substantive changes to paragraph (2) and subparagraphs (A) and (B) are intended to clarify the provisions and are necessary to comply with current rule formatting standards.

The commission proposes replacing subsection (b) with updated language to indicate that in Gregg, Nueces, and Victoria Counties, the owner or operator shall limit the VOC emissions from solvent-containing ink used on each packaging rotogravure, publication rotogravure, flexible package, and flexographic printing lines by using one of the options in this subsection. The acknowledgement of flexible package printing in the subsection is intended for clarification and is not intended impose any additional requirements since this printing process is currently subject to the requirements corresponding to the type of press used to conduct the flexible package material printing.

The commission proposes non-substantive changes to paragraphs (1) - (3) necessary to comply with rule formatting standards. In addition, the commission proposes minor amendments to paragraph (3) to replace the phrase *shall be required to provide for* with *must achieve* and *reduction in VOC emissions* with *control efficiency.* The proposed changes update the existing language with terminology used for consistency with other Chapter 115 rules. The proposed changes are not intended to alter the meaning of this requirement.

The commission proposes subparagraph (D) to indicate that a flexible package printing process must meet the overall control efficiency in subparagraph (B) or (C), depending on the type of press used. Flexible package printing processes are currently required to meet either the packaging rotogravure printing process overall control efficiency if the flexible package materials are printed on a rotogravure press, or the flexographic printing overall control efficiency if the flexible package materials are printed on a flexographic press.

The commission proposes subsection (c) to indicate that beginning March 1, 2013, in the DFW and HGB areas, the control requirements would apply to each flexible package printing line, unless specifically exempt in §115.431. Except as specifically discussed elsewhere in this preamble, proposed subsection (c) would implement the EPA's recommendations in the 2006 Flexible Package Printing CTG that the commission has determined are RACT.

Proposed paragraph (1) requires the owner or operator to limit the VOC emissions from coatings applied on each flexible package printing line by using one of the options in subparagraphs (A) - (C). Proposed paragraph (1) indicates that these limitations are based on the daily weighted average. Determining the VOC content of coatings applied to flexible package materials on a daily weighted average is the suggested averaging period in the EPA's 2006 CTG. The commission seeks comment on appropriate averaging periods to demonstrate compliance with the VOC limits in this paragraph.

Proposed subparagraph (A) limits the VOC content of the coatings to 0.8 pound of VOC per pound of solids applied. Proposed subparagraph (A) indicates that the VOC content limits can be met through the use of low-VOC materials or a combination of low-VOC materials and a vapor control system.

Proposed subparagraph (B) limits the VOC content of the coatings to 0.16 pounds of VOC per pound of material. Proposed subparagraph (B) indicates that the VOC content limits can be

met through the use of low-VOC materials or a combination of low-VOC materials and a vapor control system.

Proposed subparagraph (C) would require the operation of a vapor control system to achieve an overall control efficiency of at least 80% by weight. This option provides an alternative method for affected flexible package printers where low-VOC coatings are not sufficient to achieve the desired product quality or efficacy. As discussed elsewhere in this preamble, the commission is not proposing to implement the EPA's CTG recommendation to correlate the overall control efficiency of add-on control equipment with the date the equipment was first installed. The most stringent CTG recommendation for the overall control efficiency of add-on controls in the CTG is 80%. The commission expects that affected flexible package printers choosing to comply with the control requirement in proposed subparagraph (C) are sources with control equipment capable of meeting at least an 80% overall control efficiency.

Proposed paragraph (2) would specify that a flexible package printing line that becomes subject to paragraph (1) by exceeding the exemption limits in §115.431(a) is subject to the provisions of this subsection even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with paragraph (1) of this subsection and one of the conditions in subparagraphs (A) or (B) is met.

Proposed subparagraph (A) would require the project that caused throughput or the emission rate to fall below the exemption limits in §115.431(a) to be authorized by a permit, permit amendment, standard permit, or permit by rule required by 30 TAC Chapters 106 or 116. Proposed subparagraph (A) would also specify that if a permit by rule is available for the project, the owner or operator shall continue to comply with paragraph (1) of this subsection for 30 days after the filing of documentation of compliance with that permit by rule.

Proposed subparagraph (B) would require that if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing. This is an existing requirement for printing lines subject to the requirements in subsection (a), and the commission is proposing to incorporate the same provision in proposed subsection (c).

Proposed paragraph (3) requires an owner or operator applying low-VOC coatings in combination with a vapor control system to meet the VOC emission limits in paragraph (1) of this subsection using the equation provided. This proposed new control requirement is necessary to demonstrate that the overall control efficiency of the vapor control system, when used in conjunction with low-VOC coatings, is sufficient to meet the VOC emission limit in §115.432(c). Proposed paragraph (3) contains the equation to determine the overall control efficiency needed to meet the VOC emission limits in §115.432. The equation proposed in paragraph (3) is the same as the equation in existing §115.423(3)(A) with revision to accommodate the VOC emission limit units. The proposed paragraph also requires control device and capture efficiency testing to be performed in accordance with the testing requirements in §115.435(a). The commission seeks comment on alternative methods for demonstrating compliance with the option to apply low-VOC coatings in combination with a vapor control system.

Proposed subsection (d) would require the owner or operator of a flexible package printing process to implement the work practices in paragraphs (1) and (2) for cleaning materials. Proposed paragraph (1) would require keeping all cleaning solvents and used shop towels in closed containers. Proposed paragraph (2) would require conveying cleaning solvents from one location to another in closed containers or pipes. The commission requests comment on adequate work practice procedures for cleaning materials associated with flexographic and rotogravure printing processes.

Section 115.433, Alternate Control Requirements

The commission proposes revising the existing provisions in §115.433 to consolidate redundant provisions currently located in subsections (a) and (b) under a single "implied (a)" under §115.433. Proposed "implied (a)" in §115.433 would make the provisions for alternate control requirements applicable to the owner or operator of a flexographic or rotogravure printing line subject to this division, regardless of the printing property location. The proposed amendment to §115.433 would apply to the locations currently listed in either existing subsection (a) or (b); the BPA, DFW, El Paso, and HGB areas and Gregg, Nueces, and Victoria Counties.

Section 115.435, Testing Requirements

The commission proposes non-substantive revisions to subsection (a) necessary to comply with rule formatting standards. The commission also proposes to specify that the purpose of the testing requirements in this section are to demonstrate compliance with the control requirements in §115.432. These changes are not intended to alter the meaning of this requirement.

The commission proposes non-substantive changes to paragraphs (1) - (5). The commission proposes revising paragraph (6) to include *as amended through October 18, 1983 (48 FR 48375).* The proposed revision reflects the most recent amendment of this test procedure in the Code of Federal Regulations (CFR).

The commission proposes to renumber the current paragraph (7) as proposed paragraph (8). The existing paragraph (8), regarding minor modifications to the methods, is proposed as paragraph (7).

Non-substantive revisions are proposed for paragraph (8), regarding capture efficiency testing, which are necessary to comply with current rule formatting standards and are not intended to alter the meaning of this requirement. The commission proposes to update proposed paragraph (8) to include *as amended through October 21, 1996 (61 FR 54559).* In subparagraph (A), the commission also proposes to update clause (ii) and subclause (I) to include *as amended through October 17, 2000 (65 FR 61761).* The proposed revision reflects the most recent amendment of this test method in the CFR.

The commission proposes revisions to subparagraph (B)(i) to replace the existing text equation prescribed to determine the overall control efficiency using the gas/gas method for temporary total enclosures (TTEs) with an equation under §115.435(a)(8)(B)(i) to conform to current rule formatting requirements and improve readability of the rule. The proposed equation and the variables used in the calculation are identical to the text equation and variables in current §115.435(a)(7)(B)(i).

The commission proposes revisions to subparagraph (B)(ii) to replace the existing text equation prescribed to determine the overall control efficiency using the liquid/gas method for TTEs with the equation under §115.435(a)(8)(B)(ii) to conform to current rule formatting requirements and improve readability of the

rule. The proposed equation and the variables used in the calculation are identical to the text equation and variables in current §115.435(a)(7)(B)(ii).

The commission proposes revisions to subparagraph (B)(iii) to replace the existing text equation prescribed to determine the overall control efficiency using the gas/gas method for buildings or rooms used as an enclosures with a equation under §115.435(a)(8)(B)(iii) to conform to current rule formatting requirements and improve readability of the rule. The proposed equation and the variables used in the calculation are identical to the text equation and variables in current §115.435(a)(7)(B)(iii).

The commission proposes revisions to subparagraph (B)(iv) to replace the existing text equation prescribed to determine the overall control efficiency using the liquid/gas method for buildings or rooms used as an enclosures with the equation under §115.435(a)(8)(B)(iv) to conform to current rule formatting requirements and improve readability of the rule. The proposed equation and the variables used in the calculation are identical to the text equation and variables in current §115.435(a)(7)(B)(iv).

The commission proposes removing the language in existing subparagraph (C)(i) - (iii) and replacing it with language that requires the operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.436(a) that must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. Proposed subparagraph (C) states that the executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test. Proposed subparagraph (C) ensures the operational parameters tested in the initial performance test are representative of those during normal operation and consolidates the necessary provisions from subparagraph (C)(i) - (iii). Proposed subparagraph (C) should not substantively change the requirements for any facilities currently subject to the rule; however, the commission requests comment on proposed subparagraph (C).

The commission proposes to delete subparagraph (C)(i) regarding the prohibition on incorporating any error margin from the test into the results of the capture efficiency test. While the commission considers it inappropriate to include an error margin in the test results, it is not necessary to specifically include this prohibition in the rule.

The commission proposes to delete existing subparagraph (C)(ii) because the requirement is no longer necessary since the date to accomplish the initial capture efficiency testing for the owner or operator of an affected rotogravure or flexographic printing line has already passed. The proposed revision deletes language made obsolete by the passing of the initial capture efficiency compliance date.

The commission proposes to delete the language in existing subparagraph (C)(iii) regarding identification of the monitored parameters during the initial pretest meeting. As discussed elsewhere in this preamble, the monitoring parameters for the capture systems along with other control devices are addressed under the existing provisions in §115.436, and it is unnecessary to include the provisions in current subparagraph (C)(iii). Furthermore, a pretest meeting with the source owner or operator may not always occur.

The commission proposes non-substantive revisions to subsection (b)(1) - (5) necessary to comply with rule formatting requirements that are not intended to alter the meaning of this provision. Additionally, the commission proposes updating paragraph (6) to reflect the most recent amendment of testing procedures in the CFR.

The commission proposes subsection (c) to allow methods other than those specified in subsections (a)(1) - (6) and (b)(1) - (6) to be used if the alternative methods have been approved by the executive director and validated according to Method 301. The proposed provision for alternative methods is similar to alternative method provisions in other Chapter 115 rules.

Section 115.436, Monitoring and Recordkeeping Requirements

The commission proposes deleting the existing language in subsection (a) and replacing with updated text to indicate that in the BPA, DFW, El Paso, and HGB areas, the owner or operator of a rotogravure or flexographic printing line subject to this division shall comply with the monitoring and recordkeeping requirements in paragraphs (1) - (6). The proposed revision is not intended to alter the meaning of the existing language in subsection (a). The commission also proposes non-substantive revisions to paragraphs (1) - (6) to update language necessary to comply with rule formatting standards.

Additionally, the commission proposes revisions to paragraph (3) to remove the term *emission* from *emission control device* because control device is the term defined in §101.1. The proposed rule change provides clear and consistent use of terminology throughout the rule and is not intended to change the meaning of this requirement.

The commission proposes a non-substantive revision to paragraph (6) necessary to comply with rule formatting standards and to update the reference to §115.435 to reflect the proposed renumbering of exiting subsection (a)(7) to proposed subsection (a)(8).

The commission proposes non-substantive changes to subsection (b) and paragraphs (1) - (5) to update rule language consistent with rule formatting standards and to update references. In subsection (b), the commission proposes replacing the term *facility* with *line* to provide clear and consistent use of terminology throughout the rule. These changes are not intended to alter the meaning of this requirement.

The commission proposes revising paragraph (3) to remove the term *emission* from *emission control device* because control device is the term defined in §101.1. The proposed rule change provides clear and consistent use of terminology throughout the rule and is not intended to change the meaning of this requirement.

Proposed subsection (c) would require, beginning March 1, 2013, in the DFW and HGB areas, the owner or operator of a flexible package printing line subject to this division to comply with the monitoring and recordkeeping requirements contained in paragraphs (1) - (6). The proposed paragraphs impose identical monitoring and recordkeeping requirements for coatings, including inks and adhesives, as the requirements in subsection (a) specify for inks, except for the requirement in paragraph (2). The separate subsection for coatings used during flexible package printing is necessary to prevent requiring additional monitoring and recordkeeping for the other printing operations subject to the division but not affected by this rulemaking.

Proposed paragraph (1) requires maintaining records of the VOC content of all coatings as applied to the substrate. The proposed paragraph requires records of the quantity of each coating used to be maintained. Proposed paragraph (1) also allows the com-

position of coatings to be determined by using the test methods approved in §115.435(a) or by examining the manufacturer's formulation data and documenting the amount of dilution solvent added to adjust the viscosity of coatings prior to application to the substrate.

Proposed paragraph (2) requires maintaining records of the quantity and type of each coating and solvent consumed if any of the coatings, as applied, exceed the applicable VOC content limits. Proposed paragraph (2) also requires that records must be sufficient to demonstrate compliance with the applicable VOC content limit on a daily weighted average. The proposed new recordkeeping requirement ensures the owner or operator maintains documentation sufficient to demonstrate that when all coatings applied are calculated on a daily weighted average, the VOC content does not exceed the applicable limits in §115.432(c).

Proposed paragraph (3) requires that monitors be installed and maintained to continuously measure and record operational parameters of any control device installed to meet the applicable control requirements in §115.432(c). Proposed paragraph (3) also requires that such records must be sufficient to demonstrate proper functioning of those devices to design specifications and include documentation of the provisions in proposed subparagraphs (A) - (D). Proposed subparagraph (A) specifies the exhaust gas temperature of direct-flame incinerators or gas temperature immediately upstream and downstream of any catalyst bed. Proposed subparagraph (B) specifies the total amount of VOC recovered by a carbon adsorption or other solvent recovery system during a calendar month. Proposed subparagraph (C) specifies the exhaust gas VOC concentration of any carbon adsorption system to determine if breakthrough has occurred. Proposed subparagraph (D) specifies the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.

Proposed paragraph (4) requires the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.435(a) be maintained.

Proposed paragraph (5) requires that all records at the affected site be maintained for at least two years and such records be made available upon request to authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction.

Proposed paragraph (6) requires the capture efficiency protocol under §115.435(a)(8) be maintained on file. Proposed paragraph (6) directs the owner or operator to submit all results of the test methods and capture efficiency operating parameter values on-site for a minimum of one year. Additionally, proposed paragraph (6) requires that if any changes are made to the capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes, and a new capture efficiency or control device destruction or removal efficiency test may be required.

Section 115.437, Exemptions

The commission proposes the repeal of §115.437. As discussed elsewhere in the Section by Section Discussion portion of this preamble, the commission is proposing to move the exemptions currently listed in §115.437 to proposed new §115.431, to improve readability of the rule by listing the exemptions before the rule requirements.

Section 115.439, Counties and Compliance Schedules

The commission proposes amending subsection (a) to clarify that the existing language indicates the compliance date for flexographic and rotogravure printing lines in the specified locations has passed, except the compliance date for flexible package printing processes affected by subsections (c) and (d).

The commission proposes amending subsection (b) to clarify that the owner or operator of a flexible package printing process affected by the proposed rule requirements is not required to be in compliance until the dates specified in subsections (c) and (d).

Proposed subsection (c) requires the owner or operator of a flexible package printing line in the DFW and HGB areas to comply with the requirements in §115.432(c) and (d) and §115.436(c), no later than March 1, 2013. The March 1, 2013, compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that any VOC emission reductions achieved by the proposed rule will occur prior to the ozone season in the DFW area. Proposed subsection (c) would also specify that any testing required by §115.435 to demonstrate compliance with the requirements in proposed §115.432(c) must be completed and results submitted by no later than March 1, 2013. The commission requests comment on appropriate compliance dates for the proposed requirements.

Proposed subsection (d) requires the owner or operator of a flexible package printing line in the DFW and HGB areas that becomes subject to the requirements in this division after March 1, 2013, to comply with the requirements in this division no later than 60 days after becoming subject. The commission is requesting comment on the adequacy of the time provided for newly affected facilities to comply with the proposed requirements.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 5, CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

Section 115.450, Applicability and Definitions

The commission proposes new §115.450, to clearly identify the surface coating processes affected by the requirements in this division and to define the terms relevant to those surface coating processes.

Proposed new subsection (a) specifies that the requirements in this division apply to the surface coating processes listed in paragraphs (1) - (6) in the DFW and HGB areas and to the coating process listed in paragraph (7) in the DFW area. The commission is not proposing to apply the requirements to automobile and light-duty truck assembly coating processes in the HGB area because there are no facilities in the HGB area that would be subject to this CTG category. The commission has previously submitted a negative declaration for the automobile and light-duty truck assembly coating process category for the HGB area.

Proposed new paragraphs (1) and (2) list large appliance surface coating processes and metal furniture surface coating processes, respectively. The proposed applicability for large appliance and metal furniture surface coating operations is not limited to the manufacturers of these parts and products; any operation involving the coating of these substrates is subject to the proposed rule requirements. The proposed applicability in para-

graphs (1) and (2) retains the existing applicability for these coating operations, as defined in existing §115.420(b)(6) and (7).

Proposed new paragraph (3) specifies that this division applies to miscellaneous metal part and product coating at the original equipment manufacturer, off-site job shops that coat new and used parts and products or that recoat used parts and products, and designated on-site maintenance shops that recoat used parts and products. For the purpose of this proposed rule, off-site job shops constitute locations that coat new miscellaneous metal parts or products and that recoat used miscellaneous metal parts or products on a contractual basis. A designated on-site maintenance shop is an area designated at a site where coatings are applied to one or more miscellaneous metal parts or products on a routine basis. Proposed new paragraph (3) retains the applicability as defined in existing §115.420(b)(9)(F) for miscellaneous metal parts and products. Proposed new paragraph (4) specifies that this division applies to miscellaneous plastic part and product coating, pleasure craft coating, and automotive/transportation and business machine plastic part coating at the original equipment manufacturer and off-site job shops that coat new parts and products or that recoat used parts and products. The proposed rule applicability is the same as the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG recommendation. Proposed new paragraph (5) specifies that this division applies to motor vehicle materials applied to metal and plastic parts described in paragraphs (3) and (4) at the original equipment manufacturer and off-site job shops that coat new parts and products or that recoat used parts and products during an operation other than an automobile and light-duty truck assembly coating process. The proposed rule applicability is the same as recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG.

Proposed new paragraph (6) specifies that this division applies to paper, film, and foil coating lines with the potential to emit from all coatings of VOC greater than or equal to 25 tpy when uncontrolled. The proposed applicability threshold is the same as recommended in the EPA's 2007 Paper, Film, and Foil Coatings CTG.

Proposed new paragraph (7) specifies that this division applies to automobile and light-duty truck assembly coating processes conducted by the original equipment manufacturer in the DFW area. Automobile and light-duty truck manufacturing coating is currently subject to Chapter 115, as defined in existing §115.420(b)(8)(A). Proposed new paragraph (7) also incorporates operators that conduct automobile and light-duty truck coating processes under contract with the original equipment manufacturer in the DFW area into the rule applicability. The contract coaters referred to are those that coat new automobile and light-duty truck bodies, body parts for new automobiles or new light-duty trucks, and other parts that are coated along with these bodies or body parts under contract with the original equipment manufacturer. The proposed applicability is recommended in the EPA's 2008 Automobile and Light-Duty Truck Assembly Coatings CTG. The commission requests comment on the appropriate applicability for operators that coat new automobile and light-duty truck bodies, body parts for new automobiles or new light-duty trucks, and other parts that are coated along with these bodies or body parts under contract with the original equipment manufacturer.

Proposed new subsection (b) includes the general definitions that would apply to proposed new Division 5 and also specifies that unless the context clearly indicates otherwise or unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382), in §§3.2, 101.1, or 115.10, the terms used in this division have the meanings commonly used in the field of air pollution control. Unless specifically discussed, the definitions proposed in this subsection are identical to those in existing §115.420(a). The commission requests comment on any additional definitions that should be included.

Proposed new paragraph (1) defines *Aerosol coating (spray paint)* as a hand-held, pressurized, non-refillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.

Proposed new paragraph (2) defines *Air-dried coating* as a coating that is cured at a temperature below 194 degrees Fahrenheit (90 degrees Celsius); these coatings may also be referred to as low-bake coatings. Proposed new paragraph (2) is a definition recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG; however, the commission proposes to include the term as a general definition because it is used in the control requirements section for other coating categories affected by this division.

Proposed new paragraph (3) defines *Baked coating* as a coating that is cured at a temperature at or above 194 degrees Fahrenheit (90 degrees Celsius); these coatings may also be referred to as high-bake coatings. Proposed new paragraph (3) is a definition recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG; however, the commission proposes to include the term as a general definition because it is used in the control requirements section for other coating categories affected by this division. In the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG a high-baked coating is defined as a coating that is cured at a temperature above 194 degrees Fahrenheit (90 degrees Celsius). The commission is requesting comment on the validity of the interpretation that the definition of high-baked coating should be equivalent to the definition of baked coating.

Proposed new paragraph (4) defines *Coating application system* as devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but are not limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

Proposed new paragraph (5) defines *Coating line* as an operation consisting of a series of one or more coating application systems and associated flash-off area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured. The coating line ends at the point the coating is dried or cured, or prior to any subsequent application of a different coating.

Proposed new paragraph (6) defines *Coating solids (or solids)* as the part of a coating that remains on the substrate after the coating is dried or cured.

Proposed new paragraph (7) defines *Daily weighted average* as the total weight of VOC emissions from all coatings subject to the same VOC limit, divided by the total volume or weight of those coatings (minus water and exempt solvent), or divided by the total volume or weight of solids, delivered to the application system each day. Proposed new paragraph (7) indicates that coatings subject to different VOC content limits in §115.453 must not be combined for purposes of calculating the daily weighted average. Proposed new paragraph (7) retains the method for determining the daily weighted average consistent with the existing definition in §115.420(a)(6) but accommodates weight units because the

paper, film, and foil coating category VOC content limits are provided in pounds.

Proposed new paragraph (8) defines *Multi-component* coating as a coating that requires the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film. Proposed new paragraph (8) is a definition recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG; however, the commission proposes to include the term as a general definition because it is used in the control requirements section for other coating categories affected by this division.

Proposed new paragraph (9) defines *Normally closed container* as a container that is closed unless an operator is actively engaged in activities such as adding or removing material.

Proposed new paragraph (10) defines *One-component coating* as a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity, is not considered a component. Proposed new paragraph (10) is a definition recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG; however, the commission proposes to include the term as a general definition because it is used in the control requirements section for other coating categories affected by this division.

Proposed new paragraph (11) defines *Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents)* as the basis for emission limits for surface coating processes. Proposed new paragraph (11) retains the definition of pounds of VOC per gallon of coating as defined in existing §115.420(a)(9) with non-substantive changes that are not intended to alter the meaning of this definition. The proposed definition in paragraph (11) includes the equation to calculate pounds of VOC per gallon of coating (minus water and exempt compounds) using values obtained from testing data or analytical data from the material safety data sheet (MSDS). Explanations of the variables follow the equation.

Proposed new paragraph (12) defines *Pounds of volatile organic compounds (VOC) per gallon of solids* as the basis for emission limits for surface coating processes. Proposed new paragraph (12) retains the definition of pounds of VOC per gallon of solids as defined in existing §115.420(a)(10) with non-substantive changes that are not intended to alter the meaning of this definition. The proposed definition in paragraph (12) includes the equation to calculate pounds of VOC per gallon of solids using values obtained from testing data or analytical data from the MSDS. Explanations of the variables follow the equation.

Proposed new paragraph (13) defines *Spray gun* as a device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

Proposed new paragraph (14) defines *Surface coating processes* as operations that use a coating application system.

Proposed new subsection (c) provides specific surface coating definitions that are unique to each surface coating operation proposed for regulation in this division. Unless specifically discussed, the proposed definitions in this section are recommended in the EPA's CTG documents related to the surface coating categories subject to this division. The commission requests comment on any additional definitions that should be included in this proposed new subsection.

Proposed new paragraph (1) defines the terms that apply to automobile and light-duty truck manufacturing. The terms defined in proposed new subparagraphs (A) - (T) include: *Adhesive; Automobile assembly coating process; Automobile and light-duty truck adhesive; Automobile and light-duty truck bedliner; Automobile and light-duty truck cavity wax; Automobile and light-duty truck deadener; Automobile and light-duty truck gasket/gasket sealing material; Automobile and light-duty truck glass-bonding primer; Automobile and light-duty truck lubricating wax/compound; Automobile and light-duty truck sealer; Automobile and light-duty truck trunk interior coating; Automobile and light-duty truck underbody coating; Automobile and light-duty truck weather strip adhesive; Electrodeposition primer; Final repair; In-line repair; Light-duty truck assembly coating process; Primer-surfacer; Topcoat;* and *Solids turnover ratio (RT').* The proposed definitions of these terms are provided in proposed new paragraph (1) and are not specifically discussed in this preamble, except for those specific definitions that are not taken directly from the EPA's 2008 Automobile and Light-Duty Truck Assembly Coatings CTG.

Proposed new subparagraph (M) defines *Automobile assembly coating process* as the assembly-line coating of new passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers. This definition is derived from the existing definition of *automobile coating* in §115.420(b)(12)(A)(i).

Proposed new subparagraph (Q) defines *Light-duty truck assembly coating process* as the assembly-line coating of new motor vehicles rated at 8,500 pounds gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans. This definition is derived from the existing definition of *light-duty truck coating* in §115.420(b)(12)(A)(ii).

Proposed new paragraph (2) defines the terms that apply to automotive/transportation and business machine plastic parts. The terms defined in proposed new subparagraphs (A) - (O) include: *Adhesion prime; Black coating; Business machine; Clear coating; Coating of plastic parts of automobiles and trucks; Coating of plastic parts of business machines; Electrostatic prep coat; Flexible coating; Fog coat; Gloss reducer; Red coating; Resist coat; Stencil coat; Texture coat;* and *Vacuum-metalizing coatings.* The proposed definitions of these terms are provided in proposed new paragraph (2) and are not specifically discussed in this preamble. The definitions are taken directly from the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG without substantive change.

Proposed new paragraph (3) defines *Large appliance coating* as the coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances. Proposed new paragraph (3) retains the definition for large appliance coating as defined in existing §115.420(b)(6) without revision. Although the 2007 Large Appliance Coatings CTG recommends VOC emission limits for specific coating categories, the CTG document does not include definitions for these specific coating categories. The definitions in proposed new subparagraphs (A) - (F) incorporate the definitions recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG for similar coating categories with minor non-substantive changes necessary to conform to current rule formatting standards. The proposed definitions of these terms are provided in proposed new paragraph (3) and are not specifically discussed in this preamble. The definitions in proposed new subparagraphs (A) - (F) include: *Extreme high-gloss coating; Extreme performance coat-*

ing; Heat-resistant coating; Metallic coating; Pretreatment coating; and *Solar-absorbent coating.*

Proposed new paragraph (4) defines *Metal furniture* as the coating of metal furniture including, but not limited, to tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products or the coating of any metal part that will be a part of a nonmetal furniture product. Proposed new paragraph (4) retains the definition is existing §115.420(b)(7) without revision. Although the 2007 Metal Furniture Coatings CTG recommends VOC emission limits for specific coating categories, the CTG document does not include definitions for these specific coating categories. The definitions in proposed new subparagraphs (A) - (F) incorporate the definitions recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG for similar coating categories with minor non-substantive changes necessary to conform to current rule formatting standards. The proposed definitions of these terms are provided in proposed new paragraph (4) and are not specifically discussed in this preamble. The definitions in proposed new subparagraphs (A) - (F) include: *Extreme high-gloss coating; Extreme performance coating; Heat-resistant coating; Metallic coating; Pretreatment coating;* and *Solar-absorbent coating.*

Proposed new paragraph (5) lists the defined terms that apply to miscellaneous metal and plastic parts. Unless specifically discussed, the definitions in proposed new paragraph (5) incorporate the definitions recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG with minor non-substantive changes necessary to conform to current rule formatting standards. The terms defined in proposed new subparagraphs (A) - (FF) include: *Camouflage coating; Clear coat; Drum (metal); Electric-dissipating coating; Electric-insulting varnish; EMI/RFI shielding; Etching filler; Extreme high-gloss coating; Extreme performance coating; Heat-resistant coating; High performance architectural coating; High temperature coating; Mask coating; Metallic coating; Military specification coating; Mold-seal coating; Miscellaneous metal parts and products; Multi-colored coating; Off-site job shop; Optical coating; Pail (metal); Pan-backing coating; Prefabricated architectural component coating; Pretreatment coating; Repair coating; Shock-free coating; Silicone-release coating; Solar-absorbent coating; Stencil; Touch-up coating; Translucent coating;* and *Vacuum-metalizing coating.* The proposed definitions of these terms are provided in proposed new paragraph (5) and are not specifically discussed in this preamble, except for those definitions that are not directly from the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG or that the commission is proposing a modification to the definition in the CTG.

The definition of *Clear coat* in proposed new subparagraph (B) is a coating that lacks opacity or is transparent and may or may not have an undercoat that is used as a reflectant base or undertone color. This definition is identical to the existing definition in §115.420(b)(9)(A). The EPA's 2008 CTG provides a recommended definition for clear coat; however, revising it to reflect the CTG-recommended definition is unnecessary since the definition for the term in Chapter 115 and the CTG are synonymous. The commission requests comment on any discontinuity between the existing definition of clear coat and the CTG-recommended definition.

The definition of *Drum (metal)* in proposed new subparagraph (C) is any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters). The EPA's 2008 CTG provides a recommended definition for a drum; however, revising it to reflect the CTG-recommended definition is unnecessary since the definition for the term in Chapter 115 and the CTG are synonymous. The commission requests comment on any discontinuity between the existing definition of clear coat and the CTG-recommended definition.

The definition of *Miscellaneous metal parts and products* in proposed new subparagraph (Q) is those specific parts and products listed in clauses (i) - (vii). Proposed new subparagraph (Q) retains the definition in existing §115.420(b)(9) with revision to delete the locations that are affected by the miscellaneous metal parts and products coating rule requirements. The affected locations are more appropriately described in the subsection (a). Proposed new clause (i) identifies large farm machinery (harvesting, fertilizing, and planting machines; tractors, combines, etc.). Proposed new clause (ii) identifies small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.). Proposed new clause (iii) identifies small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.). Proposed new clause (iv) identifies commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.). Proposed new clause (v) identifies industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.). Proposed new clause (vi) identifies fabricated metal products (metal-covered doors, frames, etc.). Proposed new clause (vii) identifies any other category of coated metal products, including, but not limited to, those that are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries). Excluded are those surface coating processes specified in Subchapter E, Division 2, and in paragraphs (1) - (4) and (6) - (8) of this subsection.

The definition of *Off-site job shop* in proposed new subparagraph (S) is a non-manufacturer of metal or plastic parts and products that applies coatings to such products at a site exclusively under contract with one or more parties that operate under separate ownership and control. This definition is not an existing definition and is not recommended in the EPA's Miscellaneous Metal and Plastic Parts CTG. The commission is proposing this definition to describe the intended meaning of an off-site job shop as described in the Rule Interpretation Team document Number R5-421.005, concerning the applicability of the miscellaneous metal parts and products surface coating rules.

Proposed new subparagraph (U) defines *Pail (metal)* as any cylindrical metal shipping container with a capacity equal to or greater than 1.0 gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material. The proposed definition is not recommended in the Miscellaneous Metal and Plastic Parts Coating CTG. Proposed new subparagraph (U) retains the definition of pail in existing §115.420(b)(9)(G) without revision because the coating of pails is still considered a miscellaneous metal part coating operation.

Proposed new paragraph (6) defines the terms that apply to motor vehicle materials. The terms defined in proposed new subparagraphs (A) - (H) include: *Motor vehicle bedliner; Motor vehicle cavity wax; Motor vehicle deadener; Motor vehicle gasket/sealing material; Motor vehicle lubricating wax/compound;*

Motor vehicle sealer; Motor vehicle trunk interior coating; and *Motor vehicle underbody coating.* The proposed definitions of these terms are provided in proposed new paragraph (6) and are not specifically discussed in this preamble. The definitions are taken directly from the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG with changes to replace the term *facility* with *process.* The proposed changes more appropriately reflect that motor vehicle materials applied to substrates other than automobiles or light-duty trucks during assembly line-coating would be subject to the requirements corresponding to motor vehicle materials regardless of the process location.

Proposed new paragraph (7) defines *Paper, film, and foil coating* as the coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film), related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape), metal foil (including decorative, gift wrap, and packaging), industrial and decorative laminates, abrasive products (including fabric coated for use in abrasive products), and flexible packaging. Paper, film, and foil coating includes the application of a continuous layer of a coating material across the entire width or any portion of the width of a paper, film, or foil web substrate to: provide a covering, finish, or functional or protective layer to the substrate; saturate the substrate for lamination; or provide adhesion between two substrates for lamination. Paper, film, and foil coating does not include coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press. In addition, size presses and on-machine coaters that function as part of an in-line papermaking system are not included. Proposed new paragraph (7) incorporates the EPA's 2007 Paper, Film, and Foil CTG process description to supplement the existing definition of paper coating in §115.420(b)(10). The added language is intended to clearly distinguish between processes considered paper, film, and foil coating and processes that include coating on paper, film, and foil but that would not be considered a coating process and therefore would not be subject to the requirements referring to paper, film, and foil coating. Additionally, the EPA's 2007 CTG considers fabric coating and vinyl coating a paper, film, and foil coating process; however, the commission interprets the applicability of fabric and vinyl coating under paper, film, and foil coating to be limited to certain fabric and vinyl coating operations. Under this interpretation, some facilities may be subject to paper, film, and foil under Division 5 while others may remain subject to the Division 2 fabric and vinyl coating requirements in Division 2, depending on the particular coating operation. The commission requests comment on dual applicability for fabric and vinyl coating process applicability in the proposed new rules with the fabric and vinyl coating applicability in Division 2.

Proposed new paragraph (8) defines the terms that apply to pleasure craft. Proposed new paragraph (8) defines *Pleasure craft* as any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 65.6 feet (20 meters) in length. Proposed new paragraph (8) clarifies that a vessel rented exclusively to, or chartered for, individuals for such purposes is considered a pleasure craft. Proposed new paragraph (8) retains the existing definition of pleasure craft in existing §115.420(b)(11)(U) without substantive revision to maintain consistency with the existing Chapter 115 rules. The terms defined in proposed new subparagraphs (A) - (H) include: *Antifoulant coating; Extreme high-gloss coating; Finish primer-surface; High build primer-surface; High-gloss coating; Pleasure craft coating; Pretreatment wash primer;* and *Topcoat.* The definitions are taken directly from the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG without substantive change. The proposed definitions of these terms are provided in the proposed new paragraph (8) and are not specifically discussed in this preamble.

Section 115.451, Exemptions

The commission proposes new §115.451, to list the exemptions that apply to the owner or operator of a surface coating process subject to this division. Proposed new §115.451 provides the same exemptions for the surface coating processes that are currently located in existing §115.427(a) and incorporates the new exemptions recommended in the CTG documents associated with the surface coating processes affected by this division. The commission seeks comment on appropriate exemptions for the various surface coating processes in the DFW and HGB areas.

Proposed new paragraph (1) excludes from the VOC emission calculations the coatings and solvents used in coating activities and associated cleaning operations not addressed by the surface coating categories in §115.421(a)(3), (5) - (8)(A), and (10) - (15) or §115.453. Proposed new §115.451(1) includes, as an example, that architectural coatings applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs at a property would not be included in the calculations. The proposed exemption retains the criteria in existing §115.427(a)(3) with non-substantive revision to ensure that the coating categories proposed for re-location in Division 5 remain affected by this provision. This is an existing Chapter 115 exemption and not recommended in the EPA's CTG documents.

Proposed new subparagraph (A) exempts all surface coating processes on a property that, when uncontrolled, will emit a combined weight of VOC of less than 3.0 pounds per hour and 15 pounds per day in any consecutive 24-hour period from the control requirements in §115.453. As discussed elsewhere in this preamble, the CTG documents recommend an exemption threshold of 15 pounds per day for each product category. The commission is not proposing the CTG recommendation because the existing exemption criteria in §115.427(a)(3) requires the VOC emissions generated from the coatings and solvents used in all of the surface coating processes in Division 2, unless specifically excluded, be combined to determine exemption from the applicable rule requirements in §115.421(a). Proposed new subparagraph (A) maintains the existing approach implemented in §115.427(a)(3)(A), with revisions to indicate this exemption continues to apply to the processes transitioning from applicability in Division 2 to Division 5.

Proposed new subparagraph (B) exempts surface coating processes on a property that, when uncontrolled, will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are exempt from §115.453(a), if documentation is provided to, and approved by, both the executive director and the EPA to demonstrate that necessary coating performance criteria cannot be achieved with coatings that satisfy applicable VOC limits and that control equipment is not technically or economically feasible. Proposed new §115.451(1)(B) is the same as the existing Chapter 115 exemption in §115.427(a)(3)(B) and not a CTG recommendation.

Proposed new subparagraph (C) exempts surface coating processes on a property where total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period from the VOC limits in §115.453(a). The proposed exemption is identical to the current exemption in §115.427(a)(3)(C).

Proposed new paragraph (2) exempts the coating processes in subparagraphs (A) - (C) from the coating VOC limits for miscellaneous metal and plastic part coating in §115.453(a)(1)(C) - (F) and (2). Proposed new subparagraph (A) exempts large appliance coating. Proposed new subparagraph (B) exempts metal furniture coating. Proposed new subparagraph (C) exempts automobile and light-duty truck assembly coating. This exemption clarifies that any part or assembled product specified in subparagraphs (A) - (C) is not considered a miscellaneous metal or plastic part and would not be required to comply with the coating VOC content limits related to this category.

Proposed new paragraph (3) exempts paper, film, and foil coating processes from the coating application system requirements in §115.453(c) and the coating use work practice requirements in §115.453(d)(1), because the 2007 Paper, Film, and Foil Coating CTG document does not recommend coating application methods and does not provide recommendations for work practices associated with coatings and coating-related waste.

Proposed new paragraph (4) exempts automobile and light-duty truck assembly coating processes from the coating application system requirements in §115.453(c) and the cleaning-related work practice requirements specified in §115.453(d)(2). The 2008 Automobile and Light-Duty Truck Assembly Coatings CTG document recommends that the owners and operators of automobile and light-duty truck assembly coating processes develop and implement a work plan for cleaning activities beyond the more general work practice procedures listed in §115.453(d)(2). The 2008 CTG document also does not provide the recommendation to require coatings be applied using specific application systems.

Proposed new paragraph (5) exempts automobile and light-duty truck assembly coating materials supplied in containers with a net volume of 16 ounces or less, or a net weight of 1.0 pound or less, are exempt from the VOC limits in Table 2 under §115.453(a)(3).

Proposed new paragraph (6) provides an exemption for specific miscellaneous metal part and product coatings and coating processes from using the coating application systems required in §115.453(c). The operations exempted under proposed subparagraphs (A) - (G) include: touch-up coatings, repair coatings, and textured finishes; stencil coatings; safety-indicating coatings; solid-film lubricants; electric-insulating and thermal-conducting coatings; magnetic data storage disk coatings; and plastic extruded onto metal parts to form a coating. The commission is not proposing to incorporate the EPA's 2008 Miscellaneous Metal Parts and Products Coatings CTG recommendation to exempt these coatings and coating operations from the coating VOC limits for reasons discussed elsewhere in this preamble. However, the commission requests comment on whether these metal part coatings and coating operations should be exempt from the miscellaneous metal part and product coating VOC content requirements.

Proposed new paragraphs (7) and (8) also exempt specific coatings and operations from the coating application system requirements in §115.453(c). Proposed new paragraph (7) exempts all miscellaneous plastic part airbrush coatings and coating operations where total coating usage is less than 5.0 gallons per year. Proposed new paragraph (8) provides an exemption for pleasure craft coating operations applying extreme high-gloss coatings. The proposed exemptions are recommended in the EPA's 2008 Miscellaneous Metal and Plastic Part Coatings CTG document.

Proposed new paragraph (9) exempts various miscellaneous plastic parts coatings and coating operations from the coating VOC limits in §115.453(a)(1)(D). The coatings and coating operations exempted under proposed new subparagraphs (A) - (H) include: touch-up and repair coatings; stencil coatings applied on clear or transparent substrates; clear or translucent coatings; any individual coating type used in volumes less than 50 gallons in any one year, if substitute compliant coatings are not available, provided that the total usage of all such coatings does not exceed 200 gallons per year, per property; reflective coating applied to highway cones; mask coatings that are less than 0.5 mil thick dried and the area coated is less than 25 square inches; electromagnetic interference (EMI)/radio frequency interference (RFI) shielding coatings; and heparin-benzalkonium chloride (HBAC)-containing coatings applied to medical devices, if the total usage of all such coatings does not exceed 100 gallons per year, per property. The proposed exemptions are recommended in the EPA's 2008 Miscellaneous Metal and Plastic Part Coatings CTG document.

Proposed new paragraph (10) exempts certain automotive/transportation and business machine plastic part coatings and coating operations from the coating VOC limits in §115.453(a). The exemptions in proposed subparagraphs (A) - (H) include: texture coatings; vacuum-metalizing coatings; gloss reducers; texture topcoats; adhesion primers; electrostatic preparation coatings; resist coatings; and stencil coatings. These exemptions are recommended in the Miscellaneous Metal and Plastic Parts Coatings CTG document and are being proposed for inclusion in the exemptions for this division.

Proposed paragraph (11) provides an exemption for powder coatings applied during metal and plastic parts surface coating processes from the requirements in this division, except as specified in §115.458(b)(5). Powder coatings produce minimal VOC emissions and would likely not exceed the VOC control limits designated for each coating type specified in the metal and plastic parts requirements in §115.453(a)(1)(C) - (F) and (2). The commission seeks comment on whether the exemption interferes with the existing coating requirements for miscellaneous metal parts and products coatings.

Proposed new paragraph (12) exempts aerosol coatings (spray paint) from this division. The proposed exemption is identical to the exemption in existing §115.427(a)(6).

Proposed new paragraph (13) exempts coatings applied to test panels and coupons as part of research and development, quality control, or performance-testing activities at paint research or manufacturing properties from the requirements in this division. The proposed exemption is a recommendation provided in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG.

Section 115.453, Control Requirements

The commission proposes new §115.453, to implement the EPA's CTG recommendations related to the surface coating categories proposed for regulation in this division, unless specifically discussed.

Proposed new subsection (a) states that the control requirements in this subsection apply to the surface coating processes subject to this division. Except as specified in paragraph (3), these limitations are based on the daily weighted average of coatings delivered to the application system. Proposed new §115.453(a) excludes paragraph (3) to clarify that determination of compliance with the certain VOC limits pertaining to

automobile and light-duty truck assembly coatings are based on averaging approaches unique to that industrial category. The daily weighted average approach is consistent with both the existing method of determining compliance with the VOC control limits and the averaging period suggested in the CTG documents for the coating categories subject to this division.

Proposed new paragraph (1) requires the owner or operator to limit VOC emissions from all coatings in each of the coating categories in this paragraph. Proposed new paragraph (1) requires that the limits must be met by applying low-VOC coatings to meet the specified VOC content limits on a lb VOC/gal of coating basis, as delivered to the application system (minus water and exempt solvent), or by applying low-VOC coatings and operating a vapor control system to meet the specified VOC emission limits on a lb VOC/gal of solids basis.

The commission proposes new subparagraph (A) to specify the VOC limits that apply to the specified large appliance coating types. As discussed in the *Demonstrating Noninterference Under FCAA, Section 110(l)* portion of the Background and Summary of the Factual Basis for the Proposed Rules section of this preamble, the proposed VOC limits achieve an overall emissions reduction from the existing VOC emission limits in §115.421(a) for large appliance coatings and have been determined by the commission to be RACT. Subparagraph (A) contains two tables with the VOC limits for various large appliance coating types. Table 1 presents the VOC content limits on a pound of VOC per gallon of coating basis, and Table 2 presents the equivalent VOC emission limits on a lb VOC/gal of solids basis. Although not recommended in the 2007 Large Appliance Coatings CTG, proposed subparagraph (A) requires that if a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.

The commission proposes new subparagraph (B) to specify the VOC limits that apply to the specified metal furniture coating types. As discussed in the *Demonstrating Noninterference Under FCAA, Section 110(l)* portion of the Background and Summary of the Factual Basis for the Proposed Rules section of this preamble, the proposed VOC limits achieve an overall emissions reduction from the existing VOC emission limits in §115.421(a) for metal furniture coatings and have been determined by the commission to be RACT. Subparagraph (B) contains two tables with the VOC limits for various metal furniture coating types. Table 1 in §115.453(a)(1)(A), presents the VOC content limits on a pound of VOC per gallon of coating basis, and Table 2 in §115.453(a)(1)(B), presents the equivalent VOC emission limits on a lb VOC/gal of solids basis. Although not recommended in the 2007 Metal Furniture Coatings CTG, proposed subparagraph (B) requires that if a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.

The commission proposes new subparagraph (C) to specify the VOC limits that apply to the specified miscellaneous metal parts and products coating types. Proposed subparagraph (C) requires that if a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies. This proposed requirement is recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG. As discussed in the *Demonstrating Noninterference Under FCAA, Section 110(l)* portion of the Background and Summary of the Factual Basis for the Proposed Rules section of this preamble, the proposed VOC limits achieve an overall emissions reduction from the existing VOC emission limits in §115.421 for miscellaneous metal parts and products coatings and have been determined by the commission to be RACT. Subparagraph (C) contains two tables with the VOC limits for various miscellaneous metal parts and products. Table 1 in §115.453(a)(1)(C), presents the VOC content limits on a lb VOC/gal of coating basis; and Table 2, also located in §115.453(a)(1)(C), presents the equivalent VOC emission limits on a lb VOC/gal of solids basis.

The commission proposes new subparagraph (D) to specify the VOC limits that apply to the specified miscellaneous plastic parts and products coatings. Proposed new subparagraph (D) requires that if a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating, and the VOC limit for general coating applies. This proposed requirement is recommended in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG. Subparagraph (D) contains two tables with coating VOC limits for various miscellaneous plastic parts and products. Table 1 in §115.453(a)(1)(D), presents the VOC content limits on a lb VOC/gal of coating basis; and Table 2, also located in §115.453(a)(1)(D), presents the equivalent VOC emission limits on a lb VOC/gal of solids basis.

The commission proposes new subparagraph (E) to specify the VOC limits that apply to the specified automotive/transportation and business machine plastic parts coatings. The EPA's CTG recommends that for all miscellaneous metal and plastic part coating categories, if a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies. However, the automotive/transportation and business machine plastic parts coatings category does not have a *general* or *other* coating category; the requirement is therefore not proposed to apply to this particular miscellaneous metal and plastic coating category. Subparagraph (E) contains two tables with coating VOC limits for various automotive/transportation and business machine plastic parts coatings types. Table 1 in §115.453(a)(1)(E), presents the VOC content limits for automotive/transportation plastic parts coatings on a lb VOC/gal of coating basis and a lb VOC/gal of solids basis. Table 2, also located in §115.453(a)(1)(E), presents the VOC content limits for business machine plastic parts coatings on a lb VOC/gal of coating basis and a lb VOC/gal of solids basis.

The commission proposes new subparagraph (F) to provide the VOC limits that apply to the specified pleasure craft coatings. Proposed new subparagraph (F) requires that if a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limit for other pleasure coatings applies. Such a coating would be classified under the *all other pleasure craft surface coatings for metal or plastic* or *other substrate antifoulant coating.* Subparagraph (F) contains two tables with coating VOC limits for various pleasure craft coatings types. Table 1 in §115.453(a)(1)(F) presents the VOC content limits on a lb VOC/gal of coating basis; and Table 2, also located in §115.453(a)(1)(F), presents the equivalent VOC emission limits on a lb VOC/gal of solids basis.

Proposed new paragraph (2) requires that the owner or operator shall not apply motor vehicle materials to the metal and plastic parts in subsection (a)(1)(C) - (F), that exceed the limits (minus water and exempt compounds) contained in the table in §115.453(a)(2), as delivered to the application system, for various motor vehicle materials. The VOC limits for motor vehicle materials are proposed only on a lb VOC/gal of coating ba-

sis because the Miscellaneous Metal and Plastic Parts Coatings CTG document expects these are low-use materials and are often used in areas of operation that would be expensive to control with add-on controls. The commission requests comment on whether the option to use a vapor control system during application of motor vehicle materials should be provided as a compliance option.

Proposed new paragraph (3) requires that the owner or operator of an automobile and light-duty truck assembly coating process shall not apply coatings that exceed the VOC limits contained in the two tables in §115.453(a)(3). Table 1 in §115.453(a)(3) presents the VOC limits for each automobile and light-duty truck coating process. The limits vary depending on the process. The commission proposes to implement the EPA's 2008 Automobile and Light-Duty Truck Assembly Coatings CTG recommendation to base the VOC limits for electrodeposition primer coatings on a monthly weighted average instead of the daily weighted average required in the existing Chapter 115 rules. Compliance with the VOC limits on a monthly weighted average basis must be determined in accordance with the procedure in §115.455(a)(2)(D). Additionally, the commission proposes to provide as an alternative to the VOC limit of 4.8 lbs VOC/gal of coating applied for final repair, if a source owner or operator does not compile records sufficient to enable determination of a daily weighted average VOC content, compliance with the final repair VOC limit may be demonstrated each day by meeting a standard of 4.8 lbs VOC/gal of coating (minus water and exempt solvents) on an occurrence-weighted average basis. Compliance with the VOC limits on an occurrence-weighted average basis must be determined in accordance with the procedure specified in §115.455(a)(2). Table 2 in §115.453(a)(3) presents the VOC content limits for miscellaneous materials used during automobile and light-duty truck manufacturing coating. Compliance with the VOC content limits must be determined in accordance with §115.455(a)(1) or (2)(C), as appropriate.

Proposed new paragraph (4) requires that the owner or operator of each paper, film, and foil coating line shall not apply coatings that exceed the limits contained in the table in §115.453(a)(4). Proposed new paragraph (4) requires the limits must be met by applying low-VOC coatings to meet the specified VOC content limits on a pound of VOC per pound of coating basis as delivered to the application system or by applying low-VOC coatings in combination with a vapor control system to meet the specified VOC emission limits on a pound of VOC per pound of solids basis. The table in §115.453(a)(4) provides separate VOC limits for pressure sensitive tape and label surface coating and paper, film, and foil surface coating.

The commission proposes new paragraph (5) to require an affected owner or operator choosing to comply with the option to apply low-VOC coatings in combination with a vapor control system to meet the VOC emission limits in subsection (a)(1) or (4), to use the equation provided. This proposed new control requirement is necessary to demonstrate that the overall control efficiency of the vapor control system, when used in conjunction with low-VOC coatings, is sufficient to meet the VOC emission limits in §115.453(a)(1) and (4). Proposed new paragraph (5) contains the equation to determine the overall control efficiency needed to meet the VOC emission limits in §115.453. The equation proposed in new paragraph (5) is the same as the equation in existing §115.423(3)(A), revised to ensure the equation applies to either volume-based or mass-based units. Proposed new paragraph (5) also requires control device and capture efficiency testing to be performed in accordance with the testing requirements in §115.455(a)(3) and (4). The commission seeks comment on alternative methods for demonstrating compliance with the option to apply low-VOC coatings in combination with a vapor control system.

Proposed new subsection (b) provides that except for the surface coating process in subsection (a)(2), the owner or operator of a surface coating process may operate a vapor control system capable of achieving a 90% overall control efficiency, as an alternative to subsection (a). The Automobile and Light-Duty Truck Assembly Coatings CTG did not recommend using a vapor control system as an alternative compliance option. However, to maintain flexibility, the commission proposes to provide the owner or operator of an automobile and light-duty truck assembly coating process the option to comply with the 90% overall control efficiency compliance option recommended in the EPA's CTG documents regarding the other coating processes affected by the proposed rulemaking. The commission also proposes to omit the calculation to determine the minimum overall control efficiency contained in existing §115.423(3)(A), from the proposed rulemaking. The commission seeks comment on whether the 90% overall control efficiency is an appropriate alternative compliance option for the automobile and light-duty truck manufacturing coating industry. Proposed new subsection (b) requires control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455(a)(3) and (4). Additionally, proposed new subsection (b) indicates that if the owner or operator complies with the overall control efficiency option under this subsection, then the owner or operator is exempt from the application system requirements of subsection (c) to clarify that the owner or operator choosing this control option would not have to limit the VOC content of coating materials and would not need to use any particular coating application system to demonstrate compliance with the proposed control requirements. The language in proposed new subsection (b) also does not include the provision in §115.423(3)(B) that requires the owner or operator to submit design data for each capture system and control device to the executive director for approval. Facilities that elect the use of this option and install additional control equipment would be required to meet permitting requirements for the installation and including a separate provision for executive director approval is unnecessary.

The commission proposes new subsection (c) to ensure that the owner or operator of any surface coating process subject to this division does not apply coatings unless one of the listed coating application systems is used. Except for the automobile and light-duty truck assembly coating and paper, film, and foil coating categories, the proposed application systems are intended for use in coating processes choosing to comply with the control options requiring low-VOC coatings in subsection (a). If an operation qualifies for exemption from the VOC content limits, the coating application system requirements are still applicable to that operations unless specifically exempt from this subsection or if operating a vapor control system. The allowable application systems are listed in proposed new paragraphs (1) - (7) and include: electrostatic application; high-volume, low-pressure spray (HVLP); flow coat; roller coat; dip coat; brush coating; and other coating application system capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray. Proposed new paragraph (7) states that for the purpose of this requirement, the transfer efficiency of HVLP spray is assumed to be 65%.

Proposed new subsection (d) requires the owner or operator of a surface coating process subject to the division to implement work

practice procedures in paragraphs (1) and (2). The proposed new work practices are recommendations provided in the CTG documents concerning the coating categories affected by this division.

Proposed new paragraph (1) requires that for all coating-related activities, including but not limited to, solvent storage, mixing operations, and handling operations for coatings and coating-related waste materials, the owner or operators of all surface coating processes listed in §115.450(a), except where specifically exempt, must implement the work practices in subparagraphs (A) - (E). Proposed new paragraph (1) also requires additional work practices for automobile and light-duty truck assembly coating. Proposed subparagraph (A) requires storage of all VOC-containing coatings and coating-related waste in closed containers. Proposed new subparagraph (B) requires minimization of spills of VOC-containing coatings. Proposed new subparagraph (C) requires conveying all coatings in closed containers or pipes. Proposed new subparagraph (D) requires closing mixing vessels that contain VOC-containing coatings and other materials except when specifically in use. Proposed new subparagraph (E) requires cleaning up spills immediately. Although the Large Appliance Coatings CTG is the only document that recommends the work practice specified in subparagraph (E), the commission proposes to expand the requirement to apply to the other surface coating processes subject to this division because the commission expects that most sites are probably voluntarily following this work practice for safety reasons. The commission seeks comment on any instance where complying with the work practice in proposed new subparagraph (E) would not be feasible for surface coating processes subject to this division other than large appliance coating. Proposed new subparagraph (F) requires that in addition, the owner or operator of an automobile and light-duty truck assembly coating process minimize VOC emissions from the cleaning of storage, mixing, and conveying equipment. Proposed new subparagraph (F) only applies to automobile and light-duty truck assembly coating processes because this work practice is unique to the recommendations in the corresponding CTG document.

Proposed new paragraph (2) requires that for all cleaning-related activities including, but not limited to, waste, storage, mixing, and handling operations for cleaning materials, the owner or operator must implement the work practice procedures in subparagraphs (A) - (E). Proposed new paragraph (2) requires that in addition, the owner or operator of metal parts and products coating processes listed in §115.450(a)(3) - (5), implement the work practice in subparagraph (F). Proposed subparagraph (A) requires storage of all cleaning materials and shop towels in closed containers. Proposed new subparagraph (B) requires that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials. Proposed new subparagraph (C) requires minimization of spills of VOC-containing cleaning materials. Proposed new subparagraph (D) requires conveying VOC-containing cleaning materials from one location to another in closed containers or pipes. Proposed new subparagraph (E) requires minimization of VOC emissions from cleaning of storage, mixing, and conveying equipment. Proposed new subparagraph (F) requires cleaning up spills immediately. In addition, proposed new subparagraph (G) requires the owner or operator to minimize VOC emissions from the cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent, and all spent solvent is captured in closed containers. Proposed new subparagraph (G) only applies to metal and plastic parts surface coating processes listed in §115.453(a)(1)(C) - (F) and (2), because this work practice is unique to the recommendations in the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG document. The proposed work practice procedures in this paragraph would apply to any cleaning material involved in operations such as the surface preparation of a substrate and post-operation cleaning of equipment and work areas.

Proposed new paragraph (3) directs the owner or operator of an automobile and light-duty truck assembly coating operation to implement a work practice plan containing procedures to minimize VOC emissions from cleaning activities and purging of coating application equipment. Proposed new paragraph (3) allows properties with a work practice plan already in place to comply with National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements specified in 40 CFR §63.3094 (as amended through April 20, 2006 (71 FR 20464)), to incorporate procedures for minimizing non-hazardous air pollutant VOC emissions to comply with the work practice plan required by this paragraph. The commission requests comment on appropriate cleaning work practices related to automobile and light-duty truck manufacturing.

Proposed new subsection (e) specifies that a coating operation that becomes subject to the provisions of §115.453(a) by exceeding the provisions of §115.451(a) is subject to the provisions in §115.453(a) even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with §115.453(a) and one of the conditions in paragraphs (1) or (2) is met. This is an existing requirement in §115.422 and the commission is proposing to include the same requirement in Division 5. Proposed new paragraph (1) specifies that the project that caused throughput or emission rate to fall below the exemption limits in §115.451(a) must be authorized by any permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116. Proposed new paragraph (1) also requires that if a permit by rule is available for the project, compliance with §115.451(a) must be maintained for 30 days after the filing of documentation of compliance with that permit by rule. Proposed new paragraph (2) specifies that if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

Section 115.454, Alternate Control Requirements

Proposed new §115.454, provides that for the owner or operator of a surface coating process subject to this division, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 if emission reductions are demonstrated to be substantially equivalent. This option is not a recommendation in any of the CTG documents applicable to this division but is consistent with other Chapter 115 rules.

Proposed new subsection (b) specifies that for any surface coating process or processes at a specific property, the executive director may approve requirements different from those in §115.453(a)(1)(C) based upon the executive director's determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. The proposed new subsection specifies that when making such a determination, the executive director shall specify the date or dates by which such different requirements shall be met and

shall specify any requirements to be met in the interim. The proposed new subsection also specifies that if the emissions resulting from such different requirements equal or exceed 25 tpy for a property, the determinations for that property shall be reviewed every five years. Additionally, the proposed new subsection states that executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the EPA in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter. Proposed new subsection (b) incorporates the alternate control requirement in existing §115.423(4) with non-substantive changes to update the section referenced.

Section 115.455, Approved Test Methods and Testing Requirements

Proposed new §115.455, identifies the test methods approved to determine compliance with the proposed coating VOC limits and specifies the capture efficiency testing requirements for owners and operators choosing to operate a vapor control system to comply with the proposed rule requirements.

Proposed new subsection (a) identifies the approved test methods and testing requirements and requires that compliance with the requirements in this division must be determined by applying the test methods, as appropriate. Additionally, proposed new subsection (a) provides as an alternative to the test methods in paragraph (1), the VOC content of coatings may be determined by using analytical data from the coating, and if necessary the dilution solvent, MSDS. The Miscellaneous Metal and Plastic Parts Coatings and Automobile and Light-Duty Truck Assembly Coatings CTG documents recommend accepting data from the MSDS as a compliance alternative to testing. However, the commission expects that relying on the MSDS is sufficient to ensure continuous compliance with the control requirements in §115.453 and is proposing the option to use the MSDS for all of the surface coating process categories subject to this division. Unless specifically discussed, the proposed test methods in this subsection are identical to the testing procedures required in existing §115.425.

Proposed new paragraph (1) specifies that the owner or operator shall demonstrate compliance with the VOC limits in §115.453 by applying the test methods in paragraphs (1) and (2), as appropriate. The EPA's Miscellaneous Metal and Plastic Parts Coatings and Automobile and Light-Duty Truck Assembly Coatings CTG documents provide specific testing recommendations that are proposed for inclusion in this section. The commission proposes to allow owners and operators of these surface coating processes to employ other test methods to avoid inadvertently eliminating a testing procedure in §115.425 that may currently be used to comply with the existing requirements §115.421(a). Proposed new paragraph (1) also allows the owner or operator to exclude exempt solvents from determining compliance with the applicable control requirements, when a test method inadvertently measures compounds that are exempt solvents. This provision is currently in §115.425 and is retained in the proposed rules with revision because compliance with the VOC content limits is based on the VOC concentration of a coating considering only the VOC and solids content.

The specific methods and procedures required are listed in subparagraphs (A) - (D) and include: Method 24 (40 CFR Part 60, Appendix A); American Society for Testing and Materials (ASTM) Test Methods D 1186-06.01, 1200-06.01, D 3794-06.01, D 1644-75, and D 3960-81; EPA guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds (VOC) Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December, 1984; and the additional test procedures described in 40 CFR §60.446 (as amended through October 17, 2000 (65 FR 61761)).

The commission also proposes new subparagraph (E) to allow minor modifications to the test methods specified in subparagraphs (A) - (D) if approved by the executive director.

The commission proposes new paragraph (2) to indicate that in addition to subsection (a)(1), the owner or operator shall determine compliance with the VOC limits in §115.453(a)(3) by applying the test methods in subparagraphs (A) - (C), as appropriate.

Proposed new subparagraph (A) specifies the Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Topcoat Operations (EPA-453/R-08-002).

Proposed new subparagraph (B) specifies the procedure contained in this paragraph for determining daily compliance with the alternative emission limitation in §115.453(a)(3) for final repair. Calculation of occurrence weighted average for each combination of repair coatings (primer, specific basecoat, clearcoat) must be determined by the procedure list in subparagraph (B)(i) - (iii).

Proposed new clause (i) provides that the relative occurrence weighted average usage is calculated using the equations in clause (i) for each repair material. Proposed new clause (i) is the combination of the requirements in existing §115.425(3)(B)(i) and (ii). The equations in §115.453(a)(2)(B)(i) are used to determine the occurrence weighted average of the primer, basecoat, and clearcoat used in repair operations. A description of each equation variable is provided with the equations. The EPA's 2008 Automobile and Light-Duty Truck Assembly Coatings CTG recommends giving clearcoat coatings a weighting factor of two and the other coatings a weighting factor of one. However, the commission proposes to retain the existing approach for determining the occurrence weighted average in §115.425(3)(B) because it adequately accounts for the varying usage between the different types of coatings used in repair operations.

Proposed new clause (ii) specifies that the occurrence weighted average (Q) in lb VOC/gal of coating (minus water and exempt solvents) as applied, for each potential combination of repair coatings is calculated according to subparagraph (B). Included in proposed new clause (ii) is the equation to determine the occurrence weighted average and descriptions of each equation variable, except for those that are defined in clause (i).

Proposed new subparagraph (C) lists the procedure contained in 40 CFR Part 63, Subpart PPPP, Appendix A (as amended through April 24, 2007 (72 FR 20237)), for reactive adhesives. Proposed new subparagraph (C) is a recommendation provided in the EPA's 2008 Automobile and Light-Duty Truck Assembly Coatings CTG document.

Proposed new subparagraph (D) lists the procedure contained in 40 CFR Part 60, Subpart MM (as amended October 17, 2000 (65 FR 61760)) for determining the monthly weighted average for electrodeposition primer.

Proposed new paragraph (3) lists the required methods used to determine compliance with the overall control efficiency option in proposed new §115.453(b). The methods listed in proposed new paragraph (3) are used to determine the destruction or removal efficiency of control devices, such as a thermal oxidizer, that are used to comply with §115.453(b). The methods listed in subpara-

graphs (A) - (D) include: Methods 1 - 4 (40 CFR Part 60, Appendix A) for determining flow rate; Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon; Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; and the additional performance test procedures in 40 CFR §60.444 (as amended through October 17, 2000 (65 FR 61761)). Proposed new subparagraph (E) would allow the executive director to approve minor modifications to the methods in subparagraphs (A) - (D).

Proposed new paragraph (4) requires that the owner or operator of a coating process subject to §115.453(b) shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

Proposed new subparagraph (A) includes exemptions that may apply to capture efficiency testing requirements if the source meets the provisions in either clause (i) or (ii). The exemptions from capture efficiency testing provided in clauses (i) and (ii) are identical to the capture efficiency testing exemptions currently provided in the existing §115.425(a)(7)(A). Proposed new clause (i) provides an exemption for sources with a permanent total enclosure that meets the specifications of Procedure T, and all VOC is directed to a control device.

Proposed new clause (ii) provides an exemption if the source uses a control device designed to collect and recover VOC and the conditions in subclauses (I) and (II) are met.

Proposed new subparagraph (B) requires that the capture efficiency must be calculated using one of the following four protocols referenced. The proposed subparagraph additionally requires that any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA. The capture efficiency testing protocols included in proposed new subparagraph (B) are the same as those currently required in §115.425(a)(7)(B) except for non-substantive revisions and formatting to the equations to conform to current rule formatting standards.

Proposed new clause (i) lists the protocol for the gas/gas method using TTE. Additionally, the proposed clause requires the EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The equation required for the gas/gas method using a TTE is also provided in clause (i) with the definitions for the equation variables.

Proposed new clause (ii) lists the protocol for the liquid/gas method using TTE. Additionally, the proposed clause requires the EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The equation required for the liquid/gas method using a TTE is also provided in clause (ii) with the definitions for the equation variables.

Proposed new clause (iii) lists the protocol for the gas/gas method using the building or room enclosure in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from the enclosure are measured while operating only the affected facility. The proposed clause requires that all fans and blowers in the building or room enclosure in which the affected source is located must be operating as they would under normal production. The equation required for the gas/gas method for using a building or room enclosure in which the affected source is located is also provided in clause (iii) with the definitions for the equation variables.

Proposed new clause (iv) lists the protocol for the liquid/gas method using a building or room enclosure in which the affected source is located in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from the enclosure are measured while operating only the affected facility. The proposed clause requires that all fans and blowers in the building or room enclosure in which the affected source is located must be operated as they would under normal production. The equation required for the liquid/gas method for using a building or room enclosure in which the affected source is located is also provided in clause (iv) with the definitions for the equation variables.

Proposed new subparagraph (C) requires the operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.458(a) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. Proposed new subparagraph (C) indicates the executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test. Proposed new subparagraph (C) ensures the operational parameters tested in the initial performance test are representative of those during normal operation.

Proposed new paragraph (5) allows the owner or operator to use test methods other than those specified in paragraphs (1) - (3) if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Method 301. Proposed new paragraph (5) also specifies that for purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."

Proposed new subsection (b) specifies the inspection requirements. Proposed new subsection (b) requires that the owner or operator of each surface coating process subject to the control requirements in §115.453 shall provide samples, without charge, upon request by representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction. Proposed new subsection (b) specifies the representative or inspector requesting the sample will determine the amount of coating needed to test the sample to determine compliance. These inspection requirements are identical to those in existing §115.424 with reformatting changes.

Section 115.458, Monitoring and Recordkeeping Requirements

The commission proposes new §115.458, to identify the monitoring and recordkeeping sufficient to demonstrate compliance with the requirements in this division.

Proposed new subsection (a) indicates that the monitoring requirements in this subsection apply to the owner or operator of a surface coating process subject to this division that uses a vapor control system in accordance with §115.453(b). Proposed new subsection (a) requires that the owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including the requirements in subsection (a)(1) - (4). The proposed monitoring requirements in sub-

section (a) are identical to the existing requirements imposed in §115.426(2) with revisions to update language for consistency with language used throughout this division and other Chapter 115 rules.

Proposed new paragraph (1) requires continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed. Proposed new paragraph (2) requires the total amount of VOC recovered by carbon adsorption or other solvent recovery systems during a calendar month. Proposed new paragraph (3) requires continuous monitoring of carbon adsorption bed exhaust. Proposed new paragraph (4) requires appropriate operating parameters for capture systems and control devices other than those specified in subsection (a)(1) - (3).

Proposed new subsection (b) specifies that the recordkeeping requirements in this subsection apply to the owner or operator of a surface coating process subject to this division. Proposed new paragraph (1) requires the owner or operator to maintain records of the testing data or the MSDS, in accordance with the requirements in §115.455(a)(1). Proposed new paragraph (1) also requires that the MSDS must contain relevant information regarding each coating and solvent available for use in the affected surface coating processes including the VOC content, composition, solids content, and solvent density. Additionally, the proposed new paragraph requires that all records must be sufficient to demonstrate continuous compliance with the VOC limits in §115.453(a).

Proposed new paragraph (2) requires that records be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable control limits. Such records must be sufficient to calculate the applicable weighted average of VOC content for all coatings. Proposed new paragraph (2) is the same as the existing requirement in §115.426(1)(B).

Proposed new paragraph (3) provides as an alternative to the recordkeeping requirements of paragraph (2), the owner or operator that qualifies for exemption under §115.451(1)(C) may maintain records of the total gallons of coating and solvent used in each month and total gallons of coating and solvent used in the previous 12 months. Proposed new paragraph (3) imposes the same requirement as in existing §115.426(1)(B)(3).

Proposed new paragraph (4) requires the owner or operator shall maintain, on file, the capture efficiency protocol submitted under §115.455(a)(4). All results of the test methods and capture efficiency protocols must be submitted to the executive director within 60 days of the actual test date. The owner or operator would also be required to maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency or control device destruction or removal efficiency test may be required.

Proposed new paragraph (5) requires that the owner or operator claiming an exemption in §115.451 shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. Proposed new paragraph (6) indicates that except for specialty coatings, compliance with the recordkeeping requirements of 40 CFR §63.752 (as amended through September 1, 1998 (63 FR 46534)), is considered to represent compliance with the requirements of this section.

Proposed new paragraph (7) requires that records must be maintained of any testing conducted in accordance with the provisions specified in §115.455(a). Proposed new paragraph (8) requires that records must be maintained a minimum of two years and be made available upon request to authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction.

Section 115.459, Compliance Schedules

The commission proposes new §115.459, to list the compliance schedule for affected surface coating processes in the DFW and HGB areas subject to Division 5. Proposed new subsection (a) requires that the owner or operator of a surface coating process subject to this division shall comply with the requirements of this division no later than March 1, 2013. The March 1, 2013, compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that any VOC reductions achieved by the proposed rule will occur prior to the ozone season in the DFW area. The commission is requesting comment on appropriate compliance dates for the proposed new requirements.

Proposed new subsection (b) requires that the owner or operator of each surface coating process that becomes subject to this division on or after the date specified in §115.459(a), shall comply with the requirements in this division no later than 60 days after becoming subject. The commission requests comment on the amount of time adequate to comply with the requirements in this division for surface coating processes that become subject after the March 1, 2013, compliance date.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 6, INDUSTRIAL CLEANING SOLVENTS

Section 115.460, Applicability and Definitions

The commission proposes new §115.460, to identify the operations affected by the proposed rule requirements and to define the terms relevant to those affected operations.

The commission proposes new subsection (a) to indicate the requirements in this division apply to the owner or operator of solvent cleaning operations in the DFW and HGB areas beginning March 1, 2013. Proposed new subsection (a) states that residential cleaning is not considered a solvent cleaning operation. The commission proposes to exclude residential cleaning because these operations are outside the scope of sources intended to be affected by the EPA's 2006 CTG. Unless specifically exempt in §115.461, the proposed cleaning rule requirements in this division are intended to apply to sites where cleaning requirements in the Chapter 115 rules specific to a regulated process or operation are absent, and to industrial processes or operations that are not specifically regulated in Chapter 115.

Proposed new subsection (b) indicates that unless the context clearly indicates otherwise or unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10, the terms used in this division have the meanings commonly used in the field of air pollution control. Proposed new subsection (b) also lists the specific definitions that apply in the proposed new Division 6. Unless specifically discussed, the terms defined in this subsection are based on those in the Bay Area Air Quality Management District's Regulation 8 Rules and South Coast Air Quality Manage-

ment District's Regulation XI, Rule 1171. The EPA's 2006 Industrial Cleaning Solvents CTG did not recommend any definitions but relied on both Management District's rules for the development of its exemption and control recommendations. The commission solicits comment on definitions that should be included in the proposed new subsection.

The terms defined in proposed new paragraphs (1) - (10) include: *aerosol can; electrical and electronic components; janitorial cleaning; magnet wire; magnet wire coating operation; medical device; medical device and pharmaceutical preparation operations; polyester resin operation; precision optics;* and *solvent cleaning operation.*

Proposed new paragraph (3) defines *Janitorial cleaning* as the cleaning of building or building components including, but not limited to, floors, ceilings, walls, windows, doors, stairs, bathrooms, furnishings, and exterior surfaces of office equipment, and excludes the cleaning of work areas where manufacturing or repair activity is performed. The proposed definition is derived from the South Coast Air Quality Management District's Regulation XI, Rule 1171 janitorial cleaning definition with revision to replace the term *facility* with *building* for clarification. The EPA's 2006 Industrial Cleaning Solvents CTG recommends janitorial cleaning be excluded from the applicability for the proposed rule requirements.

The definition of *solvent cleaning operation* in proposed new paragraph (10) is the removal of uncured adhesives, inks, and coatings; and contaminants such as dirt, soil, oil, and grease from parts, products, tools, machinery, equipment, vessels, floors, walls, and other work production related work areas. The proposed definition is based on the EPA's 2006 CTG description of cleaning operations.

Section 115.461, Exemptions

The commission proposes new §115.461, to list the proposed new exemptions recommended in EPA's 2006 Industrial Cleaning Solvents CTG. Proposed new §115.461 establishes consistency with other Chapter 115 rules and makes the rule easier to read by clearly identifying the cleaning activities that are exempt from all or portions of the subsequent rule requirements. The commission seeks comment on appropriate exemptions for solvent cleaning operations in the DFW and HGB areas.

Proposed new subsection (a) exempts the owner or operator of solvent cleaning operations located on a property that emits less than 3.0 tons per calendar year of VOC from all cleaning solvents, when uncontrolled, from the requirements in this division, except as specified in §115.468(b)(2). The commission agrees with the EPA's determination that requiring these small sources to comply with the control requirements in §115.463 is not economically feasible and does not constitute RACT. When determining if a source qualifies for this exemption or any other exemption that refers to uncontrolled VOC emissions, the combined VOC emissions would be calculated without considering the emission reductions achieved through the use of any add-on controls or other operational changes.

Proposed new subsection (b) exempts any process or operation subject to Chapter 115 where the rule specifies solvent cleaning requirements related to that process or operation. Proposed new subsection (b) ensures that owners and operators of affected processes or operations regulated in Chapter 115 would only be subject to one set of cleaning requirements. Examples of operations exempt from all requirements in this division because other Chapter 115 rules regulate cleaning activities include degreasing, offset lithographic printing, and miscellaneous metal and plastic parts coating processes.

Proposed new subsection (c) exempts the products and operations listed in paragraphs (1) - (17) from the VOC limits in §115.463(1). The EPA's 2006 Industrial Cleaning Solvents CTG relies on the Bay Area Air Quality Management District (BAAQMD) Regulation 8, Rule 4, Sections 8-4-116 and 8-4-117 for its recommended exemptions. The products and operations exempt under these sections would not be subject to the 50 grams per liter (g/l) VOC content limit even if subject to Rule 4 through an exemption in another BAAQMD Rule under Regulation 8. Under the commission's interpretation of the exemptions provided in the BAAQMD Regulation 8, Rule 4, it is presumed that there are technological feasibility issues with meeting the 50 g/l or equivalent cleaning standards and should not be applied to the products and operations specified in BAAQMD Regulation 8, Rule 4, Sections 8-4-116 and 8-4-117.

The products and operations exempted under proposed new paragraphs (1) - (17) include: electrical and electronic components; precision optics; numisimatic dies; resin mixing, molding, and application equipment; coating, ink, and adhesive mixing, molding, and application equipment; stripping of cured inks, cured adhesives, and cured coatings; research and development laboratories; medical device or pharmaceutical preparation operations; performance or quality assurance testing of coatings, inks, or adhesives; architectural coating manufacturing and application operations; magnet wire coating operations; semiconductor wafer fabrication; coating, ink, and adhesive manufacturing; polyester resin operations; flexographic and rotogravure printing processes; screen printing operations; and digital printing operations.

The commission proposes new subsection (d) to exempt cleaning solvents supplied in aerosol cans from the VOC limits in §115.463(3) if total use for the property is less than 160 fluid ounces per day. Proposed new subsection (d) incorporates the exemption in the South Coast Air Quality Management District Regulation XI, Rule 1171, Section (g)(4). The exemption will allow sites to use higher VOC content cleaning solvents in aerosol cans in limited quantities if necessary for situations that low-VOC cleaning solvents may not be as effective.

Section 115.463, Control Requirements

The commission proposes new §115.463, to implement the EPA's 2006 Industrial Cleaning Solvents recommendations for affected cleaning solvent operations in the DFW and HGB areas that the commission has determined to be RACT, unless specifically discussed in this preamble. Proposed new §115.463 specifies that the control requirements in paragraphs (1) - (4) apply to the owner or operator of a solvent cleaning operation subject to this division.

Proposed new paragraph (1) requires that the owner or operator shall limit the VOC content of cleaning solutions to either the limit in paragraph (1)(A) or (B). Various compliance options are provided to give affected owners or operators the flexibility to choose the appropriate option for the solvent cleaning operations performed at their site. Proposed new subparagraph (A) limits the VOC content to 0.42 lb VOC/gal of solution, as applied. Proposed new subparagraph (B) limits the composite partial vapor pressure of the cleaning solution to 8.0 millimeters of mercury at 68 degrees Fahrenheit (20 degrees Celsius).

Proposed new paragraph (2) provides an alternative to paragraph (1) by allowing the owner or operator to operate a vapor

control system capable of achieving an overall control efficiency of at least 85% by mass. Proposed new paragraph (2) requires that capture efficiency testing must be performed in accordance with the testing requirements in §115.465. The 85% overall control efficiency is the control level recommended by the CTG as an alternative to meeting the VOC content limits.

Proposed new paragraph (3) specifies the work practice procedures the owner or operator shall implement during the handling, storage, and disposal of cleaning solvents and shop towels. Proposed new subparagraph (A) requires covering open containers and used applicators. Proposed new subparagraph (B) requires minimizing air circulation around solvent cleaning operations. Proposed new subparagraph (C) requires properly disposing of used solvent and shop towels. Proposed subparagraph (D) requires implementing equipment practices that minimize VOC emissions (e.g., maintaining cleaning equipment to repair solvent leaks).

Proposed new paragraph (4) specifies that a solvent cleaning operation that becomes subject to the provisions of paragraph (1) by exceeding the exemption limits in §115.461 is subject to the provisions in paragraph (1) even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with paragraph (1) and one of the conditions in subparagraphs (A) or (B) is met. The provision in proposed new paragraph (4) is similar to an existing provision in §115.422(6), and the commission is proposing to include this requirement in the control requirements of the proposed new rule for industrial cleaning solvents. Proposed new subparagraph (A) requires the project that caused throughput or emission rate to fall below the exemption limits in §115.461 to be authorized by any permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116. If a permit by rule is available for the project, compliance with paragraph (1) must be maintained for 30 days after the filing of documentation of compliance with that permit by rule. Proposed new subparagraph (B) requires that if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

Section 115.464, Alternate Control Requirements

The commission proposes new §115.464, to provide the owner or operator of a solvent cleaning operation subject to this division, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 if emission reductions are demonstrated to be substantially equivalent. This option is not a recommendation in the EPA's 2006 Industrial Cleaning Solvents CTG but is consistent with the flexibility afforded to owners and operators regulated under other Chapter 115 rules.

Section 115.465, Approved Test Methods and Testing Requirements

The commission proposes new §115.467, to specify the methods and testing requirements that the owner or operator shall use to demonstrate compliance with the control requirements in §115.463.

Proposed new paragraph (1) requires that compliance with the VOC content limits in §115.463(1) must be determined using Method 24 (40 CFR Part 60, Appendix A). The proposed new paragraph provides as an alternative to Method 24, compliance with the VOC content limits in §115.463(1) may be determined by using analytical data from the MSDS. Proposed new paragraph (1) provides owners and operators the same flexibility afforded to other sites affected by Chapter 115, to either demonstrate compliance with the VOC content limits by employing Method 24 or by satisfying compliance through reliance on the MSDS. Although the EPA's 2006 CTG does not recommend specific test methods to determine the VOC content of cleaning solutions, the commission proposes to include Method 24 in the required procedures to address situations where MSDS information may not be available and provide additional flexibility for affected owners or operators. However, the commission could not identify appropriate methods to test for the vapor pressure of cleaning solutions as an alternative to relying on the MSDS. The commission requests comment on appropriate test methods to determine the VOC content or vapor pressure of cleaning solutions used during solvent cleaning operations and whether the alternate control requirement in proposed new §115.463(1)(B) should be limited to those cleaning solutions where the owner or operator has documented data from the manufacturer of the partial vapor pressure of the cleaning solution.

Proposed new paragraph (2) requires that the owner or operator subject to §115.463(2) shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

Proposed new subparagraph (A) provides two exemptions in clauses (i) and (ii) that may apply to capture efficiency testing requirements. The exemptions from capture efficiency testing provided in clauses (i) and (ii) are identical to the capture efficiency testing exemptions currently provided in the existing §115.425(a)(7)(A) and proposed to be included in the proposed new §115.455. Proposed new clause (i) provides an exemption for sources with permanent total enclosure that meets the specifications of Procedure T, and all VOC is directed to a control device. Proposed new clause (ii) provides an exemption if the source uses a control device designed to collect and recover VOC and the conditions in subclauses (I) and (II) are met.

Proposed new subparagraph (B) requires that the capture efficiency must be calculated using one of the four protocols referenced in clauses (i) - (iv). The proposed subparagraph additionally requires that any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA. The capture efficiency testing protocols included in proposed new subparagraph (B) are the same as those currently required in §115.425(a)(7)(B) in the current Chapter 115 rules for surface coating process, except for non-substantive revisions and formatting to the equations to conform to current rule formatting standards.

Proposed new clause (i) lists the protocol for the gas/gas method using a TTE. Additionally, the proposed clause requires the EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The equation required for the gas/gas method using a TTE is also provided in clause (i) with the definitions for the equation variables.

Proposed new clause (ii) lists the protocol for the liquid/gas method using TTE. Additionally, the proposed clause requires the EPA specifications to determine whether a temporary enclo-

sure is considered a TTE are given in Procedure T. The equation required for the liquid/gas method using a TTE is also provided in clause (ii) with the definitions for the equation variables.

Proposed new clause (iii) lists the protocol for the gas/gas method using the building or room enclosure in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from the enclosure are measured while operating only the affected facility. The proposed clause requires that all fans and blowers in the building or room enclosure in which the affected source is located must be operating as they would under normal production. The equation required for the gas/gas method using a building or room enclosure in which the affected source is located is also provided in clause (iii) with the definitions for the equation variables.

Proposed new clause (iv) lists the protocol for the liquid/gas method using a building or room enclosure in which the affected source is located in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from the enclosure are measured while operating only the affected facility. The proposed clause requires that all fans and blowers in the building or room enclosure in which the affected source is located must be operated as they would under normal production. The equation required for the liquid/gas method using a building or room enclosure in which the affected source is located is also provided in clause (iv) with the definitions for the equation variables.

Proposed new subparagraph (C) requires the operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.468(a) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. Proposed new subparagraph (C) indicates the executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test. Proposed new subparagraph (C) ensures the operational parameters tested in the initial performance test are representative of those during normal operation.

Proposed new paragraph (3) lists the required methods used to determine compliance with the overall control efficiency option in proposed new §115.463(2). The methods listed in proposed new paragraph (3) are used to determine the destruction or removal efficiency of control devices, such as a thermal oxidizer, that are used to comply with §115.463(2). The methods listed in subparagraphs (A) - (D) include: Method 1 - 4 (40 CFR Part 60, Appendix A) for determining flow rate; Method 25 (40 CFR Part 60 Appendix A) for determining total gaseous nonmethane organic emissions as carbon; Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; and the additional performance test procedures in 40 CFR §60.444 (as amended through October 17, 2000 (65 FR 61761)). Proposed new subparagraph (E) would allow the executive director to approve minor modifications to the methods in subparagraphs (A) - (D).

Proposed new paragraph (4) allows test methods other than those specified in paragraphs (1) - (3) if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Method 301. Proposed new paragraph (4) also specifies that for purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."

Section 115.468, Monitoring and Recordkeeping Requirements

The commission proposes new §115.468, to identify the monitoring and recordkeeping sufficient to demonstrate compliance with the requirements in this division.

Proposed new subsection (a) specifies that the monitoring requirements in this subsection apply to the owner or operator of solvent cleaning operations subject to this division that uses a vapor control system in accordance with §115.463(2). Proposed new subsection (a) requires that the owner or operator shall permanently install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including the requirements in paragraphs (1) - (4). The monitoring requirements are not recommendations contained in the EPA's 2006 CTG document; these requirements are consistent with other Chapter 115 rules for control device monitoring.

Proposed new paragraph (1) requires continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed. Proposed new paragraph (2) requires the total amount of VOC recovered by carbon adsorption or other solvent recovery systems during a calendar month. Proposed new paragraph (3) requires continuous monitoring of carbon adsorption bed exhaust. Proposed new paragraph (4) requires appropriate operating parameters for vapor control systems other than those specified in subsection (a)(1) - (3).

Proposed new subsection (b) specifies that the recordkeeping requirements in this subsection apply to the owner or operator of solvent cleaning operations subject to this division.

Proposed new paragraph (1) requires that the owner or operator maintain records of the testing data or the MSDS, in accordance with the requirements in §115.465(1). Proposed new paragraph (1) requires that the concentration of all VOC used to prepare the cleaning solution and, if diluted prior to use, the proportions that each of these materials is used must be recorded. Proposed new paragraph (1) also requires records must be sufficient to demonstrate continuous compliance with the cleaning solution VOC content or composite partial vapor pressure limits in §115.463(1).

Proposed new paragraph (2) requires that the owner or operator of a solvent cleaning operation claiming an exemption in §115.461 shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. For example, maintaining records of solvent usage may be sufficient to demonstrate continuous compliance with the exemption in §115.461(a).

Proposed new paragraph (3) requires that the owner or operator maintain records of any testing conducted at an affected site in accordance with the provisions specified in §115.465(2).

Proposed new paragraph (4) requires that records must be maintained a minimum of two years and be made available upon request to authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction. The proposed record retention period is consistent with other Chapter 115 rules. The commission seeks comment on the amount of time adequate to maintain records.

Section 115.469, Compliance Schedules

The commission proposes new §115.469, to list the compliance schedule for affected solvent cleaning operations in the DFW and HGB nonattainment areas subject to this division.

The commission proposes new subsection (a) requiring the owner or operator of a solvent cleaning operation subject to this division to comply with the requirements in this division no later than March 1, 2013. The March 1, 2013, compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that any VOC reductions achieved by the proposed rule will occur prior to the ozone season in the DFW area. The commission requests comment on appropriate compliance dates for the rule requirements.

The commission also proposes new subsection (b) to require the owner or operator of a solvent cleaning operation that becomes subject to the division on or after March 1, 2013, to comply with the requirements in the division no later than 60 days after becoming subject. The commission requests comment on the amount of time adequate to comply with the requirements in the division for surface coating processes that become subject after the March 1, 2013, compliance date.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 7, MISCELLANEOUS INDUSTRIAL ADHESIVES

Section 115.470, Applicability and Definitions

The commission proposes new §115.470, to clearly identify the sites affected by the proposed rule requirements and to define the terms relevant to the materials used by and processes conducted at those affected sites.

The commission proposes new subsection (a) to indicate the requirements in the division apply to the owner or operator of a manufacturing or repair site using adhesives for any adhesive application process in the DFW and HGB areas beginning March 1, 2013.

Proposed new subsection (b) indicates that unless the context clearly indicates otherwise or unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10, the terms used in this division have the meanings commonly used in the field of air pollution control. Proposed new subsection (b) also lists the specific definitions that apply in the proposed new Division 7. The commission seeks comment on any additional definitions that should be included. Unless specifically discussed, the proposed definitions incorporate the EPA's 2008 CTG definition recommendations.

The definitions included in proposed new paragraphs (1) - (43) include: *Acrylonitrile-butadiene-styrene or ABS welding; Adhesive; Adhesive primer; Aerosol adhesive or adhesive primer; Application system; Ceramic tile installation adhesive; Chlorinated polyvinyl chloride plastic or CPVC plastic welding; Chlorinated polyvinyl chloride welding or CPVC welding; Contact adhesive; Cove base; Cove base installation adhesive; Cyanoacrylate adhesive; Daily weighted average; Ethylene Propylenediene Monomer (EPDM) roof membrane; Flexible vinyl; Indoor floor covering installation adhesive; Laminate; Metal to urethane/rubber molding or casting adhesive; Motor vehicle adhesive; Motor vehicle glass-bonding primer; Motor vehicle weatherstrip adhesive; Multipurpose construction adhesive; Outdoor floor covering installation adhesive; Panel installation; Perimeter bonded sheet flooring installation; Plastic solvent welding adhesive; Plastic solvent welding adhesive primer; Plastic foam; Plastics; Polyvinyl chloride plastic or PVC plastic; Polyvinyl chloride welding adhesive or PVC welding adhesive; Porous material; Reinforced plastic composite; Rubber; Sheet rubber lining installation; Single-ply roof membrane; Single-ply roof membrane installation and repair adhesive; Single-ply roof membrane adhesive primer; Structural glazing; Subfloor installation; Thin metal laminating adhesive; Tire repair;* and *Waterproof resorcinol glue.*

The definition of *Application system* in proposed new paragraph (5) is devices or equipment designed for the purpose of applying an adhesive or adhesive primer to a surface and is based on the existing definition of *coating application system* in §115.420(a)(3). Proposed new paragraph (5) indicates the devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, and extrusion coaters. Proposed new paragraph (5) retains the definition in §115.420(a)(3) with changes to remove the application systems that would not be used to apply adhesive processes.

The definition of *Daily weighted average* in proposed new paragraph (13) is the total weight of VOC emissions from all adhesives and adhesive primers subject to the same VOC content limit in §115.473(a), divided by the total volume of those adhesives or adhesive primers (minus water and exempt solvent) delivered to the application system each day. Proposed new coatings subject to different VOC limits in §115.473(a) must not be combined for purposes of calculating the daily weighted average. In addition, determination of compliance is based on each adhesive application process. The proposed definition is consistent with the use of daily weighted average in other Chapter 115 rules and is the averaging period suggested in the EPA's 2008 CTG.

The definition of *Porous material* in proposed new paragraph (32) is a substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, paper and corrugated paperboard. This definition is as recommended by the CTG and includes the clarification in the CTG that wood is not considered a porous material for the purposes of the definition. However, the commission requests comment on whether the definition recommended by the CTG is sufficient to determine classification for wood-based products under the adhesive application process control requirements.

Section 115.471, Exemptions

The commission proposes new §115.471, to list the proposed new exemptions recommended in EPA's 2007 Miscellaneous Industrial Adhesives CTG. Proposed new §115.471 establishes consistency with other Chapter 115 rules and makes the rules easier to read by clearly identifying the adhesive application processes that are exempt from all or portions of the subsequent rule requirements. The commission seeks comment on appropriate exemptions for adhesive application processes in the DFW and HGB areas.

Proposed new subsection (a) exempts the owner or operator of adhesive application processes located on a property with actual combined emissions of VOC less than 3.0 tons per calendar year, when uncontrolled, from all adhesives, adhesive primers, and solvents used during related cleaning operations, from the requirements of this division, except as specified in §115.478(b)(2). The commission agrees with the EPA's determination that requiring these small sources to comply with the control requirements in §115.473 is not economically feasible and does not constitute RACT. When determining if a source qualifies for this exemption or any other exemption that refers to uncontrolled VOC emissions, the combined VOC

emissions would be calculated without considering the emission reductions achieved through the use of any add-on controls or other operational changes.

Proposed new subsection (b) exempts the adhesive and adhesive primer application processes in paragraphs (1) - (7) from the VOC limit requirements in §115.473(a)(1). The processes in paragraphs (1) - (7) would be exempt from the proposed VOC content limits, application system requirements, and vapor control system requirements but would remain affected by the adhesive-related and cleaning material work practices standards. Proposed paragraph (1) exempts adhesives or adhesive primers being tested or evaluated in any research and development, quality assurance, or analytical laboratory. Proposed new paragraph (2) exempts adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace or undersea-based weapons systems. Proposed paragraph (3) exempts adhesives or adhesive primers used in medical equipment manufacturing operations. Proposed paragraph (4) exempts cyanoacrylate adhesive application processes. Proposed new paragraph (5) exempts aerosol adhesive and aerosol adhesive primer application processes. Proposed new paragraph (6) exempts processes using polyester-bonding putties to assemble fiberglass parts as fiberglass boat manufacturing properties. Proposed new paragraph (7) exempts processes using adhesives and adhesive primers that are supplied to the manufacturer in containers with a net volume of 16 ounces or less, or a net weight of 1.0 pound or less.

Proposed new subsection (c) exempts the owner or operator of any process or operation subject to another division of Chapter 115 that specifies adhesives or adhesive primer VOC content limits used during the adhesive application processes listed in the tables in proposed new §115.473(a) are exempt from the requirements in this division. The commission proposes this exemption to ensure that processes and operations involving adhesives or adhesive primers used in any of the adhesive application processes in §115.473(a) are not subject to duplicative control requirements.

Section 115.473, Control Requirements

The commission proposes new §115.473, to incorporate the EPA's 2008 Miscellaneous Industrial Adhesives recommendations for affected adhesive application processes in the DFW and HGB areas that the commission has determined to be RACT, except as specifically discussed.

Proposed new subsection (a) requires the owner or operator to limit VOC emissions from all adhesives and adhesive primers used during the specified adhesive application processes to the VOC content limits (minus water and exempt compounds) in the tables in proposed new subsection (a), as delivered to the application system. Proposed new subsection (a) indicates that these limits are based on the daily weighted average of all adhesives delivered to the adhesive primer or adhesive application system each day.

The tables in proposed subsection (a) contain the adhesive VOC content limits on a lb VOC/gal of adhesive basis (water and exempt compounds) for all of the application processes regulated by this division. If an adhesive is used to bond dissimilar substrates together, then the applicable substrate category with the least stringent VOC content limit applies. Table 1 in §115.473(a) contains the adhesive VOC content limits for general adhesive application processes. Table 2 in §115.473(a) contains the adhesive VOC content limits for specialty adhesive application processes. Table 3 in §115.473(a) contains the adhesive VOC content limits for adhesive primer application processes.

Proposed new paragraph (1) requires the VOC content limits in subsection (a) be met using one of the options provided in subparagraph (A) or (B). Proposed new subparagraph (A) allows the application of low-VOC adhesives to comply with the VOC content limits in proposed new §115.473(a). Proposed new subparagraph (B) allows the application of low-VOC adhesives in combination with a vapor control system to comply with the VOC content limits contained in proposed new §115.473(a). Various compliance options are provided to give affected owners or operators the flexibility to choose the appropriate option for the adhesive application processes performed at their site.

Proposed new paragraph (2) requires the owner or operator to operate a vapor control system capable of achieving an overall control efficiency of 85% of the VOC emissions from adhesives if the testing requirements in §115.475(3) and (4) are satisfied, as an alternative to demonstrating compliance with the VOC content limits in proposed new §115.473(a) through the options provided in paragraph (1). This alternative provides owners and operators the operational flexibility to use other means of controlling the VOC generated from adhesives instead of low-VOC content adhesives, especially when the use of high-VOC adhesives is necessary or desirable for product quality. Additionally, compliance with this option does not require the use of the specified application systems listed in §115.473(b).

The commission proposes new paragraph (3) to require an affected owner or operator choosing to comply with the option to apply low-VOC coatings in combination with a vapor control system to meet the VOC content limits in subsection (a)(1), to use the equations provided. This proposed new control requirement is necessary to demonstrate that the overall control efficiency of the vapor control system, when used in conjunction with low-VOC coatings, is sufficient to meet the VOC emission limits in §115.473. Proposed new paragraph (3) contains two equations to determine the lb VOC/gal of solids and to determine the overall control efficiency needed to meet the VOC content limits in §115.473. Proposed new paragraph (3) also requires control device and capture efficiency testing to be performed in accordance with the testing requirements in §115.475(3) and (4). The commission seeks comment on alternative methods for demonstrating compliance with the option to apply low-VOC coatings in combination with a vapor control system.

Proposed new subsection (b) requires the owner or operator of any adhesive application process subject to this division shall not apply adhesives unless one of the application systems in paragraphs (1) - (8) is used. The adhesive application systems are required for use in combination with the compliance options specified in subsection (a)(1). Proposed new paragraph (1) lists electrostatic spray. Proposed new paragraph (2) lists HVLP spray. Proposed new paragraph (3) lists flow coat. Proposed new paragraph (4) lists roll coat or hand application, including non-spray application methods similar to hand or mechanically powered caulking gun, brush, or direct hand application. Proposed new paragraph (5) lists dip coat. Proposed new paragraph (6) lists airless spray. Proposed new paragraph (7) lists air-assisted airless spray. Proposed new paragraph (8) lists the acceptable use of other adhesive application systems capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray. Proposed new paragraph (8) states that for the purpose of this requirement, the transfer efficiency of HVLP spray is assumed to be 65%.

Proposed new subsection (c) requires the owner or operator of each adhesive application process subject to this division to implement the work practice procedures contained in paragraphs (1) and (2). The work practices aid in reducing VOC emissions generated from adhesive application processes and materials consumed during associated cleaning activities.

Proposed new paragraph (1) specifies the work practices the owner or operator shall implement for the storage, mixing, and handling of adhesives, thinners, and adhesive-related waste materials. Proposed new subparagraph (A) requires storage of all VOC-containing adhesives, adhesive primers, and process-related waste materials in closed containers. Proposed new subparagraph (B) ensures that mixing and storage containers used for VOC-containing adhesives, adhesive primers, and process-related waste materials are kept closed at all times. Proposed new subparagraph (C) requires minimization of spills of VOC-containing adhesives, adhesive primers, and process-related waste materials. Proposed subparagraph (D) requires that VOC-containing adhesives, adhesive primers, and process-related waste materials be conveyed from one location to another in closed containers or pipes.

Proposed new paragraph (2) specifies the work practices the owner or operator shall implement for the storage, mixing, and handling of all cleaning materials containing VOC. Any cleaning activity conducted during an adhesive application process, including surface preparation, constitutes cleaning materials and is subject to these work practices. Proposed new subparagraph (A) requires storage of all VOC-containing cleaning materials and used shop towels in closed containers. Proposed new subparagraph (B) ensures that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials. Proposed new subparagraph (C) requires minimization of spills of VOC-containing cleaning materials. Proposed new subparagraph (D) requires that VOC-containing cleaning materials be conveyed from one location to another in closed containers or pipes. Proposed new subparagraph (E) requires minimization of VOC emissions from the cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

Proposed new subsection (d) specifies that an adhesive application process that becomes subject to the provisions of §115.473(a) by exceeding the exemption limits in §115.471 is subject to the provisions in §115.473(a) even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with §115.473(a) and one of the conditions in paragraph (1) or (2) is met. This requirement is not a CTG recommendation. Proposed new subsection (d) is consistent with other Chapter 115 rules.

Proposed new paragraph (1) requires the project that caused a throughput or emission rate to fall below the exemption limits in §115.471 to be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116. Proposed new paragraph (1) requires if a permit by rule is available for the project, compliance with §115.473(a) must be maintained for 30 days after the filing of documentation of compliance with that permit by rule. Proposed new paragraph (2) requires if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

Section 115.474, Alternate Control Requirements

The commission proposes new §115.474, to provide for the owner or operator of an adhesive application process subject to this division, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 if emission reductions are demonstrated to be substantially equivalent. This option is not a recommendation in the Miscellaneous Industrial Adhesive CTG but is consistent with the flexibility afforded to owners and operators regulated under other Chapter 115 rules.

Section 115.475, Approved Test Methods and Testing Requirements

The commission proposes new §115.475, to identify the test methods approved to determine compliance with the control requirements in this division. Proposed new §115.475 requires that the owner or operator demonstrate compliance with the VOC content limits in §115.473(a) by applying the test methods in proposed new §115.475. Proposed new §115.475 allows the owner or operator to exclude exempt solvents when determining compliance with a VOC content limit where a test method inadvertently measures compounds that are exempt solvents. The commission proposes this provision because compliance with the VOC content limits is based on the VOC concentration of a coating considering only the VOC and solids content. Proposed §115.475 provides, as an alternative to the test methods in this section, the VOC content of an adhesive may be determined by using analytical data from the MSDS.

Proposed new paragraph (1) requires that except for reactive adhesives, compliance with the VOC content limits in §115.473(a) must be determined using Method 24 (40 CFR Part 60, Appendix A). Proposed new paragraph (2) requires that compliance with the VOC content limits for reactive adhesives in §115.473(a) must be determined using 40 CFR Part 63, Subpart PPPP, Appendix A (as amended through April 24, 2007 (72 FR 20237)).

Proposed new paragraph (3) requires that the owner or operator of an adhesive application process subject to §115.473(a)(2) shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

Proposed new subparagraph (A) provides two exemptions in clauses (i) and (ii) that may apply to capture efficiency testing requirements. The exemptions from capture efficiency testing provided in clauses (i) and (ii) are identical to the capture efficiency testing exemptions currently provided in the existing §115.425(a)(7)(A) and proposed to be included in the proposed new §115.475. Proposed new clause (i) provides an exemption for sources with permanent total enclosure that meets the specifications of Procedure T and all VOC is directed to a control device. Proposed new clause (ii) provides an exemption if the source uses a control device designed to collect and recover VOC and the conditions in subclauses (I) and (II) are met.

Proposed new subparagraph (B) requires that the capture efficiency must be calculated using one of the protocols referenced. The proposed subparagraph additionally requires that any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA. The capture efficiency testing protocols included in proposed new subparagraph (B) are the same as those currently required in §115.425(a)(7)(B) except for non-substantive revisions and formatting to the equations to conform to current rule formatting standards.

Proposed new clause (i) lists the protocol for the gas/gas method using TTE. Additionally, the proposed clause requires the EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The equation required for the gas/gas method using a TTE is also provided in clause (i) with the definitions for the equation variables.

Proposed new clause (ii) lists the protocol for the liquid/gas method using TTE. Additionally, the proposed clause requires the EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The equation required for the liquid/gas method using a TTE is also provided in clause (ii) with the definitions for the equation variables.

Proposed new clause (iii) lists the protocol for the gas/gas method using the building or room enclosure in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from the enclosure are measured while operating only the affected facility. The proposed clause requires that all fans and blowers in the building or room enclosure in which the affected source is located must be operating as they would under normal production. The equation required for the gas/gas method using a building or room enclosure in which the affected source is located is also provided in clause (iii) with the definitions for the equation variables.

Proposed new clause (iv) lists the protocol for the liquid/gas method using a building or room enclosure in which the affected source is located in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from the enclosure are measured while operating only the affected facility. The proposed clause requires that all fans and blowers in the building or room enclosure in which the affected source is located must be operated as they would under normal production. The equation required for the liquid/gas method using a building or room enclosure in which the affected source is located is also provided in clause (iv) with the definitions for the equation variables.

Proposed new subparagraph (C) requires the operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.478(a) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. Proposed new subparagraph (C) indicates the executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test. Proposed new subparagraph (C) ensures the operational parameters tested in the initial performance test are representative of those during normal operation.

Proposed new paragraph (4) lists the required methods used to determine compliance with the overall control efficiency option in proposed new §115.473(a)(2). The methods listed in proposed new paragraph (4) are used to determine the destruction or removal efficiency of control devices, such as a thermal oxidizer, that are used to comply with §115.473(a)(2). The methods listed in subparagraphs (A) - (D) include: Methods 1 - 4 (40 CFR Part 60, Appendix A) for determining flow rate; Method 25 (40 CFR Part 60 Appendix A) for determining total gaseous nonmethane organic emissions as carbon; Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; and the additional performance test procedures in 40 CFR §60.444 (as amended through October 17, 2000 (65 FR 61761)). Proposed new subparagraph (E) would allow the executive director to approve minor modifications to the methods in subparagraphs (A) - (D).

Proposed new paragraph (5) allows test methods other than those specified in paragraphs (1) - (4) if approved by the executive director and validated by 40 CFR Part 63, Appendix A, Method 301. Proposed new paragraph (5) also specifies that for purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."

Section 115.478, Monitoring and Recordkeeping Requirements

The commission proposes new §115.478, to identify monitoring and recordkeeping sufficient to demonstrate compliance with the proposed control requirements.

Proposed new subsection (a) specifies that the monitoring requirements in subsection (a) apply to the owner or operator of an adhesive application process subject to this division that uses a vapor control system in accordance with §115.473(a)(2). Proposed new subsection (a) specifies that the owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including the requirements in paragraphs (1) - (4). The proposed control device monitoring requirements are consistent with those in other Chapter 115 rules, and the commission expects that these requirements are sufficient to ensure proper functioning of the equipment.

Proposed new paragraph (1) requires continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed. Proposed new paragraph (2) requires the total amount of VOC recovered by carbon adsorption or other solvent recovery systems during a calendar month. Proposed new paragraph (3) requires continuous monitoring of carbon adsorption bed exhaust. Proposed new paragraph (4) requires appropriate operating parameters for capture systems and control devices other than those specified in paragraphs (1) - (3).

Proposed new subsection (b) specifies that the recordkeeping requirements in paragraphs (1) - (4) apply to the owner or operator of an adhesive application process subject to this division. Proposed new paragraph (1) requires that the owner or operator shall maintain records of the testing data or the MSDS, in accordance with the requirements in §115.475(1). Proposed new paragraph (1) also requires that records must be sufficient to demonstrate continuous compliance with the VOC limits in §115.473(a). Proposed new paragraph (2) requires that the owner or operator of an adhesive or adhesive primer application process claiming an exemption in §115.473 shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. For example, maintaining records of adhesive and solvent usage may be

sufficient to demonstrate continuous compliance with the exemption in §115.471(a). Proposed new paragraph (3) requires that the owner or operator shall maintain records of any testing conducted at an affected site in accordance with the provisions specified in §115.475(3). Proposed new paragraph (4) requires that records must be maintained a minimum of two years and be made available upon request to authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction. The proposed record retention period is consistent with other Chapter 115 rules. The commission seeks comment on the amount of time adequate to maintain records.

Section 115.479, Compliance Schedules

The commission proposes new §115.479, to list the compliance schedule for affected adhesive application processes in the DFW and HGB nonattainment areas subject to this division.

The commission proposes new subsection (a) requiring the owner or operator of an adhesive application process subject to this division to comply with the requirements in this division no later than March 1, 2013. The March 1, 2013, compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that any VOC reductions achieved by the proposed rule will occur prior to the ozone season in the DFW area. The commission requests comment on appropriate compliance dates for the proposed new requirements.

The commission also proposes new subsection (b) to require the owner or operator of an adhesive application process that becomes subject to this division on or after March 1, 2013, to comply with the requirements in this division no later than 60 days after becoming subject. The commission requests comment on the amount of time adequate to comply with the requirements in this division for surface coating processes that become subject after the March 1, 2013, compliance date.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules implement RACT for sources of VOC emissions per the CTG as required by the EPA for eight emission source categories in the DFW and HGB areas as required by the FCAA. The proposed rules would be submitted to the EPA for review and approval as part of the SIP.

The proposed rules would amend Chapter 115 to limit the VOC content of coatings and solvents used by affected industrial sites in the DFW and HGB areas for the following eight CTG emission source categories: flexible packaging printing; industrial cleaning solvents; large appliance coatings; metal furniture coatings; paper, film and foil coatings; miscellaneous industrial adhesives; miscellaneous metal and plastic parts coatings; and automobile and light-duty truck assembly coatings in the DFW area only. To further reduce VOC emissions, the proposed rules would also implement work practice standards for coating-related activities and solvent cleaning operations.

Fiscal impacts for the proposed rules are estimated using EPA CTG documents and estimates from a study commissioned by executive director staff, Pechan's *Industrial Cleaning Solvents and Miscellaneous Industrial Adhesives Inventory Research.*

Local governments (counties, municipalities, school districts, etc.) in the HGB and DFW areas may be affected by the proposed rules for industrial cleaning solvents. Examples of local government operations that may use these solvents are: school bus repair and maintenance; general auto repair and maintenance; and highway, street, bridge, and tunnel construction. Local government entities that use industrial cleaning solvents and have total actual VOC emissions less than 3.0 tpy are exempt from the proposed rules. Local government operations with total actual VOC emissions of 3.0 tpy or more in industrial cleaning solvent operations would be required to implement work practice procedures and reduce emissions from cleaning materials by March 1, 2013. In addition, the proposed rules impose monitoring and recordkeeping requirements to demonstrate compliance. Industrial cleaning solvents are used in many different operations for different purposes. Local governments are expected to choose the most cost-effective option when complying with RACT under the proposed rules. Costs to comply with the proposed rules would depend on a variety of factors including the compliance option used, the industrial process, and the type of solvent required to achieve an acceptable level of cleanliness. However, on average, local governments are expected to experience annual cost savings for a facility if they choose to switch to low-VOC materials. Savings should be similar to the amounts experienced by businesses that are estimated in the PUBLIC BENEFITS AND COSTS and SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT sections of this preamble.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the DFW and HGB areas.

The proposed rules implement RACT for sources of VOC emissions per the CTG documents for flexible packaging printing; industrial cleaning solvents; large appliance coatings; metal furniture coatings; paper, film and foil coatings; miscellaneous industrial adhesives; and miscellaneous metal and plastic parts coatings facilities in the DFW and HGB areas. The proposed rules also implement RACT for automobile and light-duty truck assembly coatings in the DFW area. Costs implications are anticipated for businesses and individuals for each of the first five years the proposed rules are in effect. The fiscal impact of the proposed rules will vary depending on the compliance option used, the solvent or coating used, and site-specific characteristics.

Exempt Businesses

The proposed rules exempt certain businesses from VOC control requirements per the CTG documents. The following processes in the DFW area are exempt: flexible package printing lines that have the potential to emit less than 25 tpy; paper, film and foil coating lines that have the potential to emit less than 25 tpy; coating operations (large appliance coating; metal furniture coating; automobile and light-duty truck assembly coating; and miscellaneous metal and plastic part coating) located on a property with VOC emissions less than 3.0 pounds per hour and 15 pounds per day; miscellaneous industrial adhesive operations with total actual VOC emissions less than 3.0 tpy; and industrial cleaning solvent operations with total actual VOC emissions less than 3.0 tpy. The following processes in the HGB area are

exempt: flexible package printing lines that have the potential to emit less than 25 tpy; paper, film and foil coating lines that have the potential to emit less than 25 tpy; coating operations (large appliance coating, metal furniture coating; and miscellaneous metal and plastic part coating) located on property with VOC emissions less than 3.0 pounds per hour and 15 pounds per day; miscellaneous industrial adhesive operations with total actual VOC emissions less than 3.0 tpy; and industrial cleaning solvent operations with total actual VOC emissions less than 3.0 tpy.

Non-Exempt Business

In general, businesses not exempt from the proposed rules are expected to choose the least expensive option provided to reduce VOC emissions in their operations. Typically, the least expensive option for businesses will be to use, if they are not already doing so, VOC-compliant inks, solvents, and coatings.

Flexible Package Printing

Potentially five sites could be affected by the proposed rules, but it appears that VOC emissions in these printing operations are currently controlled to a level at least equivalent to the level required by the proposed rules. For flexible package printing lines with currently uncontrolled VOC emissions, the proposed rules provide several compliance options, and costs will vary depending on a number of factors. Options under the proposed rules are switching to low-VOC materials, using a combination of low-VOC materials and add-on controls, or using only add-on controls that meet efficiency standards prescribed by the proposed rules.

Switching to low-VOC alternative inks, coatings, and adhesives is expected to be significantly less than installing or updating controls, but data on material costs are not available from the CTG document. The proposed rules require lines emitting 3.0 or more tpy to implement work practices aimed at reducing the amount of material that evaporates and is wasted. Work practices can range from storing VOC emitting materials in closed containers and minimizing spills to minimizing air circulation around solvent cleaning operations.

If a site is not using low-VOC materials, then add-on controls would be required, the cost of which would vary depending on flow rate, hourly solvent use rate, and operating hours. For a line with the potential to emit more than 25 tpy, a fixed bed catalytic oxidizer could cost $142,000 to $341,000 depending on the design, and annual operating costs are estimated to range from $26,200 to $47,500. Per ton of VOC reduced, the cost for add-on controls for flexible package printing lines is expected to range from $1,300 to $2,800. Testing, monitoring, and recordkeeping costs would also be incurred.

Industrial Cleaning Solvents

There are an estimated 158 large businesses in the DFW and HGB areas that could be affected by the proposed rules. These businesses are expected to save $1,840 per year by switching to low-VOC cleaning solvents, and the proposed rules require the implementation of work practices that are expected to reduce the amount of material evaporation and waste.

Fiscal impacts of the proposed rules will vary depending on the compliance option used and site-specific factors such as the type of industrial process and the type of solvent used. If add-on controls, such as catalytic or thermal incinerators, are used, costs could be significant and would depend on the flue gas volumetric flow rate and energy recovery. Neither the CTG document nor the Pechan study previously referenced in this preamble provided information regarding the cost of add-on controls.

Automobile and Light-Duty Truck Assembly Coatings

There is one identified manufacturer in the DFW area that could be affected by the proposed rules. Both EPA and the commission expect that these coating sites have already reduced their VOC emissions to comply with federal standards, and the EPA does not anticipate any additional cost as a result of the proposed rules. However, the EPA expects that work practice procedures could reduce the amount of cleaning materials used because of reduced evaporation and waste.

Large Appliance Coating

There is one identified site in the DFW area that could be affected by the proposed rules. Because add-on controls would be a costly alternative in complying with the proposed rules, it is expected that this operation will switch to low-VOC solvent formulas, the cost of which ranges from approximately $730 per year for a small plant to $25,900 per year for a large plant. The EPA has estimated that on a per ton basis, switching to low-VOC formulas costs $500 per ton of VOC reduced. In addition, the proposed rules may require the purchase of a coating application system, the cost of which is not expected to be significant. These systems are estimated to range from $200 for a HVLP spray gun to $1,400 for a complete system.

Metal Furniture Coatings

There are two identified sites that could be affected by the proposed rules. Because add-on controls would be a costly alternative in complying with the proposed rules, it is expected that this operation will switch to low-VOC solvent formulas, the cost of which ranges from approximately $600 to $36,000 per facility, or $200 per ton of VOC reduced. In addition, the proposed rules may require the purchase of a coating application system, the cost of which is not expected to be significant. These systems are estimated to range from $200 for a HVLP spray gun to $1,400 for a complete system.

If the facility chooses add-on controls, such as a permanent total enclosure and a thermal oxidizer, capital costs could be as much as $3.5 million to $6.3 million, and annual operating costs are estimated to range from $575,000 to $1.1 million. The proposed rules also require the implementation of work practices that are expected to reduce the amount of material evaporation and waste.

Paper, Film, and Foil Coatings

There is one identified site that could be affected by the proposed rules. Add-on controls would be a costly alternative in complying with the proposed rules, and it is expected that these coating operations will switch to low-VOC solvent formulas. The cost of controls for a 90% emission reduction is estimated to be $1,200 per ton of VOC emissions reduced. No estimates are available for costs to switch to low-VOC solvent formulas, but this alternative is expected to be significantly less than installing and upgrading add-on controls. The proposed rules also require the implementation of work practices that are expected to reduce the amount of material evaporation and waste.

Miscellaneous Industrial Adhesives

Owners and operators of 26 identified large businesses in the DFW and HGB areas are expected to use low-VOC adhesives when complying with the proposed rules since add-on controls such as catalytic or thermal incinerators would be more costly.

Costs for these controls would depend on the flue gas volumetric flow rate and energy recovery. The cost for a large business to switch to a low-VOC adhesive is estimated to be $4,480 per year. In addition, the proposed rules may require the purchase of a coating application system for low-VOC material application. The cost of a system is not expected to be significant with an estimated range from $200 for a HVLP spray gun to $1,400 for a complete system. The proposed rules also require the implementation of work practices that are expected to reduce the amount of material evaporation and waste.

Miscellaneous Metal and Plastic Parts Coatings

There are potentially 20 sites affected by the proposed rules. The estimated costs of switching to low-VOC coatings range from $2,600 to $115,000 per year per facility depending on the coatings usage or $1,758 per ton of VOC reduced. The proposed rules also require the implementation of work practices that are expected to reduce the amount of material evaporation and waste. In addition, the proposed rules may require the purchase of a coating application system, the cost of which is not expected to be significant. These systems are estimated to range from $200 for a HVLP spray gun to $1,400 for a complete system.

Testing and Recordkeeping Requirements

If businesses choose to rely on the manufacturer's formulation data for materials, no additional testing costs are expected. Businesses can also choose to comply with coating VOC limit requirements by using EPA Test Method 24 under current rules. EPA Test Method 24 is estimated to cost $450 per sample ($350 for lab testing and $100 for sample handling and preparation).

If businesses choose to use add-on controls instead of using low-VOC materials, they will incur one-time costs to test control efficiency. Testing costs are estimated to range from $10,000 to $20,000 per vapor control system for initial demonstration of control efficiency.

Small Business and Micro-Business Assessment

Adverse fiscal implications are anticipated for small and micro-businesses in the DFW and HGB areas as a result of the proposed rules if they are not using low-VOC materials. However, the proposed rules allow them to use a material with a low-VOC formulation or to add controls to current processes to comply with the low-VOC emission requirements. As with large businesses, a small business is expected to choose the most economical option for their operation.

Some small businesses will be exempt from the proposed rules depending on whether their actual VOC emissions meet exemption criteria. The following small businesses in the DFW area are exempt: flexible package printing lines that have the potential to emit less than 25 tpy; paper, film, and foil coating lines with the potential to emit less than 25 tpy; coating operations (large appliance coating, metal furniture coating; automobile and light-duty truck assembly coating; and miscellaneous metal and plastic part coating) located on property with VOC emissions less than 3.0 pounds per hour and 15 pounds per day; miscellaneous industrial adhesive operations with total actual VOC emissions less than 3.0 tpy; and industrial cleaning solvent operations with total actual VOC emissions less than 3.0 tpy. The following small businesses in the HGB area are exempt: flexible package printing lines that have the potential to emit less than 25 tpy; paper, film, and foil coating lines with the potential to emit less than 25 tpy; coating operations (large appliance coating, metal furniture coating; and miscellaneous metal and plastic part coating) located on property with VOC emissions less than 3.0 pounds per hour and 15 pounds per day; miscellaneous industrial adhesive operations with total actual VOC emissions less than 3.0 tpy; and industrial cleaning solvent operations with total actual VOC emissions less than 3.0 tpy.

There may be as many as 81 small businesses that may be affected by the proposed rules concerning miscellaneous industrial adhesives and 108 small businesses affected by proposed rules concerning industrial cleaning solvents in the DFW and HGB areas. There may also be non-exempt small businesses that have flexible package printing operations and coating operations.

In general, small businesses should experience the same costs or cost savings as a large business under the proposed rules. However, a small business affected by the proposed rules for miscellaneous industrial adhesives could incur costs of $1,490 per year by switching to a low-VOC formula. For small businesses using industrial cleaning solvents, fiscal implications will vary depending on a variety of factors, but by switching to a low-VOC formula, a small business could save, on average, as much as $2,760 per year.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with federal regulations.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking meets 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. The proposed rulemaking does not, however, 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 proposed rules implement the EPA's RACT recommendations for sources of VOC emissions for sources of VOC emissions in the DFW and HGB areas as required by FCAA,

§172(c)(1), except for EPA recommendations that would be less stringent than the current requirements of Chapter 115 for these source categories. FCAA, §172(c)(1) requires the SIP for nonattainment areas to include reasonably available control measures, including RACT, for sources of pollutants identified by the EPA as required by FCAA, §183(e). FCAA, §182(b)(2) provides that for certain nonattainment areas, states must revise their SIP to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990, and prior to the area's date of attainment. The EPA published CTG documents in 2006 for Industrial Cleaning Solvents (EPA 453/R-06-001) and Flexible Package Printing (EPA 453/R-06-003); in 2007 for Paper, Film, and Foil Coatings (EPA 453/R-07-003), Large Appliance Coatings (EPA 453/R-07-004), and Metal Furniture Coatings (EPA 453/R-07-005); and in 2008 for Miscellaneous Metal and Plastic Parts (EPA-453/R-08-003), Miscellaneous Industrial Adhesives (EPA-453/R-08-005), and Automobile and Light-Duty Truck Assembly Coatings (EPA-453/R-08-006). Specifically, the proposed rules would limit the VOC content of coatings and solvents used by affected industrial sites in the DFW and HGB areas for the following seven CTG emission source categories: flexible package printing; industrial cleaning solvents; large appliance coatings; metal furniture coatings; paper, film, and foil coatings; miscellaneous industrial adhesives; and miscellaneous metal and plastic parts coatings. The proposed rules would also limit the VOC content of coatings and solvents used by affected sites in the DFW area for the automobile and light-duty truck assembly coating CTG emission source category. To further reduce VOC emissions, the proposed rules would also implement work practice standards for coating-related activities and solvent cleaning operations.

The proposed rulemaking implements requirements of 42 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, Air Pollution Prevention and Control). 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 schedule. Additionally, states have further obligations under FCAA, §172(c)(1) and §182(b)(2) to provide for RACT in nonattainment areas, such as HGB and DFW. The proposed rulemaking will implement RACT for flexible package printing; industrial cleaning solvents; large appliance coatings; metal furniture coatings; paper, film, and foil coatings; miscellaneous industrial adhesives; and miscellaneous metal and plastic parts coatings in the DFW and HGB areas, and for automobile and light-duty truck coatings in the DFW area, as well as implement work practice standards for coating-related activities and solvent cleaning operations. Implementation of RACT is a necessary and required component of developing the SIP for nonattainment areas as required by 42 USC, §7410.

The requirement to provide a fiscal analysis of proposed 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 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 proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed previously 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 attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed 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, and do not exceed, federal law. In addition, these rules do not exceed any contract between the state and a federal agency.

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 unamended. 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); Bullock v. Marathon Oil Co., 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney 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); 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.

The specific intent of the proposed rulemaking is to protect the environment and to reduce risks to human health by requiring control measures for flexible package printing; industrial cleaning solvents; large appliance coatings; metal furniture coatings; paper, film, and foil coatings; miscellaneous industrial adhesives; and miscellaneous metal and plastic parts coatings in the DFW and HGB areas, and for automobile and light-duty truck assembly coatings in the DFW area that have been determined by the commission to be RACT. To further reduce VOC emissions, the proposed rules would also implement work practice standards for coating-related activities and solvent cleaning operations. The proposed 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 proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because although the proposed rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the proposed rulemaking is to implement RACT for flexible package printing; industrial cleaning solvents; large appliance coatings; metal furniture coatings; paper, film, and foil coatings; miscellaneous industrial adhesives; and miscellaneous metal and plastic parts coatings facilities in the DFW and HGB areas, and for automobile and light-duty truck assembly coatings in the DFW area. To further reduce VOC emissions, the proposed rules would also implement work practice standards for coating-related activities and solvent cleaning operations. FCAA, §182(b)(2), provides that for certain nonattainment areas, states must revise their SIP to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990, and prior to the area's date of attainment. The EPA published CTG documents in 2006 for Industrial Cleaning Solvents (EPA 453/R-06-001) and Flexible Package Printing (EPA 453/R-06-003); in 2007 for Paper, Film, and Foil Coatings (EPA 453/R-07-003), Large Appliance Coatings (EPA 453/R-07-004), and Metal Furniture Coatings (EPA 453/R-07-005); and in 2008 for Miscellaneous Metal and Plastic Parts (EPA-453/R-08-003), Miscellaneous Industrial Adhesives (EPA-453/R-08-005), and Automobile and Light-Duty Truck Assembly Coatings (EPA-453/R-08-006). Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that 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 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 proposed rules fulfill the FCAA requirement to implement RACT in nonattainment areas. These revisions will result in VOC emission reductions in ozone nonattainment areas which may contribute to the timely attainment of the ozone standard and reduced public exposure to VOC. Consequently, the proposed 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 proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). The proposed rulemaking would not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Announcement of Hearings

The commission will hold public hearings on this proposal in Arlington on July 14, 2011, at 10:00 a.m. and 6:30 p.m. at the Arlington City Council Chambers 101 W. Abrams Street, Arlington, TX 76010; in Houston on July 18, 2011, at 6:30 p.m. at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston, TX 77027 in Conference Room C; and in Austin on July 22, 2011, at 10:00 a.m. and 2:00 p.m. at the Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin, TX 78753. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-016-115-EN. The comment period closes July 25, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Frances Dowiak, Air Quality Planning Section, at (512) 239-3931.

DIVISION 2. SURFACE COATING PROCESSES

30 TAC §§115.422, 115.427, 115.429

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021, and FCAA, 42 USC, §§7401 *et seq.*

§115.422. Control Requirements.

In the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the following control requirements apply. [~~For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.~~]

(1) The owner or operator of each vehicle refinishing (body shop) operation shall minimize volatile organic compounds [~~compound~~] (VOC) emissions during equipment cleanup by using [~~utilizing~~] the following procedures:

(A) install and operate a system that [~~which~~] totally encloses spray guns, cups, nozzles, bowls, and other parts during washing, rinsing, and draining procedures. Non-enclosed cleaners may be used if the vapor pressure of the cleaning solvent is less than 100 millimeters of mercury (mm Hg) at 68 degrees Fahrenheit and the solvent is directed towards a drain that leads directly to an enclosed remote reservoir;

(B) keep all wash solvents in an enclosed reservoir that is covered at all times, except when being refilled with fresh solvents; and

(C) keep all waste solvents and other cleaning materials in closed containers.

(2) Each vehicle refinishing (body shop) operation must [~~shall~~] use coating application equipment with a transfer efficiency of at least 65%, unless otherwise specified in an alternate means of control approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control). High-volume, low-pressure (HVLP) spray guns are assumed to comply with the 65% transfer efficiency requirement.

(3) The following requirements apply to each wood furniture manufacturing facility subject to §115.421(a)(14) of this title (relating to Emission Specifications).

(A) No compounds containing more than 8.0% by weight of VOC may [~~shall~~] be used for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, and/or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is, the spray booth coating or other material used to cover the booth is being replaced, no more than 1.0 gallon of organic solvent may [~~shall~~] be used to prepare the booth prior to applying the booth coating.

(B) Only normally closed containers must [~~shall~~] be used for storage of finishing, cleaning, and washoff materials.

(C) Conventional air spray guns may [~~shall~~] not be used for applying finishing materials except under one or more of the following circumstances:

(i) to apply finishing materials that have a VOC content no greater than 1.0 kilogram [~~kilograms~~] of VOC per kilogram of solids (1.0 pound [~~pounds~~] of VOC per pound of solids), as delivered to the application system;

(ii) for touch-up and repair under the following circumstances:

(I) the finishing materials are applied after completion of the finishing operation; or

(II) the finishing materials are applied after the stain and before any other type of finishing material is applied, and the finishing materials are applied from a container that has a volume of no more than 2.0 gallons.

(iii) if spray is automated, that is, the spray gun is aimed and triggered automatically, not manually;

(iv) if emissions from the finishing application station are directed to a vapor control system;

(v) the conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 5.0% of the total gallons of finishing material used during that semiannual period; or

(vi) the conventional air gun is used to apply stain on a part for which:

(I) the production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(II) the excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

(D) All organic solvent used for line cleaning or to clean spray guns must [~~shall~~] be pumped or drained into a normally closed container.

(E) Emissions from washoff operations must [~~shall~~] be minimized by:

(i) using normally closed tanks for washoff; and

(ii) minimizing dripping by tilting or rotating the part to drain as much organic solvent as possible.

(4) The following requirements apply to each shipbuilding and ship repair surface coating facility subject to §115.421(a)(15) of this title.

(A) All handling and transfer of VOC-containing materials to and from containers, tanks, vats, drums, and piping systems must [~~shall~~] be conducted in a manner that minimizes spills.

(B) All containers, tanks, vats, drums, and piping systems must [~~shall~~] be free of cracks, holes, and other defects and remain closed unless materials are being added to or removed from them.

(C) All organic solvent used for line cleaning or to clean spray guns must [~~shall~~] be pumped or drained into a normally closed container.

(5) The following requirements apply to each aerospace vehicle or component coating process subject to §115.421(a)(11) or (b)(10) of this title.

(A) One or more of the following application techniques must [~~shall~~] be used to apply any primer or topcoat to aerospace vehicles or components: flow/curtain coating; dip coating; roll coating; brush coating; cotton-tipped swab application; electrodeposition coating; HVLP spraying; electrostatic spraying; or other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods, unless one of the following situations apply:

(i) any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces;

(ii) the application of specialty coatings;

(iii) the application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that the executive director has determined cannot be applied by any of the specified application methods;

(iv) the application of coatings that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.) and that the executive director has determined cannot be applied by any of the specified application methods in this subparagraph;

(v) the use of airbrush application methods for stenciling, lettering, and other identification markings;

(vi) the use of aerosol coating (spray paint) application methods; and

(vii) touch-up and repair operations.

(B) Cleaning solvents used in hand-wipe cleaning operations must [~~shall~~] meet the definition of aqueous cleaning solvent in §115.420(b)(1)(I) of this title (relating to Surface Coating Definitions) or have a VOC composite vapor pressure less than or equal to 45 mm Hg at 20 degrees Celsius, unless one of the following situations apply:

(i) cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen;

(ii) cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine);

(iii) cleaning and surface activation prior to adhesive bonding;

(iv) cleaning of electronics parts and assemblies containing electronics parts;

(v) cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems;

(vi) cleaning of fuel cells, fuel tanks, and confined spaces;

(vii) surface cleaning of solar cells, coated optics, and thermal control surfaces;

(viii) cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft;

(ix) cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components;

(x) cleaning of aircraft transparencies, polycarbonate, or glass substrates;

(xi) cleaning and solvent usage associated with research and development, quality control, or laboratory testing;

(xii) cleaning operations, using nonflammable liquids, conducted within five [~~5~~] feet of energized electrical systems. Energized electrical systems means any alternating current (AC) or direct current (DC) electrical circuit on an assembled aircraft once electrical power is connected, including interior passenger and cargo areas, wheel wells and tail sections; and

(xiii) cleaning operations identified as essential uses under the Montreal Protocol that the United States Environmental Protection Agency (EPA) [~~for which EPA~~] has allocated essential use allowances or exemptions in 40 Code of Federal Regulations §82.4 (as amended through May 10, 1995 (60 FR 24986)), including any future amendments promulgated by the EPA.

(C) For cleaning solvents used in the flush cleaning of parts, assemblies, and coating unit components, the used cleaning solvent must be emptied into an enclosed container or collection system that is kept closed when not in use or captured with wipers provided they comply with the housekeeping requirements of subparagraph (E) of this paragraph. Aqueous and semiaqueous cleaning solvents are exempt from this subparagraph.

(D) All spray guns must be cleaned by one or more of the following methods:

(i) enclosed spray gun cleaning system provided that it is kept closed when not in use and leaks are repaired within 14 days from when the leak is first discovered. If the leak is not repaired by the 15th day after detection, the solvent must [~~shall~~] be removed and the enclosed cleaner must [~~shall~~] be shut down until the leak is repaired or its use is permanently discontinued;

(ii) unatomized discharge of solvent into a waste container that is kept closed when not in use;

(iii) disassembly of the spray gun and cleaning in a vat that is kept closed when not in use; or

(iv) atomized spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.

(E) All fresh and used cleaning solvents used in solvent cleaning operations must [~~shall~~] be stored in containers that are kept closed at all times except when filling or emptying. Cloth and paper, or other absorbent applicators, moistened with cleaning solvents must [~~shall~~] be stored in closed containers. Cotton-tipped swabs used for very small cleaning operations are exempt from this subparagraph. In addition, the owner or operator shall [~~must~~] implement handling and transfer procedures to minimize spills during filling and transferring the cleaning solvent to or from enclosed systems, vats, waste containers, and other cleaning operation equipment that hold or store fresh or used cleaning solvents. The requirements of this subparagraph are known collectively as housekeeping measures. Aqueous, semiaqueous, and hydrocarbon-based cleaning solvents, as defined in §115.420(b)(1) of this title, are exempt from this subparagraph.

(6) Any surface coating operation that becomes subject to [~~the provisions of~~] §115.421(a) of this title by exceeding the exemption limits in [~~provisions of~~] §115.427(a) of this title (relating to Exemptions) is [~~shall remain~~] subject to the provisions in §115.421(a) of this title, even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with §115.421(a) of this title and one of the following conditions is met. [~~and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.427(a) of this title, and~~]

(A) The [~~the~~] project that caused the [~~by which~~] throughput or emission rate to fall below the exemption limits in §115.427(a) of this title must be [~~was reduced is~~] authorized by a [~~any~~] permit, [~~or~~] permit amendment, [~~or~~] standard permit, or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, the owner or operator shall continue to comply with §115.421(a) of this title [~~compliance with this subsection must be maintained~~] for 30 days after the filing of documentation of compliance with that permit by rule.[~~; or~~]

(B) If [~~if~~] authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide [~~owner/operator has given~~] the executive director 30 days [~~days'~~] notice of the project in writing.

(7) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the owner or operator of a paper surface coating line subject to this division shall implement the following work practices to limit VOC emissions from storage, mixing, and handling of cleaning and cleaning-related waste materials.

(A) All VOC-containing cleaning materials must be stored in closed containers.

(B) Mixing and storage containers used for VOC-containing materials must be kept closed at all times except when depositing or removing these materials.

(C) Spills of VOC-containing cleaning materials must be minimized.

(D) VOC-containing cleaning materials must be conveyed from one location to another in closed containers or pipes.

(E) VOC emissions from the cleaning of storage, mixing, and conveying equipment must be minimized.

§115.427. Exemptions.

(a) In [~~For~~] the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the following exemptions apply.

(1) The following coating operations are exempt from §115.421(a)(9) of this title (relating to Emission Specifications):

(A) aerospace vehicles and components;

(B) vehicle refinishing (body shops), except as required by §115.421(a)(8)(B) and (C) of this title; and

(C) ships and offshore oil or gas drilling platforms, except as required by §115.421(a)(15) of this title.

(2) The following coating operations are exempt from §115.421(a)(10) of this title:

(A) the manufacture of exterior siding;

(B) tile board; or

(C) particle board used as a furniture component.

(3) The following exemptions apply to surface coating operations, except for vehicle refinishing (body shops) controlled by §115.421(a)(8)(B) and (C) of this title. Excluded from the volatile organic compounds [~~compound~~] (VOC) emission calculations are coatings and solvents used in surface coating activities that are not addressed by the surface coating categories of §115.421(a)(1) - (15) or §115.453 of this title (relating to Control Requirements). For example, architectural coatings (i.e., coatings that are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculations.

(A) Surface coating operations on a property that, when uncontrolled, will emit a combined weight of VOC of less than 3.0 [~~three~~] pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from §115.421(a) of this title and §115.423 of this title (relating to Alternate Control Requirements).

(B) Surface coating operations on a property that, when uncontrolled, will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are exempt from §115.421(a) and §115.423 of this title if documentation is provided to and approved by both the executive director and the United States Environmental Protection Agency [~~EPA~~] to demonstrate that necessary coating performance criteria cannot be achieved with coatings that satisfy applicable emission specifications and that control equipment is not technically or economically feasible.

(C) Surface coating operations on a property for which total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from §115.421(a) and §115.423 of this title.

(D) Mirror backing coating operations located on a property that, when uncontrolled, emit a combined weight of VOC less than 25 tons in one year (based on historical coating and solvent usage) are exempt from this division (relating to Surface Coating Processes).

(E) Wood furniture manufacturing facilities that are subject to and are complying with §115.421(a)(14) of this title and §115.422(3) of this title (relating to Control Requirements) are exempt from §115.421(a)(13) of this title. These wood furniture manufacturing facilities must continue to comply with §115.421(a)(13) of this title until these facilities are in compliance with §115.421(a)(14) and §115.422(3) of this title.

(F) Wood furniture manufacturing facilities that, when uncontrolled, emit a combined weight of VOC from wood furniture manufacturing operations less than 25 tons per year are exempt from §115.421(a)(14) and §115.422(3) of this title.

(G) Wood parts and products coating facilities in Hardin, Jefferson, and Orange Counties are exempt from §115.421(a)(13) of this title.

(H) Shipbuilding and ship repair operations in Hardin, Jefferson, and Orange Counties that, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 50 tons per year are exempt from §115.421(a)(15) and §115.422(4) of this title.

(I) Shipbuilding and ship repair operations in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties that, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 25 tons per year are exempt from §115.421(a)(15) and §115.422(4) of this title.

(J) The following activities where cleaning and coating of aerospace vehicles or components may take place are exempt from this division: research and development, quality control, laboratory testing, and electronic parts and assemblies, except for cleaning and coating of completed assemblies.

(4) Vehicle refinishing (body shops) in Hardin, Jefferson, and Orange Counties are exempt from §115.421(a)(8)(B) and §115.422(1) and (2) of this title.

(5) The coating of vehicles at in-house (fleet) vehicle refinishing operations and the coating of vehicles by private individuals are exempt from §115.421(a)(8)(B) and §115.422(1) and (2) of this title. This exemption is not applicable if the coating of a vehicle by a private individual occurs at a commercial operation.

(6) Aerosol coatings (spray paint) are exempt from this division.

(7) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the following surface coating categories that are subject to the requirements of Chapter 115, Subchapter E, Division 5 of this title (relating to Control Requirements for Surface Coating Processes) are exempt from the requirements in this division:

(A) large appliance coating;

(B) metal furniture coating;

(C) miscellaneous metal parts and products coating;

(D) each paper coating line with the potential to emit equal to or greater than 25 tons per year of VOC from all coatings applied; and

(E) automobile and light-duty truck manufacturing coating.

(b) For Gregg, Nueces, and Victoria Counties, the following exemptions apply.

(1) Surface coating operations located at any property that, when uncontrolled, will emit a combined weight of VOC less than 550 pounds (249.5 kilograms [~~kg~~]) in any continuous 24-hour period are exempt from §115.421(b) of this title. Excluded from this calculation are coatings and solvents used in surface coating activities that are not addressed by the surface coating categories of §115.421(b)(1) - (10) of this title. For example, architectural coatings (i.e., coatings that are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculation.

(2) The following coating operations are exempt from §115.421(b)(8) of this title:

(A) aerospace vehicles and components;

(B) vehicle refinishing (body shops); and

(C) ships and offshore oil or gas drilling platforms.

(3) The following coating operations are exempt from §115.421(b)(9) of this title:

(A) the manufacture of exterior siding;

(B) tile board; or

(C) particle board used as a furniture component.

(4) Aerosol coatings (spray paint) are exempt from this division.

§115.429. Counties and Compliance Schedules.

(a) The owner or operator of each surface coating operation in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with this division (relating to Surface Coating Processes) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each surface coating operation in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than June 15, 2007.

(c) The owner or operator of each shipbuilding and ship repair operation in Hardin, Jefferson, and Orange Counties that, when uncontrolled, emits a combined weight of volatile organic compounds from ship and offshore oil or gas drilling platform surface coating operations equal to or greater than 50 tons per year and less than 100 tons per year shall comply with this division as soon as practicable, but no later than December 31, 2006.

(d) The owner or operator of a paper surface coating process located in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), shall comply with the requirements in §115.422(7) of this title (relating to Control Requirements), no later than March 1, 2013.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102113
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2548

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DIVISION 3. FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

30 TAC §§115.430 - 115.433, 115.435, 115.436, 115.439

Statutory Authority

The amendments and new section are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new and amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new and amended sections are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The new and amended sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The proposed amendments and new section implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021, and FCAA, 42 USC, §§7401 *et seq.*

§115.430. Applicability and Definitions [~~Flexographic and Rotogravure Printing Definitions~~].

(a) Applicability. The requirements in this division apply to the following flexographic and rotogravure printing processes in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), and in Gregg, Nueces, and Victoria Counties: [~~The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §115.10 of this title (relating to Definitions), §101.1 of this title (relating to Definitions), and §3.2 of this title (relating to Definitions).~~]

(1) packaging rotogravure printing lines;

(2) publication rotogravure printing lines;

(3) flexographic printing lines; and

(4) flexible package printing lines.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions respectively), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.

(1) Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all inks and coatings subject to the same VOC content limit in §115.432 of this title (relating to Control Requirements), divided by the total volume or weight of those materials (minus water and exempt solvent) or divided by the total volume or weight of solids, applied to each printing line per day.

(2) Flexible package printing--Flexographic or rotogravure printing on any package or part of a package the shape of which can be readily changed including, but not limited to, bags, pouches, liners, and wraps using paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

(3) [~~(1)~~] Flexographic printing [~~process~~]--A method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.

(4) [~~(2)~~] Packaging rotogravure printing--Any rotogravure printing on [~~upon~~] paper, paper board, metal foil, plastic film, or any other substrate that [~~which~~] is, in subsequent operations, formed into packaging products or labels.

(5) [~~(3)~~] Publication rotogravure printing--Any rotogravure printing on [~~upon~~] paper that [~~which~~] is subsequently formed

into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed materials.

(6) [~~(4)~~] Rotogravure printing--The application of words, designs, or [~~and/or~~] pictures to any substrate by means of a roll printing technique that [~~which~~] involves a recessed image area. The recessed area is loaded with ink and pressed directly to the substrate for image transfer.

§115.431. Exemptions.

(a) In the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the following exemptions apply.

(1) In the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas, all rotogravure and flexographic printing lines on a property that, when uncontrolled, have a maximum potential to emit a combined weight of volatile organic compounds (VOC) less than 50 tons per year (based on historical ink and VOC solvent usage, and at maximum production capacity) are exempt from the requirements in §115.432(a) of this title (relating to Control Requirements).

(2) In the Houston-Galveston-Brazoria area, all rotogravure and flexographic printing lines on a property that, when uncontrolled, have a maximum potential to emit a combined weight of VOC less than 25 tons per year (based on historical ink and VOC solvent usage, and at maximum production capacity) are exempt from the requirements in §115.432(a) of this title.

(3) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, all flexible package printing lines located on a property that have a combined weight of total actual VOC emissions less than 3.0 tons per year from all coatings, as defined in §101.1 of this title (relating to Definitions), and all associated cleaning operations are exempt from the requirements in §115.432(c) and (d) of this title.

(4) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, each flexible package printing line that, when uncontrolled, has a maximum potential to emit total VOC less than 25 tons per year from all coatings is exempt from the requirements in §115.432(c) of this title.

(b) In Gregg, Nueces, and Victoria Counties, all rotogravure and flexographic printing lines on a property that, when uncontrolled, emit a combined weight of VOC less than 100 tons per year (based on historical ink and VOC solvent usage) are exempt from the requirements in §115.432(b) of this title.

§115.432. Control Requirements.

(a) In the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, [~~For Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas~~] as defined in §115.10 of this title (relating to Definitions), the following control requirements [~~shall~~] apply. Beginning March 1, 2013, this subsection no longer applies to flexible package printing lines in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas that are required to comply with the requirements in subsection (c) of this section.

(1) The owner or operator shall limit the volatile organic compounds (VOC) emissions from solvent-containing ink used on each packaging rotogravure, publication rotogravure, flexible package, and flexographic printing line by using one of the following options. [~~No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing line that uses solvent-containing ink unless volatile organic compound (VOC) emissions are limited by one of the following:~~]

(A) The owner or operator shall apply [~~application to the substrate of~~] low solvent ink with a volatile fraction containing 25% by volume or less of VOC solvent and 75% by volume or more of water and exempt solvent.[~~;~~]

(B) The owner or operator shall apply [~~application to the substrate of~~] high solids solvent-borne ink containing 60% by volume or more of nonvolatile material (minus water and exempt solvent).[~~; or~~]

(C) The owner or operator shall operate [~~operation of~~] a vapor control system to reduce the VOC emissions from an effective capture system by at least 90% by weight. The design and operation of the capture system for each printing line must be consistent with good engineering practice and must achieve [~~shall be required to provide for~~] an overall control efficiency [~~reduction in VOC emissions~~], as demonstrated to the satisfaction of the executive director, upon request, of at least the following weight percentages:

(i) 75% for a publication rotogravure process;

(ii) 65% for a packaging rotogravure process; [~~or~~]

(iii) 60% for a flexographic printing process; or[~~.~~]

(iv) for a flexible package printing process, the overall control efficiency in clause (ii) or (iii) of this subparagraph, depending on the type of press used.

(2) A flexographic and rotogravure printing lines that becomes [~~Any graphic arts facility that becomes~~] subject to paragraph (1) [~~the provisions of paragraph (1)(A), (B), or (C)~~] of this subsection by exceeding the exemption limits in §115.431(a) [~~provisions of §115.437(a)~~] of this title (relating to Exemptions) is [~~will remain~~] subject to the provisions of this subsection[~~,~~] even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with paragraph (1) of this subsection and one of the following conditions is met. [~~and until emissions are reduced to no more than the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.437(a) of this title and:~~]

(A) The [~~the~~] project that caused the [~~by which~~] throughput or emission rate to fall below the exemption limits in §115.431(a) of this title must be [~~was reduced is~~] authorized by a permit, permit amendment, [~~any permit or permit amendment or~~] standard permit, or permit by rule required by Chapter 116 of this title (relating to Control of Air Pollution by Permit for New Construction or Modification) or Chapter 106 of this title (relating to Permits by Rule). If a permit by rule is available for the project, the owner or operator shall continue to comply with paragraph (1) of this subsection [~~compliance with this subsection must be maintained~~] for 30 days after the filing of documentation of compliance with that permit by rule. [~~; or~~]

(B) If [~~if~~] authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide [~~owner/operator has given~~] the executive director 30 days [~~days'~~] notice of the project in writing.

(3) Any capture efficiency testing of the capture system must be conducted in accordance with §115.435(a) of this title (relating to Testing Requirements).

(b) In Gregg, Nueces, and Victoria Counties, the owner or operator shall limit the VOC emissions from solvent-containing ink used on each packaging rotogravure, publication rotogravure, flexible package, and flexographic printing line by using one of the following options. [~~For Gregg, Nueces, and Victoria Counties, no person shall op-~~

erate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing line that uses solvent-containing ink, unless VOC emissions are limited by one of the following:]

(1) The owner or operator shall apply [application to the substrate of] low solvent ink with a volatile fraction containing 25% by volume or less of VOC solvent and 75% by volume or more of water and exempt solvent.[;]

(2) The owner or operator shall apply [application to the substrate of] high solids solvent-borne ink containing 60% by volume or more of nonvolatile material (minus water and exempt solvent).[; or]

(3) The owner or operator shall operate [operation of] a vapor control system to reduce the VOC emissions from an effective capture system by at least 90% by weight. The design and operation of the capture system for each printing line must be consistent with good engineering practice and must achieve [shall be required to provide for] an overall control efficiency [reduction in VOC emissions], as demonstrated to the satisfaction of the executive director upon request of at least the following weight percentages:

(A) 75% for a publication rotogravure process;

(B) 65% for a packaging rotogravure process; [or]

(C) 60% for a flexographic printing process; or[.]

(D) for a flexible package printing process, the overall control efficiency in subparagraph (B) or (C) of this paragraph, depending on the type of press used.

(c) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following control requirements apply to each flexible package printing line.

(1) The owner or operator shall limit the VOC emissions from coatings, as defined in §101.1 of this title (relating to Definitions), applied on each flexible package printing line by using one of the following options. These limits are based on the daily weighted average, as defined in §115.430 of this title (relating to Applicability and Definitions).

(A) The owner or operator shall limit the VOC content of the coatings to 0.8 pound of VOC per pound of solids applied. The VOC content limit can be met through the use of low-VOC materials or a combination of low-VOC materials and a vapor control system.

(B) The owner or operator shall limit the VOC content of the coatings to 0.16 pound of VOC per pound of materials applied. The VOC content limit can be met through the use of low-VOC materials or a combination of low-VOC materials and a vapor control system.

(C) The owner or operator shall operate a vapor control system that achieves an overall control efficiency of at least 80% by weight.

(2) A flexographic and rotogravure printing line that become subject to paragraph (1) of this subsection by exceeding of the exemption limits in §115.431(a) of this title is subject to paragraph (1) of this subsection even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with paragraph (1) of this subsection and one of the following conditions is met.

(A) The project that caused throughput or emission rate to fall below the exemption limits in §115.431(a) of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapter 116 of this title or Chapter 106 of this title. If a permit by rule is available for the project, the owner or operator shall continue to comply with paragraph (1) of this subsection for 30 days after the filing of documentation of compliance with that permit by rule.

(B) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

(3) An owner or operator applying low-VOC coatings in combination with a vapor control system to meet the VOC emission limits in paragraph (1) of this subsection shall use the following equation to determine the minimum overall control efficiency necessary to demonstrate equivalency. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.435(a) of this title.

Figure: 30 TAC §115.432(c)(3)

(d) The owner or operator of a flexible package printing process shall implement the following work practices for cleaning materials:

(1) keep all cleaning solvents and used shop towels in closed containers; and

(2) convey cleaning solvents from one location to another in closed containers or pipes.

§115.433. Alternate Control Requirements.

[(a)] For the owner or operator of a flexographic or rotogravure printing line subject to this division, [For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas,] alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

[(b) For all affected persons in Gregg, Nueces, and Victoria Counties, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.]

§115.435. Testing Requirements.

(a) In the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), [For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas,] compliance with the control requirements in §115.432 of this title (relating to Control Requirements) must [shall] be determined by applying the following test methods, as appropriate:

(1) Methods 1 - 4 [Test Methods 1-4] (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates, as necessary;

(2) [Test] Method 24 (40 CFR Part 60, Appendix A) for determining the volatile organic compounds [compound] (VOC) content and density of printing inks and related coatings;

(3) [Test] Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(4) [Test] Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(5) the United States Environmental Protection Agency (EPA) [EPA] guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December 1984;

(6) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375));

(7) minor modifications to these methods and procedures approved by the executive director; and

(8) [(7)] for the capture efficiency, the [which shall be measured using] applicable procedures outlined in 40 CFR [, Part] §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

(A) The following [are] exemptions apply to capture efficiency testing requirements.

(i) If a source installs a permanent total enclosure [(PTE)] that [which] meets the specifications of Procedure T and that [which] directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempt [exempted] from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure [PTE] are met during testing for control efficiency.

(ii) If a source uses a control device designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)) with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period specified in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)).

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorption system); or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must [shall] be calculated using one of the following four protocols referenced. The owner or operator of any [Any] affected source shall [must] use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA.

(i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The following equation must be used to determine the capture efficiency for this protocol. [The capture efficiency equation to be used for this protocol is: CE = Gw / (Gw + Fw), where: CE = capture efficiency, decimal fraction; Gw = mass of VOC captured and delivered to control device using a TTE (use Procedure G.2); Fw = mass of fugitive VOC that escapes from a TTE (use Procedure F.1).]

Figure: 30 TAC §115.435(a)(8)(B)(i)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The following equation must be used to determine the capture efficiency for this protocol. [The capture efficiency equation to be used for this protocol is: CE = (L - F) / L, where: CE = capture efficiency, decimal fraction; L = mass of liquid VOC input to process (use Procedure L); F = mass of fugitive VOC that escapes from a TTE (use Procedure F.1).]

Figure: 30 TAC §115.435(a)(8)(B)(ii)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located [as the enclosure (BE)] and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from building enclosure [G and F] are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The following equation must be used to determine the capture efficiency for this protocol. [The capture efficiency equation to be used for this protocol is: CE = G / (G + Fb), where: CE = capture efficiency, decimal fraction; G = mass of VOC captured and delivered to a control device (use Procedure G.2); Fb = mass of fugitive VOC that escapes from building enclosure (use Procedure F.2).]

Figure: 30 TAC §115.435(a)(8)(B)(iii)

(iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from BE [L and F] are measured while operating only the affected facility. All fans and blowers in the BE [building or room] must be operated as they would under normal production. The following equation must be used to determine the capture efficiency for this protocol. [The capture efficiency equation to be used for this protocol is: CE = (L - Fb) / L, where: CE = capture efficiency, decimal fraction; L = mass of liquid VOC input to process (use Procedure L); Fb = mass of fugitive VOC that escapes from BE (use Procedure F.2)].

Figure: 30 TAC §115.435(a)(8)(B)(iv)

(C) The operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.436(a) of this title (relating to Monitoring and Recordkeeping Requirements) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test. [The following conditions must be met in measuring capture efficiency.]

[(i) Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test.]

[(ii) All affected facilities shall accomplish the initial capture efficiency testing by July 31, 1992, in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant Counties, and by July 31, 1993, in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller Counties.]

[(iii) During an initial pretest meeting, the executive director and the source owner or operator shall identify those operating parameters which shall be monitored to ensure that capture efficiency does not change significantly over time. These parameters must shall be monitored and recorded initially during the capture efficiency testing and thereafter during facility operation. The executive director may

~~require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test; and]~~

~~[(8) minor modifications to these test methods and procedures approved by the executive director.]~~

(b) In [~~For~~] Gregg, Nueces, and Victoria Counties, compliance with the requirements in this division must [~~shall~~] be determined by applying the following test methods, as appropriate:

(1) Methods 1 - 4 [~~Test Methods 1-4~~] (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;

(2) [~~Test~~] Method 24 (40 CFR Part 60, Appendix A) for determining the VOC content and density of printing inks and related coatings;

(3) [~~Test~~] Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(4) [~~Test~~] Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(5) the EPA guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December 1984;

(6) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375)); or

(7) minor modifications to these test methods and procedures approved by the executive director.

(c) Methods other than those specified in subsections (a)(1) - (6) and (b)(1) - (6) of this section may be used if approved by the executive director and validated using Method 301 (40 CFR Part 63, Appendix A). For the purposes of this subsection, substitute "executive director" each place that Method 301 references "administrator."

§115.436. Monitoring and Recordkeeping Requirements.

(a) In the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the owner or operator of a rotogravure or flexographic printing line subject to this division shall: [~~For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the owner or operator of any rotogravure or flexographic printing facility shall:~~]

(1) maintain records of the volatile organic compounds [~~compound~~] (VOC) content of all inks as applied to the substrate. Additionally, records of the quantity of each ink and solvent used must [~~shall~~] be maintained. The composition of inks may be determined by the methods referenced in §115.435(a) of this title (relating to Testing Requirements) or by examining the manufacturer's formulation data and the amount of dilution solvent added to adjust the viscosity of inks prior to application to the substrate;

(2) maintain daily records of the quantity of each ink and solvent used at a facility subject to the requirements of an alternate means of control approved by the executive director in accordance with §115.433 [~~§115.433(a)~~] of this title (relating to Alternate Control Requirements) that [~~which~~] allows the application of inks exceeding the applicable control limits. Such records must be sufficient to demonstrate compliance with the applicable emission limitation on a daily weighted average;

(3) install and maintain monitors to continuously measure and record operational parameters of any [~~emission~~] control device installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:

(A) the exhaust gas temperature of direct-flame incinerators or [~~and/or~~] gas temperature immediately upstream and downstream of any catalyst bed;

(B) the total amount of VOC recovered by a carbon adsorption or other solvent recovery system during a calendar month;

(C) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title [~~(relating to Definitions)~~], to determine if breakthrough has occurred; and

(D) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities;

(4) maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.435(a) of this title [~~(relating to Testing Requirements)~~];

(5) maintain all records at the affected facility for at least two years and make such records available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency (EPA), or any [~~EPA, or the~~] local air pollution agency with [~~having~~] jurisdiction [~~in the area~~]; and

(6) maintain on file the capture efficiency protocol submitted under §115.435(a)(8) [~~§115.435(a)(7)~~] of this title [~~(relating to Testing Requirements)~~]. The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director within 60 days of the actual test date. The source owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes, and a new capture efficiency or [~~and/or~~] control device destruction or removal efficiency test may be required.

(b) In [~~For~~] Gregg, Nueces, and Victoria Counties, the owner or operator of any rotogravure or flexographic printing line [~~facility~~] shall:

(1) maintain records of the VOC content of all inks as applied to the substrate. Additionally, records of the quantity of each ink and solvent used must [~~shall~~] be maintained. The composition of inks may be determined by the methods referenced in §115.435(b) of this title [~~(relating to Testing Requirements)~~] or by examining the manufacturer's formulation data and the amount of dilution solvent added to adjust the viscosity of inks prior to application to the substrate;

(2) maintain daily records of the quantity of each ink and solvent used at a facility subject to the requirements of an alternate means of control approved by the executive director in accordance with §115.433 [~~§115.433(b)~~] of this title that [~~(relating to Alternate Control Requirements) which~~] allows the application of inks exceeding the applicable control limits. Such records must be sufficient to demonstrate compliance with the applicable emission limitation on a daily weighted average;

(3) install and maintain monitors to continuously measure and record operational parameters of any [~~emission~~] control device installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:

(A) the exhaust gas temperature of direct-flame incinerators or [~~and/or~~] the gas temperature immediately upstream and downstream of any catalyst bed;

(B) the total amount of VOC recovered by a carbon adsorption or other solvent recovery system during a calendar month;

(C) in Victoria County, the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title [~~(relating to Definitions)~~], to determine if breakthrough has occurred; and

(D) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities;

(4) maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.435(b) of this title [~~(relating to Testing Requirements)~~]; and

(5) maintain all records at the affected facility for at least two years and make such records available upon request to authorized representatives of the executive director, the EPA, or any [~~EPA, or the~~] local air pollution agency with [~~having~~] jurisdiction [~~in the area~~].

(c) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the owner or operator of a flexible package printing line subject to this division shall comply with the following monitoring and recordkeeping requirements.

(1) The owner or operator shall maintain records of the VOC content of all coatings, as defined in §101.1 of this title (relating to Definitions), as applied to the substrate. The composition of coatings may be determined by the methods referenced in §115.435(a) of this title or by examining the manufacturer's formulation data and the amount of dilution solvent added to adjust the viscosity of coatings prior to application to the substrate. Additionally, records of the quantity of each coating used must be maintained.

(2) The owner or operator shall maintain records of the quantity and type of each coating and solvent consumed if any of the coatings, as applied, exceed the applicable VOC content limits in §115.432(c) of this title (relating to Control Requirements). Records must be sufficient to demonstrate compliance with the applicable VOC content limit on a daily weighted average.

(3) The owner or operator shall install and maintain monitors to continuously measure and record operational parameters of any control device installed to meet applicable control requirements in §115.432(c) of this title. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:

(A) the exhaust gas temperature of direct-flame incinerators or gas temperature immediately upstream and downstream of any catalyst bed;

(B) the total amount of VOC recovered by a carbon adsorption or other solvent recovery system during a calendar month;

(C) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine if breakthrough has occurred; and

(D) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.

(4) The owner or operator shall maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.435(a) of this title.

(5) The owner or operator shall maintain all records at the affected facility for at least two years and make such records available upon request to authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction.

(6) The owner or operator shall maintain on file the capture efficiency protocol submitted under §115.435(a)(8) of this title. The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director within 60 days of the actual test date. The source owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes, and a new capture efficiency or control device destruction or removal efficiency test may be required.

§115.439. Counties and Compliance Schedules.

(a) Except as specified in subsection (c) and (d) of this section, for the owner or operator of a flexographic or rotogravure printing line subject to this division [~~All affected persons~~] in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties the compliance date has already passed and the owner or operator shall continue to comply with applicable sections of this division [~~(relating to Flexographic and Rotogravure Printing) as required by §115.930 of this title (relating to Compliance Dates)~~].

(b) Except as specified in subsection (c) and (d) of this section, the owner or operator of a flexographic or rotogravure printing line subject to this division[~~All affected persons~~] in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

(c) The owner or operator of a flexible package printing line in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), shall comply with the requirements in §115.432(c) and (d) and §115.436(c) of this title (relating to Control Requirements; and Monitoring and Recordkeeping Requirements) no later than March 1, 2013. Testing required by §115.435 of this title (relating to Testing Requirements) to demonstrate compliance with the requirements of §115.432(c) of this title must be completed, and the results submitted to the executive director no later than March 1, 2013.

(d) The owner or operator of a flexible package printing line in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas that becomes subject to the requirements of this division after March 1, 2013, shall comply with the requirements in this division no later than 60 days after becoming subject.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102114
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 239-2548

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30 TAC §115.437

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repealed section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repealed section is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The repealed section is also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The repealed section is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The repeal implements THSC, §§382.002, 382.011, 382.012, and 382.016, 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.437. Exemptions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

30 TAC §§115.450, 115.451, 115.453 - 115.455, 115.458, 115.459

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new sections are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The new sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality will be achieved and maintained within each air quality control region of the state.

The new sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

§115.450. Applicability and Definitions.

(a) Applicability. In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the requirements in this division apply to the following surface coating processes, except as specified in paragraph (5) of this subsection:

(1) large appliance coating;

(2) metal furniture coating;

(3) miscellaneous metal parts and products coating at the original equipment manufacturer, off-site job shops that coat new parts and products or that recoat used parts and products, and designated on-site maintenance shops that recoat used parts and products;

(4) miscellaneous plastic parts and products coating, pleasure craft coating, and automotive/transportation and business machine plastic parts coating at the original equipment manufacturer and off-site job shops that coat new parts and products or that recoat used parts and products;

(5) motor vehicle materials applied to miscellaneous metal and plastic parts specified in paragraphs (3) and (4) of this subsection, at the original equipment manufacturer and off-site job shops that coat new metal and plastic parts during an operation other than automobile and light-duty truck manufacturing;

(6) paper, film, and foil surface coating lines with the potential to emit from all coatings greater than or equal to 25 tons per year of volatile organic compounds (VOC) when uncontrolled; and

(7) in the Dallas-Fort Worth area, automobile and light-duty truck assembly coating processes conducted by the original equipment manufacturer and operators that conduct automobile and light-duty truck coating processes under contract with the original equipment manufacturer.

(b) General definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.

(1) Aerosol coating (spray paint)--A hand-held, pressurized, non-refillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.

(2) Air-dried coating--A coating that is cured at a temperature below 194 degrees Fahrenheit (90 degrees Celsius). These coatings may also be referred to as low-bake coatings.

(3) Baked Coating--A coating that is cured at a temperature at or above 194 degrees Fahrenheit (90 degrees Celsius). These coatings may also be referred to as high-bake coatings.

(4) Coating application system--Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

(5) Coating line--An operation consisting of a series of one or more coating application systems and associated flash-off area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured. The coating line ends at the point the coating is dried or cured, or prior to any subsequent application of a different coating.

(6) Coating solids (or solids)--The part of a coating that remains on the substrate after the coating is dried or cured.

(7) Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all coatings subject to the same VOC limit in §115.453 of this title (relating to Control Requirements), divided by the total volume or weight of those coatings (minus water and exempt solvent), or divided by the total volume or weight of solids, delivered to the application system on each coating line each day. Coatings subject to different VOC content limits in §115.453 of this title may not be combined for purposes of calculating the daily weighted average.

(8) Multi-component coating--A coating that requires the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film. These coatings may also be referred to as two-component coatings.

(9) Normally closed container--A container that is closed unless an operator is actively engaged in activities such as adding or removing material.

(10) One-component coating--A coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity, is not considered a component.

(11) Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents)--The basis for emission limits for surface coating processes that can be calculated by the following equation:
Figure: 30 TAC §115.450(b)(11)

(12) Pounds of volatile organic compounds (VOC) per gallon of solids--The basis for emission limits for surface coating processes that can be calculated by the following equation:
Figure: 30 TAC §115.450(b)(12)

(13) Spray gun--A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

(14) Surface coating processes--Operations that use a coating application system.

(c) Specific surface coating definitions. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Automobile and light-duty truck manufacturing--The following definitions apply to this surface coating category.

(A) Adhesive--Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

(B) Automobile and light-duty truck adhesive--An adhesive, including glass-bonding adhesive, used in an automobile or light-duty truck assembly coating process and applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.

(C) Automobile and light-duty truck bedliner--A multi-component coating used in an automobile or light-duty truck assembly coating process and applied to a cargo bed after the application of topcoat and outside of the topcoat operation to provide additional durability and chip resistance.

(D) Automobile and light-duty truck cavity wax--A coating, used in an automobile or light-duty truck assembly coating process, applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

(E) Automobile and light-duty truck deadener--A coating used in an automobile or light-duty truck assembly coating process and applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

(F) Automobile and light-duty truck gasket/gasket sealing material--A fluid used in an automobile or light-duty truck assembly coating process and applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization seal material.

(G) Automobile and light-duty truck glass-bonding primer--A primer, used in an automobile or light-duty truck assembly coating process, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Automobile and light-duty truck glass-bonding primer includes glass-bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of adhesive or the installation of adhesive-bonded glass.

(H) Automobile and light-duty truck lubricating wax/compound--A protective lubricating material used in an automobile or light-duty truck assembly coating process and applied to vehicle hubs and hinges.

(I) Automobile and light-duty truck sealer--A high viscosity material used in an automobile or light-duty truck assembly coating process and generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before

the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of automobile and light-duty truck sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

(J) Automobile and light-duty truck trunk interior coating--A coating used in an automobile or light-duty truck assembly coating process outside of the primer-surfacer and topcoat operations and applied to the trunk interior to provide chip protection.

(K) Automobile and light-duty truck underbody coating--A coating used in an automobile or light-duty truck assembly coating process and applied to the undercarriage or firewall to prevent corrosion or provide chip protection.

(L) Automobile and light-duty truck weather strip adhesive--An adhesive used in an automobile or light-duty truck assembly coating process and applied to weather-stripping materials for the purpose of bonding the weather-stripping material to the surface of the vehicle.

(M) Automobile assembly coating process--The assembly-line coating of new passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(N) Electrodeposition primer--A process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. Electrodeposition primer is a dip-coating method that uses an electrical field to apply or deposit the conductive coating onto the part; the object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank. Electrodeposition primer is also referred to as E-Coat, Uni-Prime, and ELPO Primer.

(O) Final repair--The operation(s) performed and coating(s) applied to completely assembled motor vehicles or to parts that are not yet on a completely assembled vehicle to correct damage or imperfections in the coating. The curing of the coatings applied in these operations is accomplished at a lower temperature than that used for curing primer-surfacer and topcoat. This lower temperature cure avoids the need to send parts that are not yet on a completely assembled vehicle through the same type of curing process used for primer-surfacer and topcoat and is necessary to protect heat-sensitive components on completely assembled vehicles.

(P) In-line repair--The operation(s) performed and coating(s) applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely assembled vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously applied topcoat. In-line repair is also referred to as high-bake repair or high-bake reprocess. In-line repair is considered part of the topcoat operation.

(Q) Light-duty truck assembly coating process--The assembly-line coating of new motor vehicles rated at 8,500 pounds gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(R) Primer-surfacer--An intermediate protective coating applied over the electrodeposition primer and under the topcoat. Primer-surfacer provides adhesion, protection, and appearance properties to the total finish. Primer-surfacer is also referred to as guide coat or surfacer. Primer-surfacer operations may include other coatings (e.g., anti-chip, lower-body anti-chip, chip-resistant edge primer, spot primer, blackout, deadener, interior color, basecoat replacement coating, etc.) that are applied in the same spray booth(s).

(S) Topcoat--The final coating system applied to provide the final color or a protective finish. The topcoat may be a monocoat color or basecoat/clearcoat system. In-line repair and two-tone are part of topcoat. Topcoat operations may include other coatings (e.g., blackout, interior color, etc.) that are applied in the same spray booth(s).

(T) Solids turnover ratio (RT')--The ratio of total volume of coating solids that is added to the electrodeposition primer system (EDP) in a calendar month divided by the total volume design capacity of the EDP system.

(2) Automotive/transportation and business machine plastic parts--The following definitions apply to this surface coating category.

(A) Adhesion prime--A coating that is applied to a polyolefin part to promote the adhesion of a subsequent coating. An adhesion prime is clearly identified as an adhesion prime or adhesion promoter on its accompanying material safety data sheet.

(B) Black coating--A coating that has a maximum lightness of 23 units and a saturation less than 2.8, where saturation equals the square root of $A^2 + B^2$. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, maximum lightness is 33 units.

(C) Business machine--A device that uses electronic or mechanical methods to process information, perform calculations, print or copy information, or convert sound into electrical impulses for transmission. This definition includes devices listed in Standard Industrial Classification codes 3572, 3573, 3574, 3579, and 3661 and photocopy machines, a subcategory of Standard Industrial Classification code 3861.

(D) Clear coating--A coating that lacks color and opacity or is transparent and that uses the undercoat as a reflectant base or undertone color.

(E) Coating of plastic parts of automobiles and trucks--The coating of any plastic part that is or will be assembled with other parts to form an automobile or truck.

(F) Coating of plastic parts of business machines--The coating of any plastic part that is or will be assembled with other parts to form a business machine.

(G) Electrostatic prep coat--A coating that is applied to a plastic part solely to provide conductivity for the subsequent application of a prime, a topcoat, or other coating through the use of electrostatic application methods. An electrostatic prep coat is clearly identified as an electrostatic prep coat on its accompanying material safety data sheet.

(H) Flexible coating--A coating that is required to comply with engineering specifications for impact resistance, mandrel bend, or elongation as defined by the original equipment manufacturer.

(I) Fog coat--A coating that is applied to a plastic part for the purpose of color matching without masking a molded-in texture. A fog coat may not be applied at a thickness of more than 0.5 mil of coating solids.

(J) Gloss reducer--A coating that is applied to a plastic part solely to reduce the shine of the part. A gloss reducer may not be applied at a thickness of more than 0.5 mil of coating solids.

(K) Red coating--A coating that meets all of the following criteria:

(i) yellow limit: the hue of hostaperm scarlet;

(ii) blue limit: the hue of monastral red-violet;

(iii) lightness limit for metallics: 35% aluminum flake;

(iv) lightness limit for solids: 50% titanium dioxide white;

(v) solid reds: hue angle of -11 to 38 degrees and maximum lightness of 23 to 45 units; and

(vi) metallic reds: hue angle of -16 to 35 degrees and maximum lightness of 28 to 45 units. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, the upper limit is 49 units. The maximum lightness varies as the hue moves from violet to orange. This is a natural consequence of the strength of the colorants, and real colors show this effect.

(L) Resist coat--A coating that is applied to a plastic part before metallic plating to prevent deposits of metal on portions of the plastic part.

(M) Stencil coat--A coating that is applied over a stencil to a plastic part at a thickness of 1.0 mil or less of coating solids. Stencil coats are most frequently letters, numbers, or decorative designs.

(N) Texture coat--A coating that is applied to a plastic part which, in its finished form, consists of discrete raised spots of the coating.

(O) Vacuum-metalizing coatings--Topcoats and basecoats that are used in the vacuum-metalizing process.

(3) Large appliance coating--The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.

(A) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing Material Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degree meter.

(B) Extreme performance coating--A coating used on a metal surface where the coated surface is, in its intended use, subject to:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius); or

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents.

(C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(D) Metallic coating--A coating that contains more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(E) Pretreatment coating--A coating that contains no more than 12% solids by weight, and at least 0.50% acid, by weight; is used to provide surface etching; and applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(F) Solar-absorbent coating--A coating that has as its prime purpose the absorption of solar radiation.

(4) Metal furniture coating--The coating of metal furniture including, but not limited, to tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products or the coating of any metal part that will be a part of a nonmetal furniture product.

(A) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing Material Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degree meter.

(B) Extreme performance coating--A coating used on a metal surface where the coated surface is, in its intended use, subject to:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius); or

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents.

(C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(D) Metallic coating--A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(E) Pretreatment coating--A coating that contains no more than 12% solids by weight, and at least 0.50% acid, by weight; is used to provide surface etching; and applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(F) Solar-absorbent coating--A coating that has as its prime purpose the absorption of solar radiation.

(5) Miscellaneous metal and plastic parts--The following definitions apply to this surface coating category.

(A) Camouflage coating--A coating used, principally by the military, to conceal equipment from detection.

(B) Clear coat--A coating that lacks opacity or is transparent and may or may not have an undercoat that is used as a reflectant base or undertone color.

(C) Drum (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).

(D) Electric-dissipating coating--A coating that rapidly dissipates a high-voltage electric charge.

(E) Electric-insulting varnish--A non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

(F) EMI/RFI shielding--A coating used on electrical or electronic equipment to provide shielding against electromagnetic interference (EMI), radio frequency interference (RFI), or static discharge.

(G) Etching filler--A coating that contains less than 23% solids by weight and at least 0.50% acid by weight and is used instead of applying a pretreatment coating followed by a primer.

(H) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing and Materials Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degree meter.

(I) Extreme performance coating--A coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to one of the following conditions. Extreme performance coatings include, but are not limited to, coatings applied to locomotives, railroad cars, farm machinery, and heavy-duty trucks:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius); or

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents.

(J) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(K) High performance architectural coating--A coating used to protect architectural subsections and meets the requirements of the American Architectural Manufacturers Association's publication number AAMA 2604-05 (Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels) or 2605-05 (Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels).

(L) High temperature coating--A coating that is certified to withstand a temperature of 1000 degrees Fahrenheit (538 degrees Celsius) for 24 hours.

(M) Mask coating--A thin film coating applied through a template to coat a small portion of a substrate.

(N) Metallic coating--A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(O) Military specification coating--A coating that has a formulation approved by a United States Military Agency for use on military equipment.

(P) Mold-seal coating--The initial coating applied to a new mold or a repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

(Q) Miscellaneous metal parts and products--Parts and products considered miscellaneous metal parts and products:

(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) fabricated metal products (metal-covered doors, frames, etc.); and

(vii) any other category of coated metal products, including, but not limited to, those that are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries). Excluded are those surface coating processes specified in paragraphs (1) - (4) and (6) - (8) of this subsection.

(R) Multi-colored coating--A coating that exhibits more than one color when applied packaged in a single container and applied in a single coat.

(S) Off-site job shop--A non-manufacturer of metal or plastic parts and products that applies coatings to such products at a site exclusively under contract with one or more parties that operate under separate ownership and control.

(T) Optical coating--A coating applied to an optical lens.

(U) Pail (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 1 gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.

(V) Pan-backing coating--A coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

(W) Prefabricated architectural component coating--A coating applied to metal parts and products that are to be used as an architectural structure.

(X) Pretreatment coating--A coating that contains no more than 12% solids by weight, and at least 0.50% acid, by weight; is used to provide surface etching; and applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(Y) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal coating operations.

(Z) Shock-free coating--A coating applied to electrical components to protect the user from electric shock. The coating has characteristics of being low-capacitance and high-resistance and having resistance to breaking down under high voltage.

(AA) Silicone-release coating--A coating that contains silicone resin and is intended to prevent food from sticking to metal surfaces such as baking pans.

(BB) Solar-absorbent coating--A coating that has as its prime purpose the absorption of solar radiation.

(CC) Stencil coating--A pigmented coating or ink that is rolled or brushed onto a template or stamp in order to add identifying letters, symbols, or numbers.

(DD) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main coating operation.

(EE) Translucent coating--A coating that contains binders and pigment and formulated to form a colored, but not opaque, film.

(FF) Vacuum-metalizing coating--The undercoat applied to the substrate on which the metal is deposited or the overcoat

applied directly to the metal film. Vacuum metalizing or physical vapor deposition is the process whereby metal is vaporized and deposited on a substrate in a vacuum chamber.

(6) Motor vehicle materials--The following definitions apply to this surface coating category.

(A) Motor vehicle bedliner--A multi-component coating, used in a process that is not an automobile or light-duty truck manufacturing assembly coating process, applied to a cargo bed after the application of topcoat to provide additional durability and chip resistance.

(B) Motor vehicle cavity wax--A coating used in a process that is not an automobile or light-duty truck assembly coating process and applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

(C) Motor vehicle deadener--A coating used in a process that is not an automobile or light-duty truck assembly coating process and applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

(D) Motor vehicle gasket/sealing material--A fluid used in a process that is not an automobile or light-duty truck assembly coating process and applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization seal material.

(E) Motor vehicle lubricating wax/compound--A protective lubricating material used in a process that is not an automobile or light-duty truck assembly coating process and applied to vehicle hubs and hinges.

(F) Motor vehicle sealer--A high viscosity material used in a process that is not an automobile or light-duty truck assembly coating process and generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of automobile and light-duty truck sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

(G) Motor vehicle trunk interior coating--A coating used in a process that is not an automobile or light-duty truck assembly coating process and applied to the trunk interior to provide chip protection.

(H) Motor vehicle underbody coating--A coating used in a process that is not an automobile or light-duty truck assembly coating process and applied to the undercarriage or firewall to prevent corrosion or provide chip protection.

(7) Paper, film, and foil coating--The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film), related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape), metal foil (including decorative, gift wrap, and packaging), industrial and decorative laminates, abrasive products (including fabric coated for use in abrasive products), and flexible packaging. Paper, film, and foil coating includes the application of a continuous layer of a coating material across the entire width or any portion of the width of a paper, film, or foil web substrate to: provide a covering, finish, or functional or protective layer to the substrate; saturate the substrate for lamination; or provide adhesion between two substrates for lamination. Paper, film, and foil coating does not include coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press. In addition, size presses and on-machine coaters that function as part of an in-line papermaking system are not included.

(8) Pleasure craft--Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 65.6 feet (20 meters) in length. A vessel rented exclusively to, or chartered for, individuals for such purposes is considered a pleasure craft.

(A) Antifoulant coating--Any coating applied to the underwater portion of a pleasure craft to prevent or reduce the attachment of biological organisms, and registered with the United States Environmental Protection Agency as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code, §136).

(B) Extreme high-gloss coating--Any coating that achieves at least 95% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Method D 523-89.

(C) Finish primer-surfacer--A coating applied with a wet film thickness less than 10 mils prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, a moisture barrier, or promotion of a uniform surface necessary for filling in surface imperfections.

(D) High-build primer-surfacer--A coating applied with a wet film thickness of 10 mils or more prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.

(E) High-gloss coating--Any coating that achieves at least 85% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Test Method D 523-89.

(F) Pleasure craft coating--Any marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.

(G) Pretreatment wash primer--A coating that contains no more than 12% solids by weight and at least 0.50% acids by weight; used to provide surface etching; and applied directly to fiberglass and metal surfaces to provide corrosion resistance and adhesion of subsequent coatings.

(H) Topcoat--Any final coating applied to the interior or exterior of a pleasure craft.

§115.451. Exemptions.

The following exemptions apply to the owner or operator of a surface coating process subject to this division.

(1) Excluded from the volatile organic compounds (VOC) emission calculations are coatings and solvents used in coating activities and associated cleaning operations not addressed by the surface coating categories in §115.421(a)(3), (5) - (8)(A), and (10) - (15) or §115.453 of this title (relating to Emission Specifications and Control Requirements, respectively). For example, architectural coatings applied in the field to stationary structures and their appurtenances, portable buildings, pavements, or curbs at a property would not be included in the calculations.

(A) All surface coating processes on a property that, when uncontrolled, will emit a combined weight of VOC of less than 3.0 pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from §115.453 of this title.

(B) Surface coating processes on a property that, when uncontrolled, will emit a combined weight of VOC of less

than 100 pounds in any consecutive 24-hour period are exempt from §115.453(a) of this title if documentation is provided to and approved by both the executive director and the United States Environmental Protection Agency to demonstrate that necessary coating performance criteria cannot be achieved with coatings that satisfy applicable VOC limits and that control equipment is not technologically or economically feasible.

(C) Surface coating processes on a property where total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from the VOC limits in §115.453(a) of this title.

(2) The following surface coating processes are exempt from the VOC limits in §115.453(a)(1)(C) - (F) and (2) of this title:

(A) large appliance coating;

(B) metal furniture coating; and

(C) automobile and light-duty truck assembly coating.

(3) Paper, film, and foil coating processes are exempt from the coating application system requirements in §115.453(c) of this title and the coating use work practice requirements in §115.453(d)(1) of this title.

(4) Automobile and light-duty truck assembly coating processes are exempt from the coating application system requirements in §115.453(c) of this title and the cleaning-related work practice requirements in §115.453(d)(2) of this title.

(5) Automobile and light-duty truck assembly coating materials supplied in containers with a net volume of 16 ounces or less, or a net weight of 1.0 pound or less, are exempt from the VOC limits in Table 2 in §115.453(a)(3) of this title.

(6) The following miscellaneous metal part and product surface coatings and coating operations are exempt from the coating application system requirements in §115.453(c) of this title:

(A) touch-up coatings, repair coatings, and textured finishes;

(B) stencil coatings;

(C) safety-indicating coatings;

(D) solid-film lubricants;

(E) electric-insulating and thermal-conducting coatings;

(F) magnetic data storage disk coatings; and

(G) plastic extruded onto metal parts to form a coating.

(7) All miscellaneous plastic part airbrush coatings and coating operations where total coating usage is less than 5.0 gallons per year are exempt from the coating application system requirements in §115.453(c) of this title.

(8) The application of extreme high-gloss coatings to pleasure craft is exempt from the coating application system requirements in §115.453(c) of this title.

(9) The following miscellaneous plastic parts coatings and coating operations are exempt from the coating VOC limits in §115.453(a)(1)(D) of this title:

(A) touch-up and repair coatings;

(B) stencil coatings applied on clear or transparent substrates;

(C) clear or translucent coatings;

(D) any individual coating type used in volumes less than 50 gallons in any one year, if substitute compliant coatings are not available, provided that the total usage of all such coatings does not exceed 200 gallons per year, per facility;

(E) reflective coating applied to highway cones;

(F) mask coatings that are less than 0.5 mil thick dried and the area coated is less than 25 square inches;

(G) electromagnetic interference/radio frequency interference shielding coatings; and

(H) heparin-benzalkonium chloride-containing coatings applied to medical devices, if the total usage of all such coatings does not exceed 100 gallons per year, per facility.

(10) The following automotive/transportation and business machine plastic part coatings and coating processes are exempt from the VOC limits in §115.453(a)(1)(F) of this title:

(A) texture coatings;

(B) vacuum-metalizing coatings;

(C) gloss reducers;

(D) texture topcoats;

(E) adhesion prime;

(F) electrostatic preparation coatings;

(G) resist coatings; and

(H) stencil coatings.

(11) Powder coatings applied during metal and plastic parts surface coating processes are exempt from the requirements in this division, except as specified in §115.458(b)(5) of this title (relating to Monitoring and Recordkeeping Requirements).

(12) Aerosol coatings (spray paint) are exempt from this division.

(13) Coatings applied to test panels and coupons as part of research and development, quality control, or performance testing activities at paint research or manufacturing facilities are exempt from the requirements in this division.

§115.453. Control Requirements.

(a) The following control requirements apply to surface coating processes subject to this division. Except as specified in paragraph (3) of this subsection, these limitations are based on the daily weighted average of all coatings, as defined in §101.1 of this title (relating to Definitions).

(1) The owner or operator shall not apply coatings that exceed the volatile organic compounds (VOC) limits for each of the coating categories in this paragraph. The limits must be met by applying low-VOC coatings to meet the specified VOC content limits on a pound of VOC per gallon of coating basis (lb VOC/gal coating), as delivered to the application system (minus water and exempt solvent), or by applying low-VOC coatings in combination with a vapor control system, as defined in §115.10 (relating to Definitions), to meet the specified VOC emission limits on a pound of VOC per gallon of solids basis (lb VOC/gal solids).

(A) Large appliances. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(A)

(B) Metal furniture. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(B)

(C) Miscellaneous metal parts and products. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(C)

(D) Miscellaneous plastic parts and products. If a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(D)

(E) Automotive/transportation and business machine plastic parts. For red, yellow, and black automotive/transportation coatings, except touch-up and repair coatings, the VOC limit is determined by multiplying the appropriate limit in Table 1 of this subparagraph by 1.15.
Figure: 30 TAC §115.453(a)(1)(E)

(F) Pleasure craft. If a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limits for other coatings applies.
Figure: 30 TAC §115.453(a)(1)(F)

(2) The owner or operator shall not apply motor vehicle materials to the metal and plastic parts in paragraph (1)(C) - (F) of this subsection, that exceed the following limits, as delivered to the application system.
Figure: 30 TAC §115.453(a)(2)

(3) The owner or operator shall not apply coatings that exceed the following VOC limits during automobile and light-duty truck assembly coating.
Figure: 30 TAC §115.453(a)(3)

(A) The owner or operator shall determine compliance with the VOC limits for electrodeposition primer operations on a monthly weighted average in accordance with §115.455(a)(2)(D) of this title (relating to Approved Test Methods and Testing Requirements).

(B) As an alternative to the VOC limit in Table 1 of this paragraph for final repair coatings, if an owner or operator does not compile records sufficient to enable determination of a daily weighted average VOC content, compliance may be demonstrated each day by meeting a standard of 4.8 lb VOC/gal coating (minus water and exempt solvents) on an occurrence weighted average basis. Compliance with the VOC limits on an occurrence weighted average basis must be determined in accordance with the procedure specified in §115.455(a)(2) of this title.

(C) The owner or operator shall determine compliance with the VOC content limits in Table 2 of this paragraph in accordance with §115.455(a)(1) or (2)(C) of this title, as appropriate.

(4) The owner or operator of paper, film, and foil coating lines shall not apply coatings that exceed the following limits. The limits may be met by applying low-VOC coatings to meet the specified VOC content limits on a pound of VOC per pound of coating basis, as delivered to the application system, or by applying low-VOC coatings in combination with a vapor control system to meet the specified VOC emission limits on a pound of VOC per pound of solids basis.
Figure: 30 TAC §115.453(a)(4)

(5) An owner or operator applying low-VOC coatings in combination with a vapor control system to meet the VOC emission limits in paragraph (1) or (4) of this subsection shall use the following equation to determine the minimum overall control efficiency necessary to demonstrate equivalency. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455(a)(3) and (4) of this title.
Figure: 30 TAC §115.453(a)(5)

(b) Except for the surface coating process in subsection (a)(2) of this section, the owner or operator of a surface coating process may operate a vapor control system capable of achieving a 90% overall control efficiency, as an alternative to subsection (a) of this section. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455(a)(3) and (4) of this title. If the owner or operator complies with the overall control efficiency option under this subsection, then the owner or operator is exempt from the application system requirements of subsection (c) of this section.

(c) The owner or operator of any surface coating process subject to this division shall not apply coatings unless one of the following coating application systems is used:

(1) electrostatic application;

(2) high-volume, low-pressure (HVLP) spray;

(3) flow coat;

(4) roller coat;

(5) dip coat;

(6) brush coat; or

(7) other coating application system capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray. For the purpose of this requirement, the transfer efficiency of HVLP spray is assumed to be 65%.

(d) The following work practices apply to the owner or operator of each surface coating process subject to this division.

(1) For all coating-related activities including, but not limited to, solvent storage, mixing operations, and handling operations for coatings and coating-related waste materials, the owner or operator shall:

(A) store all VOC-containing coatings and coating-related waste materials in closed containers;

(B) minimize spills of VOC-containing coatings;

(C) convey all coatings in closed containers or pipes;

(D) close mixing vessels and storage containers that contain VOC coatings and other materials except when specifically in use;

(E) clean up spills immediately; and

(F) for automobile and light-duty truck assembly coating processes, minimize VOC emissions from the cleaning of storage, mixing, and conveying equipment.

(2) For all cleaning-related activities including, but not limited to, waste storage, mixing, and handling operations for cleaning materials, the owner or operator shall:

(A) store all VOC-containing cleaning materials and used shop towels in closed containers;

(B) ensure that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(C) minimize spills of VOC-containing cleaning materials;

(D) convey VOC-containing cleaning materials from one location to another in closed containers or pipes;

(E) minimize VOC emissions from cleaning of storage, mixing, and conveying equipment;

(F) clean up spills immediately; and

(G) for metal and plastic parts coating processes specified in §115.450(a)(3) - (5) of this title (relating to Applicability and Definitions), minimize VOC emission from the cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(3) The owner or operator of automobile and light-duty truck assembly coating processes shall implement a work practice plan containing procedures to minimize VOC emissions from cleaning activities and purging of coating application equipment. Properties with a work practice plan already in place to comply with requirements specified in 40 Code of Federal Regulations (CFR) §63.3094(b) (as amended through April 20, 2006 (71 FR 20464)), may incorporate procedures for minimizing non-hazardous air pollutant VOC emissions to comply with the work practice plan required by this paragraph.

(e) A surface coating process that becomes subject to subsection (a) of this section by exceeding the exemption limits in §115.451 of this title (relating to Exemptions) is subject to the provisions in subsection (a) of this section even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with subsection (a) of this section and one of the following conditions is met.

(1) The project that caused throughput or emission rate to fall below the exemption limits in §115.451 of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification, respectively). If a permit by rule is available for the project, the owner or operator shall continue to comply with subsection (a) of this section for 30 days after the filing of documentation of compliance with that permit by rule.

(2) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

§115.454. Alternate Control Requirements.

(a) For the owner or operator of a surface coating process subject to this division, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

(b) For any surface coating process or processes at a specific property, the executive director may approve requirements different from those in §115.453(a)(1)(A) of this title (relating to Control Requirements) based upon the executive director's determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. When the executive director makes such a determination, the executive director shall specify the date or dates by which such different requirements must be met and shall specify any requirements to be met in the interim. If the emissions resulting from such different requirements equal or exceed 25 tons a year for a property, the determinations for that property must be reviewed every five years. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter.

§115.455. Approved Test Methods and Testing Requirements.

(a) Approved Test Methods and Testing Requirements. Compliance with the requirements in this division must be determined by applying one or more of the following test methods, as appropriate. As an alternative to the test methods in paragraph (1) of this subsection, the volatile organic compounds (VOC) content of coatings may be determined by using analytical data from the coating and, if necessary dilution solvent, material safety data sheets (MSDS).

(1) The owner or operator shall demonstrate compliance with the VOC limits in §115.453 of this title (relating to Control Requirements), by applying the following test methods, as appropriate. Where a test method also inadvertently measures compounds that are exempt solvents, an owner or operator may exclude these exempt solvents when determining compliance with a VOC limit. The methods include:

(A) Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A);

(B) American Society for Testing and Materials (ASTM) Test Methods D 1186-06.01, D 1200-06.01, D 3794-06.01, D 2832-69, D 1644-75, and D 3960-81;

(C) the United States Environmental Protection Agency (EPA) guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December, 1984;

(D) additional test procedures described in 40 CFR §60.446 (as amended through October 17, 2000 (65 FR 61761)); and

(E) minor modifications to these test methods approved by the executive director.

(2) The owner or operator shall determine compliance with the VOC limits in §115.453(a)(3) of this title by applying the following test methods in addition to paragraph (1) of this subsection, as appropriate. The methods include:

(A) Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Topcoat Operations (EPA-453/R-08-002);

(B) the procedure contained in subparagraph (A) of this paragraph for determining daily compliance with the alternative emission limitation in §115.453(a)(3) of this title for final repair. Calculation of occurrence weighted average for each combination of repair coatings (primer, specific basecoat, clearcoat) must be determined by the following procedure;

(i) the relative occurrence weighted usage calculated as follows for each repair material:
Figure: 30 TAC §115.455(a)(2)(B)(i)

(ii) the occurrence weighted average (Q) in pounds of volatile organic compounds (VOC) per gallon of coating (minus wa-

ter and exempt solvents) as applied, for each potential combination of repair coatings calculated according to this subparagraph;
Figure: 30 TAC §115.455(a)(2)(B)(ii)

(C) the procedure contained in 40 CFR Part 63, Subpart PPPP, Appendix A (as amended through April 24, 2007 (72 FR 20237)), for reactive adhesives; and

(D) the procedure contained in 40 CFR Part 60, Subpart MM (as amended October 17, 2000 (65 FR 61760)) for determining the monthly weighted average for electrodeposition primer.

(3) The owner or operator shall determine compliance with the vapor control system requirements in §115.453 of this title by applying the following test methods, as appropriate:

(A) Methods 1 - 4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;

(B) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(C) Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(D) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375)); or

(E) minor modifications to these test methods approved by the executive director.

(4) The owner or operator of a surface coating process subject to §115.453 of this title shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

(A) The following exemptions apply to capture efficiency testing requirements.

(i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.

(ii) If a source uses a vapor control system designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)), with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system); or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must be calculated using one of the following protocols referenced. Any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA.

(i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.455(a)(4)(B)(i)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.455(a)(4)(B)(ii)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.455(a)(4)(B)(iii)

(iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.455(a)(4)(B)(iv)

(C) The operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.458(a) of this title (relating to Monitoring and Recordkeeping Requirements) must be monitored and recorded during the initial capture efficiency test and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

(5) Test methods other than those specified in paragraphs (1) - (4) of this subsection may be used if approved by the executive director and validated by Method 301 (40 CFR Part 63, Appendix A). For the purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."

(b) Inspection requirements. The owner or operator of each surface coating process subject to §115.453 of this title shall provide samples, without charge, upon request by authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction. The representative or inspector requesting the sample will determine the amount of coating needed to test the sample to determine compliance.

§115.458. Monitoring and Recordkeeping Requirements.

(a) Monitoring requirements. The following monitoring requirements apply to the owner or operator of a surface coating process subject to this division that uses a vapor control system in accordance with §115.453 of this title (relating to Control Requirements). The

owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including:

(1) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;

(2) the total amount of volatile organic compounds (VOC) recovered by carbon adsorption or other solvent recovery systems during a calendar month;

(3) continuous monitoring of carbon adsorption bed exhaust; and

(4) appropriate operating parameters for capture systems and control devices other than those specified in paragraphs (1) - (3) of this subsection.

(b) Recordkeeping requirements. The following recordkeeping requirements apply to the owner or operator of a surface coating process subject to this division.

(1) The owner or operator shall maintain records of the testing data or the material safety data sheets (MSDS) in accordance with the requirements in §115.455(a) of this title (relating to Approved Test Methods and Testing Requirements). The MSDS must document relevant information regarding each coating and solvent available for use in the affected surface coating processes including the VOC content, composition, solids content, and solvent density. Records must be sufficient to demonstrate continuous compliance with the VOC limits in §115.453(a) of this title.

(2) Records must be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable VOC limits. Such records must be sufficient to calculate the applicable weighted average of VOC content for all coatings.

(3) As an alternative to the recordkeeping requirements of paragraph (2) of this subsection, the owner or operator that qualifies for exemption under §115.451(1)(C) of this title (relating to Exemptions) may maintain records of the total gallons of coating and solvent used in each month and total gallons of coating and solvent used in the previous 12 months.

(4) The owner or operator shall maintain, on file, the capture efficiency protocol submitted under §115.455(a)(4) of this title. The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director within 60 days of the actual test date. The owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency or control device destruction or removal efficiency test may be required.

(5) The owner or operator claiming an exemption in §115.451 of this title shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.

(6) Except for specialty coatings, compliance with the recordkeeping requirements of 40 Code of Federal Regulations §63.752 (as amended through September 1, 1998 (63 FR 46534)) (National Emission Standards for Aerospace Manufacturing and Rework Facilities), is considered to represent compliance with the requirements of this section.

(7) Records must be maintained of any testing conducted in accordance with the provisions specified in §115.455(a) of this title.

(8) Records must be maintained a minimum of two years and be made available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.

§115.459. Compliance Schedules.

(a) The owner or operator of a surface coating process subject to this division shall comply with the requirements of this division no later than March 1, 2013.

(b) The owner or operator of each surface coating process that becomes subject to this division on or after the date specified in subsection (a) of this section, shall comply with the requirements in this division no later than 60 days after becoming subject.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2548

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DIVISION 6. INDUSTRIAL CLEANING SOLVENTS

30 TAC §§115.460, 115.461, 115.463 - 115.465, 115.468, 115.469

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new sections are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The new

sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The new sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

§115.460. Applicability and Definitions.

(a) Applicability. Except as specified in §115.461 of this title (relating to Exemptions), the requirements in this division apply to solvent cleaning operations in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions). Residential cleaning is not considered a solvent cleaning operation.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.

(1) Aerosol can--A hand-held, non-refillable container that expels pressurized product by means of a propellant-induced force.

(2) Electrical and electronic components--Components and assemblies of components that generate, convert, transmit, or modify electrical energy. Electrical and electronic components include, but are not limited to, wires, windings, stators, rotors, magnets, contacts, relays, printed circuit boards, printed wire assemblies, wiring boards, integrated circuits, resistors, capacitors, and transistors. Cabinets that house electrical and electronic components are not considered electrical and electronic components.

(3) Janitorial cleaning--The cleaning of building or building components including, but not limited to, floors, ceilings, walls, windows, doors, stairs, bathrooms, furnishings, and exterior surfaces of office equipment, excluding the cleaning of work areas where manufacturing or repair activity is performed.

(4) Magnet wire--Wire used in electromagnetic field application in electrical machinery and equipment such as transformers, motors, generators, and magnetic tape recorders.

(5) Magnet wire coating operation--The process of applying insulation coatings such as varnish or enamel on magnet wire where wire is continuously drawn through a coating applicator.

(6) Medical device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar article, including any component or accessory that is, intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of diseases; intended to affect the structure or any function of the body; or defined in the National Formulary or the United States Pharmacopoeia or any supplement to it.

(7) Medical device and pharmaceutical preparation operations--Medical devices, pharmaceutical products, and associated manufacturing and product handling equipment and material, work surfaces, maintenance tools, and room surfaces that are subject to the United States Federal Drug Administration current Good Manufacturing/Laboratory Practice, or Center for Disease Control or National Institute of Health guidelines for biological disinfection of surfaces.

(8) Polyester resin operation--The fabrication, rework, repair, or touch-up of composite products for commercial, military, or industrial uses by mixing, pouring, manual application, molding, impregnating, injecting, forming, spraying, pultrusion, filament winding, or centrifugally casting with polyester resins.

(9) Precision optics--The optical elements used in electro-optical devices that are designed to sense, detect, or transmit light energy, including specific wavelengths of light energy and changes of light energy levels.

(10) Solvent cleaning operation--The removal of uncured adhesives, inks, and coatings; and contaminants such as dirt, soil, oil, and grease from parts, products, tools, machinery, equipment, vessels, floors, walls, and other work production-related areas.

§115.461. Exemptions.

(a) Solvent cleaning operations located on a property with total actual volatile organic compounds (VOC) emissions of less than 3.0 tons per calendar year from all cleaning solvents, when uncontrolled, are exempt from the requirements of this division, except as specified in §115.468(b)(2) of this title (relating to Monitoring and Recordkeeping Requirements).

(b) The owner or operator of any process or operation subject to another division of this chapter that specifies solvent cleaning operation requirements related to that process or operation is exempt from the requirements in this division.

(c) The following are exempt from the VOC limits in §115.463(1) of this title (relating to Control Requirements):

(1) electrical and electronic components;

(2) precision optics;

(3) numisimatic dies;

(4) resin mixing, molding, and application equipment;

(5) coating, ink, and adhesive mixing, molding, and application equipment;

(6) stripping of cured inks, cured adhesives, and cured coatings;

(7) research and development laboratories;

(8) medical device or pharmaceutical preparation operations;

(9) performance or quality assurance testing of coatings, inks, or adhesives;

(10) architectural coating manufacturing and application operations;

(11) magnet wire coating operations;

(12) semiconductor wafer fabrication;

(13) coating, ink, and adhesive manufacturing;

(14) polyester resin operations;

(15) flexographic and rotogravure printing;

(16) screen printing; and

(17) digital printing.

(d) Cleaning solvents supplied in aerosol cans are exempt from the VOC limits in §115.463(1) of this title if total use for the property is less than 160 fluid ounces per day.

§115.463. Control Requirements.

The following control requirements apply to the owner or operator of a solvent cleaning operation subject to this division.

(1) The owner or operator shall limit the volatile organic compounds (VOC) content of cleaning solutions to:

(A) 0.42 pound of VOC per gallon of solution (lb VOC/gal solution), as applied; or

(B) limit the composite partial vapor pressure of the cleaning solution to 8.0 millimeters of mercury at 68 degrees Fahrenheit (20 degrees Celsius).

(2) As an alternative to paragraph (1) of this section, the owner or operator shall operate a vapor control system capable of achieving an overall control efficiency of 85% by mass. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.465 of this title (relating to Approved Test Methods and Testing Requirements).

(3) The owner or operator of a solvent cleaning operation shall implement the following work practices during the handling, storage, and disposal of cleaning solvents and shop towels:

(A) cover open containers and used applicators;

(B) minimize air circulation around solvent cleaning operations;

(C) properly dispose of used solvent and shop towels; and

(D) implement equipment practices that minimize emissions (e.g. maintaining cleaning equipment to repair solvent leaks).

(4) A solvent cleaning operation that becomes subject to paragraph (1) of this section by exceeding the exemption limits in §115.461 of this title (relating to Exemptions) is subject to the provisions in paragraph (1) of this section even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with paragraph (1) of this section and one of the following conditions is met.

(A) The project that caused throughput or emission rate to fall below the exemption limits in §115.461 of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, the owner or operator shall continue to comply with paragraph (1) of this section for 30 days after the filing of documentation of compliance with that permit by rule.

(B) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

§115.464. Alternate Control Requirements.

For cleaning solvent operations subject to §115.463 of this title (relating to Control Requirements), alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.465. Approved Test Methods and Testing Requirements.

The owner or operator shall demonstrate compliance with the control requirements in §115.463 of this title (relating to Control Requirements) by applying the following test methods, as appropriate. Where a test method also inadvertently measures compounds that are exempt solvents, an owner or operator may exclude these exempt solvents when determining compliance with a volatile organic compounds (VOC) content limit.

(1) Compliance with the VOC content limits in §115.463(1) of this title must be determined by using Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A). As an alternative to Method 24, compliance with the VOC content limits in §115.463(1) of this title may be determined by using analytical data from the material safety data sheet.

(2) The owner or operator subject to §115.463(2) of this title shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

(A) The following exemptions apply to capture efficiency testing requirements.

(i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.

(ii) If a source uses a vapor control system designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)), with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system) or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must be calculated using one of the following protocols referenced. Any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the United States Environmental Protection Agency (EPA).

(i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.465(2)(B)(i)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.465(2)(B)(ii)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from the BE are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.465(2)(B)(iii)

(iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from the BE are measured while operating only the affected facility. All fans and blowers in the BE must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.465(2)(B)(iv)

(C) The operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.468(a) of this title (relating to Monitoring and Recordkeeping Requirements) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

(3) In addition to the requirements of paragraph (2) of this section, the owner or operator shall determine compliance with §115.463(2) of this title by applying the following test methods, as appropriate:

(A) Methods 1 - 4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;

(B) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(C) Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(D) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375)); and

(E) minor modifications to these test methods approved by the executive director.

(4) Methods other than those specified in paragraphs (1) - (3) of this section may be used if approved by the executive director and validated using Method 301 (40 CFR Part 63, Appendix A). For the purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."

§115.468. Monitoring and Recordkeeping Requirements.

(a) Monitoring requirements. The following monitoring requirements apply to the owner or operator of a solvent cleaning operation subject to this division that uses a vapor control system in accordance with §115.463(2) of this title (relating to Control Requirements). The owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including:

(1) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;

(2) the total amount of volatile organic compounds (VOC) recovered by carbon adsorption or other solvent recovery systems during a calendar month;

(3) continuous monitoring of carbon adsorption bed exhaust; and

(4) appropriate operating parameters for vapor control systems other than those specified in paragraphs (1) - (3) of this subsection.

(b) Recordkeeping requirements. The following recordkeeping requirements apply to the owner or operator of a solvent cleaning operation subject to this division.

(1) The owner or operator shall maintain records of the testing data or the material safety data sheet, in accordance with the requirements in §115.465(1) of this title (relating to Approved Test Methods and Testing Requirements). The concentration of all VOC used to prepare the cleaning solution and, if diluted prior to use, the proportions that each of these materials is used must be recorded. Records must be sufficient to demonstrate continuous compliance with the VOC limits in §115.463(1) of this title.

(2) The owner or operator claiming an exemption in §115.461 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.

(3) The owner or operator shall maintain records of any testing conducted in accordance with the provisions specified in §115.465(2) and (3) of this title.

(4) Records must be maintained a minimum of two years and be made available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.

§115.469. Compliance Schedules.

(a) The owner or operator of a solvent cleaning operation subject to this division shall comply with the requirements in this division no later than March 1, 2013.

(b) The owner or operator of a solvent cleaning operation that becomes subject to this division on or after March 1, 2013, shall comply with the requirements in this division no later than 60 days after becoming subject.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2548

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DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

30 TAC §§115.470, 115.471, 115.473 - 115.475, 115.478, 115.479

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new sections are also proposed under THSC §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The new sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The new sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

§115.470. Applicability and Definitions.

(a) Applicability. Except as specified in §115.471 of this title (relating to Exemptions), the requirements in this division apply to the owner or operator of a manufacturing or repair facility using adhesives for any of the adhesive application processes specified in §115.473 of this title (relating to Control Requirements) in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions).

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.

(1) Acrylonitrile-butadiene-styrene or ABS welding--Any process to weld acrylonitrile-butadiene-styrene pipe.

(2) Adhesive--Any chemical substance applied for the purpose of bonding two surfaces together other than by mechanical means.

(3) Adhesive primer--Any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

(4) Aerosol adhesive or adhesive primer--An adhesive or adhesive primer packaged as an aerosol product in which the spray mechanism is permanently housed in a non-refillable can designed for handheld application without the need for ancillary hoses or spray equipment.

(5) Application system--Devices or equipment designed for the purpose of applying an adhesive or adhesive primer to a surface. The devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, and extrusion coaters.

(6) Ceramic tile installation adhesive--Any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

(7) Chlorinated polyvinyl chloride plastic or CPVC plastic welding--A polymer of the vinyl chloride monomer that contains 67% chlorine and is normally identified with a chlorinated polyvinyl chloride marking.

(8) Chlorinated polyvinyl chloride welding or CPVC welding--An adhesive labeled for welding of chlorinated polyvinyl chloride.

(9) Contact adhesive--An adhesive:

(A) designed for application to both surfaces to be bonded together;

(B) allowed to dry before the two surfaces are placed in contact with each other;

(C) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other;

(D) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces; and

(E) does not include rubber cements that are primarily intended for use on paper substrates or vulcanizing fluids that are designed and labeled for tire repair only.

(10) Cove base--A flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

(11) Cove base installation adhesive--Any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

(12) Cyanoacrylate adhesive--Any adhesive with a cyanoacrylate content of at least 95% by weight.

(13) Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all adhesives and adhesive primers subject to the same VOC content limit in §115.473(a) of this title (relating to Control Requirements), divided by the total volume of those adhesives or adhesive primers (minus water and exempt solvent) delivered to the application system each day. Coatings subject to different emission standards in §115.473(a) of this title must not be combined for purposes of calculating the daily weighted average. In addition, determination of compliance is based on each adhesive application process.

(14) Ethylene propylenediene monomer (EPDM) roof membrane--A prefabricated single sheet of elastomeric material composed of ethylene propylenediene monomer and that is field-applied to a building roof using one layer or membrane material.

(15) Flexible vinyl--Non-rigid polyvinyl chloride plastic with a 5.0% by weight plasticizer content.

(16) Indoor floor covering installation adhesive--Any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl-backed carpet, resilient sheet and roll, or artificial grass. Adhesives used to install ceramic tile and perimeter-bonded sheet flooring with vinyl backing onto a non-porous substrate, such as flexible vinyl, are excluded from this definition.

(17) Laminate--A product made by bonding together two or more layers of material.

(18) Metal to urethane/rubber molding or casting adhesive--Any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

(19) Motor vehicle adhesive--An adhesive, including glass-bonding adhesive, used in a process that is not an automobile or light-duty truck assembly coating process, applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.

(20) Motor vehicle glass-bonding primer--A primer, used in a process that is not an automobile or light-duty truck assembly coating process, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Motor vehicle glass-bonding primer includes glass-bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of adhesive or the installation of adhesive-bonded glass.

(21) Motor vehicle weatherstrip adhesive--An adhesive, used in a process that is not an automobile or light-duty truck assembly coating process, applied to weatherstripping materials for the purpose of bonding the weatherstrip material to the surface of the vehicle.

(22) Multipurpose construction adhesive--Any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile, and acoustical tile.

(23) Outdoor floor covering installation adhesive--Any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

(24) Panel installation--The installation of plywood, pre-decorated hardboard or tileboard, fiberglass reinforced plastic, and similar pre-decorated or non-decorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

(25) Perimeter bonded sheet flooring installation--The installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

(26) Plastic solvent welding adhesive--Any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

(27) Plastic solvent welding adhesive primer--Any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

(28) Plastic foam--Foam constructed of plastics.

(29) Plastics--Synthetic materials chemically formed by the polymerization of organic (carbon-based) substances. Plastics are usually compounded with modifiers, extenders, or reinforcers and are capable of being molded, extruded, cast into various shapes and films, or drawn into filaments.

(30) Polyvinyl chloride plastic or PVC plastic--A polymer of the chlorinated vinyl monomer that contains 57% chlorine.

(31) Polyvinyl chloride welding adhesive or PVC welding adhesive--Any adhesive intended by the manufacturer for use in the welding of polyvinyl chloride plastic pipe.

(32) Porous material--A substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, paper and corrugated paperboard. For the purposes of this definition, porous material does not include wood.

(33) Reinforced plastic composite--A composite material consisting of plastic reinforced with fibers.

(34) Rubber--Any natural or manmade rubber substrate, including, but not limited to, styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene, and ethylene propylene diene terpolymer.

(35) Sheet rubber lining installation--The process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These operations also include laminating sheet rubber to fabric by hand.

(36) Single-ply roof membrane--A prefabricated single sheet of rubber, normally ethylene propylenediene terpolymer, that is field-applied to a building roof using one layer of membrane material. For the purposes of this definition, single-ply roof membrane does not include membranes prefabricated from ethylene propylenediene monomer.

(37) Single-ply roof membrane installation and repair adhesive--Any adhesive labeled for use in the installation or repair of single-ply roof membrane. Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes, and ducts that protrude through the membrane. Repair includes gluing the edges of torn membrane together, attaching a patch over a hole, and reapplying flashings to vents, pipes, or ducts installed through the membrane.

(38) Single-ply roof membrane adhesive primer--Any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

(39) Structural glazing--A process that includes the application of adhesive to bond glass, ceramic, metal, stone, or composite panels to exterior building frames.

(40) Subfloor installation--The installation of subflooring material over floor joists, including the construction of any load-bearing joists. Subflooring is covered by a finish surface material.

(41) Thin metal laminating adhesive--Any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line(s) is less than 0.25 mil.

(42) Tire repair--A process that includes expanding a hole, tear, fissure, or blemish in a tire casing by grinding or gouging, applying adhesive, and filling the hole or crevice with rubber.

(43) Waterproof resorcinol glue--A two-part resorcinol-resin-based adhesive designed for applications where the bond

line must be resistant to conditions of continuous immersion in fresh or salt water.

§115.471. Exemptions.

(a) The owner or operator of adhesive application processes located on a property with actual combined emissions of volatile organic compounds (VOC) less than 3.0 tons per calendar year, when uncontrolled, from all adhesives, adhesive primers, and solvents used during related cleaning operations, is exempt from the requirements of this division, except as specified in §115.478(b)(2) of this title (relating to Monitoring and Recordkeeping Requirements).

(b) The following adhesive and adhesive primer application processes are exempt from the VOC limits in §115.473(a)(1) of this title (relating to Control Requirements):

(1) adhesives or adhesive primers being tested or evaluated in any research and development, quality assurance, or analytical laboratory;

(2) adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace or undersea-based weapons systems;

(3) adhesives or adhesive primers used in medical equipment manufacturing operations;

(4) cyanoacrylate adhesive application processes;

(5) aerosol adhesive and aerosol adhesive primer application processes;

(6) polyester-bonding putties used to assemble fiberglass parts at fiberglass boat manufacturing properties and at other reinforced plastic composite manufacturing properties; and

(7) processes using adhesives and adhesive primers that are supplied to the manufacturer in containers with a net volume of 16 ounces or less or a net weight of 1.0 pound or less.

(c) The owner or operator of any process or operation subject to another division of this chapter that specifies VOC content limits for adhesives or adhesive primers used during any of the adhesive application processes listed in §115.473(a) of this title, is exempt from the requirements in this division.

§115.473. Control Requirements.

(a) The owner or operator shall limit volatile organic compounds (VOC) emissions from all adhesives and adhesive primers used during the specified adhesive application processes to the following VOC content limits in pounds of VOC per gallon of adhesive (lb VOC/gal adhesive) (minus water and exempt compounds), as delivered to the application system. These limits are based on the daily weighted average of all adhesives delivered to the adhesive primer or adhesive application system each day. If an adhesive is used to bond dissimilar substrates together, then the applicable substrate category with the least stringent VOC content limit applies.
Figure: 30 TAC §115.473(a)

(1) The owner or operator shall meet the VOC content limits in this subsection by using one of the following options.

(A) The owner or operator shall apply low-VOC adhesives.

(B) The owner or operator shall apply low-VOC adhesives in combination with a vapor control system.

(2) As an alternative to paragraph (1) of this subsection, the owner or operator may operate a vapor control system capable of achieving an overall control efficiency of 85% of the VOC emissions from adhesives and adhesive primers. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.475(3) and (4) of this title (relating to Approved Test Methods and Testing Requirements). If the owner or operator complies with the overall control efficiency option under this paragraph, then the owner or operator is exempt from the application system requirements of subsection (b) of this section.

(3) An owner or operator applying low-VOC coatings in combination with a vapor control system to meet the VOC content limits in paragraph (1) of this subsection shall use the following equation to determine the minimum overall control efficiency necessary to demonstrate equivalency. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.475(3) and (4) of this title.
Figure: 30 TAC §115.473(a)(3)

(b) The owner or operator of any adhesive application process subject to this division shall not apply adhesives unless one of the following application systems is used:

(1) electrostatic spray;

(2) high-volume, low-pressure spray (HVLP);

(3) flow coat;

(4) roll coat or hand application, including non-spray application methods similar to hand or mechanically powered caulking gun, brush, or direct hand application;

(5) dip coat;

(6) airless spray;

(7) air-assisted airless spray; or

(8) other adhesive application system capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray. For the purpose of this requirement, the transfer efficiency of HVLP spray is assumed to be 65%.

(c) The following work practices apply to the owner or operator of each adhesive or adhesive primer application process subject to this division.

(1) For the storage, mixing, and handling of all adhesives, thinners, and adhesive-related waste materials, the owner or operator shall:

(A) store all VOC-containing adhesives, adhesive primers, and process-related waste materials in closed containers;

(B) ensure that mixing and storage containers used for VOC-containing adhesives, adhesive primers, and process-related waste materials are kept closed at all times;

(C) minimize spills of VOC-containing adhesives, adhesive primers, and process-related waste materials; and

(D) convey VOC-containing adhesives, adhesive primers, and process-related waste materials from one location to another in closed containers or pipes.

(2) For the storage, mixing, and handling of all surface preparation materials and cleaning materials, the owner or operator shall:

(A) store all VOC-containing cleaning materials and used shop towels in closed containers;

(B) ensure that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(C) minimize spills of VOC-containing cleaning materials;

(D) convey VOC-containing cleaning materials from one location to another in closed containers or pipes; and

(E) minimize VOC emissions from the cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is capture in closed containers.

(d) An adhesive application process that becomes subject to subsection (a) of this section by exceeding the exemption limits in §115.471(a) of this title (relating to Exemptions) is subject to the provisions in subsection (a) of this section even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with subsection (a) of this section and one of the following conditions is met.

(1) The project that caused a throughput or emission rate to fall below the exemption limits in §115.471(a) of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification, respectively). If a permit by rule is available for the project, the owner or operator shall continue to comply with subsection (a) of this section for 30 days after the filing of documentation of compliance with that permit by rule.

(2) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

§115.474. Alternate Control Requirements.

For the owner or operator of an adhesive application process subject to this division, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.475. Approved Test Methods and Testing Requirements.

The owner or operator shall demonstrate compliance with the volatile organic compounds (VOC) content limits in §115.473(a) of this title (relating to Control Requirements) by applying the following test methods, as appropriate. Where a test method also inadvertently measures compounds that are exempt solvents, an owner or operator may exclude these exempt solvents when determining compliance with a VOC content limit. As an alternative to the test methods in this section, the VOC content of an adhesive may be determined by using analytical data from the material safety data sheet.

(1) Except for reactive adhesives, compliance with the VOC content limits in §115.473(a) of this title must be determined using Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A).

(2) Compliance with the VOC content limits for reactive adhesives in §115.473(a) of this title must be determined using 40 CFR Part 63, Subpart PPPP, Appendix A, (as amended through April 24, 2007 (72 FR 20237)).

(3) The owner or operator of an adhesive application process subject to §115.473 of this title shall measure the capture efficiency using the applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

(A) The following exemptions apply to capture efficiency testing requirements.

(i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.

(ii) If a source uses a vapor control system designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control efficiency of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)), with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system) or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control efficiency (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must be calculated using one of the following protocols referenced unless a suitable alternative protocol is approved by the executive director and the United States Environmental Protection Agency (EPA).

(i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.475(3)(B)(i)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.475(3)(B)(ii)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility. All fans and blowers in the BE must be op-

erating as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.475(3)(B)(iii)

(iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility. All fans and blowers in the BE must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.475(3)(B)(iv)

(C) The operating parameters selected for monitoring the capture system for compliance with the requirements in §115.478(a) of this title (relating to Monitoring and Recordkeeping requirements) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

(4) In addition to the requirements of paragraph (3) of this section, the owner or operator shall determine compliance with §115.473(a)(2) of this title by applying the following test methods, as appropriate:

(A) Methods 1 - 4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;

(B) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(C) Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(D) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375)); and

(E) minor modifications to these test methods approved by the executive director.

(5) Methods other than those specified in paragraphs (1) - (4) of this section may be used if approved by the executive director and validated using Method 301 (40 CFR Part 63, Appendix A). For the purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."

§115.478. Monitoring and Recordkeeping Requirements.

(a) Monitoring requirements. The following monitoring requirements apply to the owner or operator of an adhesive application process subject to this division that uses a vapor control system in accordance with §115.473(a)(2) of this title (relating to Control Requirements). The owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including:

(1) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;

(2) the total amount of volatile organic compounds (VOC) recovered by carbon adsorption or other solvent recovery systems during a calendar month;

(3) continuous monitoring of carbon adsorption bed exhaust; and

(4) appropriate operating parameters for vapor control systems other than those specified in paragraphs (1) - (3) of this subsection.

(b) Recordkeeping requirements. The following recordkeeping requirements apply to the owner or operator of an adhesive application process subject to this division.

(1) The owner or operator shall maintain records of the testing data or the material safety data sheet, in accordance with the requirements in §115.475(1) of this title (relating to Approved Test Methods and Testing Requirements). Records must be sufficient to demonstrate continuous compliance with the VOC limits in §115.473(a) of this title.

(2) The owner or operator of an adhesive or adhesive primer application process claiming an exemption in §115.471 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.

(3) The owner or operator shall maintain records of any testing conducted at an affected facility in accordance with the provisions specified in §115.475(3) and (4) of this title.

(4) Records must be maintained a minimum of two years and made available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.

§115.479. Compliance Schedules.

(a) The owner or operator of an adhesive application process subject to this division shall comply with the requirements in this division no later than March 1, 2013.

(b) The owner or operator of an adhesive application process that becomes subject to this division on or after March 1, 2013, shall comply with the requirements in this division no later than 60 days after becoming subject.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 34. PUBLIC FINANCE

PART 10. TEXAS PUBLIC FINANCE AUTHORITY

CHAPTER 227. ADMINISTRATION

34 TAC §§227.1, 227.3, 227.5

The Texas Public Finance Authority (Authority) proposes new 34 TAC Chapter 227, concerning administration, including new §§227.1, 227.3, and 227.5, regarding the Authority's policy on the use of Alternative Dispute Resolution (ADR) measures, Negotiated Rulemaking, and Alternative Dispute Resolution Procedures for Contract Claims.

New §227.1 proposes to adopt, through incorporation by reference, the Model Guidelines of the State Office of Administrative Hearings on Alternative Dispute Resolution Procedures in accordance with the requirements of Government Code Chapter 2009, for use in negotiated rulemaking and for resolution of disputes.

New §227.3 outlines the Authority's policy for the use of negotiated rulemaking, whether formal or informal.

New §227.5 proposes to adopt, through incorporation by reference, the Model Guidelines for Contract Claims developed by the State Office of Administrative Hearings and the Office of the Attorney General.

The guidelines to be adopted by reference provide guidance for the use of ADR procedures when undertaking a negotiated rulemaking pursuant to Government Code Chapter 2008, or when attempting to resolve an internal dispute or a contract claim pursuant to Government Code Chapter 2260.

Susan K. Durso, General Counsel, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rules. There will be no effect on local employment or the local economy as a result of the proposed rules.

Ms. Durso has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of the proposed sections will be that the Authority may be able to resolve any disputes or decrease the likelihood of litigation arising from disputes if ADR measures are effective. There is no anticipated economic cost to persons who are required to comply with the rules. There is no anticipated difference in cost of compliance between micro, small, and large businesses and no anticipated economic cost for these entities. The Authority is required to adopt a policy for the use of ADR procedures in resolving internal and external disputes and to use negotiated rulemaking procedures when appropriate.

Comments may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Susan K. Durso, General Counsel, Texas Public Finance Authority, 300 W. 15th Street, Room 411, Austin, Texas 78701, or by electronic mail to *susan.durso@tpfa.state.tx.us* with the words "Proposed Rules" in the subject line. Comments should be presented in the order of the proposed rules. Comments not timely received or if submitted electronically without the words "Proposed Rules" in the subject line may not be considered.

The new rules are proposed pursuant to: (1) Government Code §1232.067, which authorizes the Texas Public Finance Authority's Board of Directors (Board) to adopt rules necessary for the Board to administer its functions; (2) Government Code §1232.073, which requires the Board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 for the adoption of Authority rules and appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the Authority's jurisdiction; and (3) Government Code, Chapter 2260, which sets forth procedures for resolving contract claims between state agencies and vendors. Government Code §1232.073 was enacted pursuant to House Bill 2251, 82nd Legislature, Regular Session (2011).

The new rules affect the Government Code Chapters 1232, 2008, 2009, and 2260. No other statutes, articles, or codes are affected by this proposal.

§227.1. Authority's Policy on the Use of Alternative Dispute Resolution Measures.

(a) It is the Authority's policy to encourage the use of alternative dispute resolution (ADR) procedures to resolve disputes internally and externally when it best serves the public interest as determined by the Executive Director after consultation with the Authority's Dispute Resolution Coordinator. ADR procedures are intended to supplement and not limit other dispute resolution procedures available for use by the Authority.

(b) The Authority adopts by reference the model guidelines for Alternative Dispute Resolution Procedures developed by the State Office of Administrative Hearings (Model Guidelines). The Model Guidelines are located at the State Office of Administrative Hearings internet website: *http://www.soah.state.tx.us/about-us/mediations/model_guidelines.asp.*

(c) The General Counsel is designated the Authority's Dispute Resolution Coordinator to provide training, to coordinate the implementation of the policy, to serve as a resource for any training needed to implement alternative dispute resolution procedures, and to collect data concerning the effectiveness of the implemented procedures.

§227.3. Use of Negotiated Rulemaking.

(a) It is the Authority's policy to encourage public participation in the rulemaking process whether rulemaking is undertaken pursuant to traditional rulemaking procedures under Government Code Chapter 2001 or negotiated rulemaking procedures under Government Code Chapter 2008.

(b) In determining whether to use negotiated rulemaking in lieu of traditional rulemaking procedures, the Authority will consider:

(1) whether a negotiated rulemaking:

(A) is more likely to result in workable or reasonable rule; or

(B) to offer opportunity for a creative solution to a problem; or

(2) whether the rules to be drafted are likely:

(A) to be complex, or controversial; or

(B) to affect disparate groups.

(c) If the Authority determines that negotiated rulemaking is appropriate, the Authority may elect to develop a draft rule either through an informal negotiated rulemaking process or through a formal negotiated rulemaking process.

(d) The Authority may consider engaging in formal negotiated rulemaking when it is likely that a negotiated rulemaking committee will reach a consensus on a draft rule in a timely manner. The Authority will also consider the factors specified in Government Code Chapter 2008 when deciding whether to pursue formal negotiated rulemaking.

(e) If the Authority determines that formal negotiated rulemaking is not feasible or appropriate, the Authority may engage in informal negotiated procedures or traditional rulemaking procedures, at its election.

§227.5. Use of Alternative Dispute Resolution Procedures for Contract Claims.

(a) The Authority adopts by reference the model guidelines for resolving disputes with contractors developed by the State Office of Administrative Hearings and the Office of the Attorney General (Model

Guidelines for Contract Claims). The Model Guidelines for Contract Claims are located at the Office of Attorney General's internet website: *https://www.oag.state.tx.us/notice/model_rules.pdf.*

(b) Upon receipt of notice of a contract claim under Government Code Chapter 2260, the Executive Director in consultation with the Authority's Dispute Resolution Coordinator shall determine whether use of an alternative dispute resolution (ADR) procedure is an appropriate method for resolving the dispute.

(c) If use of an ADR procedure is determined to be an appropriate method for resolving a contract claim, the Executive Director shall recommend to the claimant that the parties use the Model Guidelines for Contract Claims to structure a negotiation or mediation process in a manner that is most appropriate for the particular dispute considering the contract's complexity, subject matter, dollar amount, or method and time of performance.

(d) If the claimant is amenable to use of an ADR procedure to resolve the claimant's dispute with the Authority, the Authority's General Counsel and Dispute Resolution Coordinator, if not the General Counsel, will collaborate with the claimant to select an appropriate procedure for dispute resolution, and will implement the agreed upon procedure using the Model Guidelines for Contract Claims.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102132
Susan Durso
General Counsel
Texas Public Finance Authority
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 463-3143

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 95. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

SUBCHAPTER A. BEHAVIOR MANAGEMENT

37 TAC §95.5

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Youth Commission (TYC) proposes the repeal of §95.5, concerning Referral to Criminal Court. This rule describes the former process used within TYC facilities to initiate criminal proceedings against youth who commit crimes while in the agency's custody. This rule is no longer needed due to reforms enacted by Senate Bill 103 (80th Texas Legislature). Senate Bill 103 created statutory responsibilities for the TYC Office of Inspector General to investigate crimes committed at TYC facilities and for the Special Prosecution Unit to prosecute those crimes.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the repeal is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the repeal.

Cris Love, Chief Inspector General, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be the provision of agency rules that are current and consistent with state laws.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

The repeal is proposed under Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed repeal implements Human Resources Code, §61.034.

§95.5. Referral to Criminal Court.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102134
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 424-6014

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PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§148.40 - 148.55

The Texas Board of Pardons and Paroles proposes new 37 TAC Chapter 148, §§148.40 - 148.55, concerning sex offender conditions of parole or mandatory supervision. New Chapter 148, §§148.40 - 148.55, is proposed to provide a procedure for panel members when considering the imposition of sex offender conditions for releasees not convicted of a sex offense.

Rissie Owens, Chair of the Board, has determined that for the first five-year period the proposed new rules are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the sections.

Ms. Owens also has determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of enforcing the new rules will be to provide a releasee with written notice that sex offender conditions may be imposed as a condition of his/her parole or mandatory super-

vision; disclosure of the evidence being presented against the releasee; a hearing; and a written statement of the evidence relied upon and the reasons sex offender conditions were imposed as a condition of his/her parole or mandatory supervision. There is no anticipated economic cost to persons required to comply with the new rules as proposed. There will be no effect on small businesses. No regulatory flexibility analysis required by House Bill 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rules are proposed under §§508.036, 508.0441, 508.045, 508.141 and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

No other statutes, articles, or codes are affected by these new rules.

§148.40. Purpose.

This chapter only applies to releasees not convicted of a sex offense.

§148.41. Public Hearings.

(a) All hearings on matters not confidential or privileged by law, or both, shall be open to the public.

(b) Appropriate federal and state constitutional provisions, statutes, regulations, and judicial precedent establishing the confidential or privileged nature of information presented shall be given effect by the panel member.

(c) To effect this provision, the panel member shall have the authority to close the hearing to the extent necessary to protect against the improper disclosure of confidential and/or privileged information.

§148.42. Authority of a Panel Member.

(a) A panel member shall have the following authority:

(1) to administer oaths;

(2) to examine witnesses;

(3) to rule on the admissibility of evidence;

(4) to rule on motions and objections;

(5) to recess any hearing from time to time and place to place;

(6) to reopen, upon request of a panel member, or reconvene, or both, any hearing;

(7) to issue on behalf of the board subpoenas and other documents authorized by and signed by a board member in accordance with statutory authority;

(8) to maintain order and decorum throughout the course of any proceedings;

(9) to collect documents and exhibits comprising the record of the hearing;

(10) to prepare the report of the hearing to the parole panel for disposition of the case; and

(11) to determine the weight to be given to particular evidence or testimony and to determine the credibility of witnesses.

(b) If a panel member fails to complete an assigned case, another panel member may complete the case without the necessity of duplicating any duty or function performed by the previous panel member.

§148.43. Ex Parte Consultations.

Unless required for the disposition of matters authorized by law, the panel members assigned to render a decision in a matter may not communicate, directly or indirectly, in connection with any issue of fact or law with any party, except on notice and opportunity for all parties to participate.

§148.44. Motions.

Unless made during a hearing, motions shall be made in writing, set forth the relief or order sought, and shall be filed with the panel member assigned to conduct the hearing. Motions based on matters which do not appear of record shall be supported by affidavit.

§148.45. Witnesses.

(a) The panel member may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the panel member exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 of this title (relating to Definition of Terms) and includes:

(A) the releasee;

(B) the releasee's attorney; and

(C) no more than one representative of the TDCJ-PD who has acted or served in the capacity of supervising, advising, or agent officer in the case.

(2) In the event that it appears to the satisfaction of the panel member that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue of fact or law, then the panel member, in his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the panel member specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing, and upon good cause determined by the panel member, may present testimony by written statement.

§148.46. Opinion and Expert Testimony.

All witnesses who are testifying in the form of an opinion or inference shall submit a written report to the other party and the panel member in the manner prescribed by §148.47 of this title (relating to Evidence).

§148.47. Evidence.

(a) No later than five (5) days prior to the scheduled hearing, all parties shall submit all documents that will be introduced into evidence at the hearing to the other party and the panel member.

(b) All parties shall have an opportunity to present evidence in the form of testimony and written documentation. The panel member shall determine the order of presentation of evidence.

(c) The Texas Rules of Evidence shall apply. When necessary to ascertain facts not reasonably susceptible of proof under these rules, evidence not admissible there under may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(d) The panel member shall give effect to the rules of privilege recognized by law.

(e) Relevant testimony shall be confined to the subject of the pending matter. In the event any party at a hearing shall pursue a line of questioning that is, in the opinion of the panel member, irrelevant, incompetent, unduly repetitious, or immaterial, such questioning shall be terminated.

(f) Relevant staff reports may be admitted as evidence in any hearing.

(g) Evidence may be stipulated by agreement of all parties.

(h) Objections may be made and shall be ruled upon by the panel member, and any objections and the rulings thereon shall be noted in the record.

§148.48. Record.

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant TDCJ-PD documents, staff memoranda or reports submitted to or considered by the parole panel involved in making the decision; and any decision or order of the parole panel presiding at the hearing.

(b) All hearings shall be electronically recorded in their entirety, and at the board's option shall be either copied or transcribed upon the request and deposit of estimated costs by any party.

§148.49. Decisions.

(a) A final decision or order shall be in writing and delivered to the releasee or attorney as required by §148.53 of this title (relating to Final Panel Disposition).

(b) The releasee or attorney shall be notified in writing and provided with a copy of the report of the parole panel and notice of the right to submit a petition to reopen the hearing.

§148.50. Procedure after Waiver of Hearing.

The parole panel of the board may accept a waiver of the hearing provided that a waiver of the hearing includes the following:

(1) information that releasee was served with written notice of the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender conditions may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the panel member specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision maker; and

(F) opportunity to waive in writing the right to a hearing; and

(2) information TDCJ-PD relied upon to identify the releasee as a sex offender.

§148.51. Scheduling of Hearing.

Upon request, the panel member or his/her designee shall schedule the hearing unless:

(1) fewer than seven calendar days have elapsed from the time the releasee received notice; or

(2) information has not been presented to the panel member or his/her designee that the releasee was served with the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender conditions may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the panel member specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision maker; and

(F) opportunity to waive in writing the right to a hearing.

§148.52. Hearing.

(a) The panel member shall conduct the hearing for the purpose of determining whether sex offender conditions may be imposed as a special condition of release.

(b) The parole panel must determine, as shown by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control.

(c) At the close of the hearing, the panel member shall collect, prepare and forward to the other panel members:

(1) all documents;

(2) a summary report of the hearing with a written statement as to the evidence relied upon to make a finding or no finding that the releasee constitutes a threat to society by reason of his/her lack of sexual control; and

(3) and the recording of the hearing.

§148.53. Final Panel Disposition.

(a) After reviewing the evidence in the summary report of the hearing, the parole panel shall make final disposition of the case by taking one of the following actions:

(1) impose sex offender conditions; or

(2) deny imposition of sex offender conditions.

(b) The releasee or attorney shall be notified in writing and provided a copy of the summary report of the hearing and notice of the right to submit a petition to reopen the hearing.

§148.54. Releasee's Motion to Reopen Hearing.

(a) The releasee or releasee's attorney shall have 30 days from the date of the parole panel's decision to request a reopening of the case for any substantial error in the process.

(b) A request to reopen the hearing submitted later than 30 days from the date of the parole panel's decision will not be considered unless under exceptional circumstances including but not limited to:

(1) judicial order requiring a hearing; or

(2) initial decision was made without opportunity for a hearing or waiver.

(c) Any such request for reopening made under this section must be in writing and delivered to the board or placed in the United States mail and addressed to the Texas Board of Pardons and Paroles, General Counsel, 8610 Shoal Creek Boulevard, Austin, Texas 78757.

(d) On transmittal, a parole panel designated by the chair other than the original parole panel shall dispose of the motion by:

(1) granting of the motion and ordering that the hearing be reopened for a stated specified and limited purpose;

(2) denial of the motion; or

(3) reversal of the parole panel decision previously entered.

(e) The releasee and attorney, if any, shall be notified in writing of the parole panel's decision.

§148.55. Procedure after Motion to Reopen is Granted; Time; Rights of the Releasee; Final Disposition.

(a) When the parole panel disposes of a releasee's motion to reopen under §148.54 of this title (relating to Releasee's Motion to Reopen Hearing) by granting said motion to reopen the hearing, the case shall be disposed of or referred to a panel member for final disposition in accordance with this section and the previous disposition of the case made by the parole panel under §148.53 of this title (relating to Final Panel Disposition) shall be set aside and shall be of no force and effect.

(b) The purpose of the further proceedings before the panel member under this section shall be as specified by the parole panel in its order granting the releasee's motion to reopen pursuant to §148.54 of this title.

(c) When the panel member convenes the reopening of the hearing, he/she shall have before him/her the entire record previously compiled in the case, including:

(1) the record, report, and decision of the hearing (§148.52 of this title, relating to Hearing) collected or prepared by the panel member originally assigned to the case;

(2) any amendments, supplements, or modifications of the record, report, or decision as developed through prior reopenings of the case;

(3) the releasee's motion to reopen the hearing under §148.54 of this title; and

(4) any transmittal submitted to the parole panel with the recommendation from board staff. Any transmittal submitted to the parole panel by the general counsel constitutes legal advice which is confidential under law, and shall not be released to the public as part of the hearing packet.

(d) At the conclusion of the proceedings before the panel member, or within a reasonable time thereafter, the parole panel shall make final disposition of the case by taking one of the following actions in any manner warranted by the evidence:

(1) continue the parole panel's action; or

(2) withdraw the imposition of special condition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102097
Bettie Wells
General Counsel
Texas Board of Pardon and Paroles
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 406-5388

CHAPTER 149. MANDATORY SUPERVISION

SUBCHAPTER C. HEARING FOR IMPOSITION OF SEX OFFENDER TREATMENT AND/OR SEX OFFENDER REGISTRATION

37 TAC §§149.40 - 149.55

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Pardons and Paroles proposes the repeal of 37 TAC §§149.40 - 149.55, concerning a hearing for the imposition of sex offender treatment and/or sex offender registration. These sections are proposed for repeal to delete the language within the rules and conditions of mandatory supervision because recent case law states this language applies to all offenders whether on parole or mandatory supervision.

Rissie Owens, Chair of the Board, has determined that for the first five-year period the repeal of the sections is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the repeal as proposed.

Ms. Owens also has determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of enforcing the repeal will be to comply with federal case law requiring the Texas Board of Pardons and Paroles to conduct a hearing for all offenders whether on parole or mandatory supervision. There is no anticipated economic cost to persons required to comply with the proposal. There will be no effect on small businesses. No regulatory flexibility analysis required by House Bill 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The repeal is proposed under §§508.036, 508.0441 and 508.045, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision.

Cross-reference to Statute: Government Code, Chapter 2002.

§149.40. Purpose.
§149.41. Public Hearings.
§149.42. Authority of a Panel Member.
§149.43. Ex Parte Consultations.
§149.44. Motions.
§149.45. Witnesses.
§149.46. Opinion and Expert Testimony.
§149.47. Evidence.
§149.48. Record.
§149.49. Decisions.
§149.50. Procedure after Waiver of Hearing.
§149.51. Scheduling of Hearing.
§149.52. Hearing.
§149.53. Final Panel Disposition.
§149.54. Releasee's Motion To Reopen Hearing.
§149.55. Procedure after Motion To Reopen Is Granted; Time; Rights of the Releasee; Final Disposition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102095
Bettie Wells
General Counsel
Texas Board of Pardon and Paroles
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 406-5388

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.40

The Texas Board of Criminal Justice (TBCJ) proposes amendments to §163.40, concerning Substance Abuse Treatment. The proposed amendments are necessary to add clarity.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for each year of the first five years the rule will be in effect, enforcing, or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, is to ensure consistency in the operation of substance abuse treatment programs.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §509.003 and §509.015.

Cross Reference to Statutes: Texas Government Code §492.013.

§163.40. Substance Abuse Treatment.

(a) Definitions. These [~~The following~~] words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Admission" is the [~~--The~~] administrative process and procedure performed to accept an offender into a treatment program or facility.

(2) "Aftercare" is the counseling [~~--Counseling~~] and community based support services that are designed to provide continued support for treatment delivered in a residential or outpatient program.

(3) "Aftercare Caseloads" is the supervision of [~~--Supervision~~] and support services for offenders who have completed a substance abuse treatment program.

(4) "Assessment" is a [~~--A~~] process conducted by a qualified credentialed [~~credential~~] counselor or counselor intern [~~(QCC)~~] trained to administer a structured interview to determine the nature and extent of an offender's chemical abuse, dependency, or addiction, and to assist in making an appropriate referral. Other criminogenic risks and [~~/~~] needs will be assessed and incorporated into the individual treatment plan.

(5) "Best Practices" [~~--In these standards, Best Practices~~] are evidence based [~~evidence-based~~] substance abuse treatment programs that address concepts such as criminogenic risks and [~~/~~] needs, responsivity, and cognitive behavioral [~~cognitive-behavioral~~] treatment, and programs that possess the following hallmarks:

(A) Validated [~~validated~~] treatment assessments that include criminogenic risks and needs [~~/need~~] factors;

(B) A [~~a~~] treatment regimen that focuses on changing criminogenic risks and [~~/~~] needs, behaviors, and thinking patterns;

(C) A [~~a~~] treatment regimen that includes a specific, cognitive behavioral [~~cognitive-behavioral~~] program that has been recognized in professional criminal justice journals;

(D) Responsivity [~~responsivity~~] in addressing offenders' needs and employment of qualified staff; and

(E) Measurable [~~measurable~~] outcomes to reduce substance abuse, dependency, or addiction as well as [~~and~~] other criminogenic risks and [~~/~~]needs.

(6) "Chemical Dependency" is a substance related disorder [~~--Substance-related disorders~~] as defined [~~that term is used~~] in the most recent published edition of the *Diagnostic and Statistical Manual of Mental Disorders* [~~(DSM)~~].

(7) "Continuum of Care" is a [--A] system that provides for the uninterrupted provision of essential services from initial assessment through completion of treatment.

(8) "Counseling" is face-to-face interaction [--Face-to-face interactions] between offenders and counselors to help offenders identify, understand, and resolve [their] personal issues and problems related to their substance abuse or chemical dependency. Counseling may take place in groups or in individual meetings.

(9) "Counselor" is a [-- A qualified credentialed counselor,] graduate or counselor intern working towards licensure that would certify the individual [qualify them] to be a qualified credentialed counselor [(QCC)].

(10) "Counselor Intern" (CI) is a person seeking a license as a chemical dependency counselor who is registered with the Texas Department of State Health Services (DSHS) and pursuing a course of training in chemical dependency counseling at a registered clinical training institute or under the supervision of a certified supervisor. [--An advanced student or graduate in a professional field gaining supervised professional experience.]

(11) "Criminogenic Risk and [/]Needs" are dynamic [--Dynamic] risk factors that are directly related to crime production, such as antisocial peers; antisocial beliefs, values, and attitudes; substance abuse, dependency, or addiction; anger or [/]hostility; poor self-management skills; inadequate social skills; poor attitude toward work or [/]school; and poor family dynamics.

(12) "Detoxification" is chemical [--Chemical] dependency treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in an offender's body, manage withdrawal symptoms, and encourage the offender to continue ongoing treatment for chemical dependency.

(13) "Direct Care Staff" is staff [--Staff] responsible for providing treatment, care, supervision, or other direct client services that involve face-to-face contact with an offender.

(14) "Discharge" is formal [--Formal,] documented termination of services.

(15) "Discharge Summary" is a [--A] written report of the offender's progress and participation while in treatment, including a discharge plan that provides an aftercare or [/]supervision plan designed to sustain progress for offenders successfully completing treatment.

(16) "Education" is [--Educational] instruction; a planned, structured presentation of information that [which] is related to substance abuse or chemical dependency. Education is not considered counseling.

(17) "Emergency" is a [--A] situation requiring immediate attention and action to treat or prevent physical or emotional harm or illness.

(18) "Evaluation" is a [--A] process conducted by a community supervision officer (CSO) trained to administer the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) [TDCJ-CJAD] Substance Abuse Evaluation [(SAE)] instrument to determine the nature and extent of an offender's chemical abuse, dependency, or addiction to assist in making an appropriate referral. Other criminogenic risks and[risk/]needs will be assessed and incorporated into the individual treatment plan.

(19) "Facility" is the [--The] physical location of the treatment program operated by, for, or with funding from the TDCJ CJAD [TDCJ-CJAD]. Some locations may be secured facilities for inpatient [in-patient] treatment; other programs may be offered at locations as outpatient treatment.

(20) "Graduate" is an individual who has successfully completed, or been exempted from, supervised work experience and who is still registered with the DSHS as a CI, as defined by the DSHS. [--A counselor intern who has successfully completed education and work experience requirements prior to licensure by the Texas Department of State Health Services (formerly Texas Commission on Alcohol and Drug Abuse).]

(21) "Grievance" is a [--A] formal complaint limited to matters affecting the complaining offender personally and limited to matters that the facility or [/]program has the authority to remedy.

(22) "Intake" is the [--The] process of gathering information to determine if an offender is eligible and appropriate for services as well as[, and] providing information to the offender about a program's services and rules.

(23) "Intensive Outpatient Treatment" is an outpatient treatment program that delivers no less than six hours per week of chemical dependency counseling.

(24) [(23)] "Life Skills Training" is a [--A] structured program of training, based upon a written curriculum and provided by qualified staff designed to help offenders with social competencies, such as communication and social interaction, stress management, problem solving, decision making, and management of daily responsibilities.

(25) [(24)] "Primary Counselor" is an [--An] individual working directly with and [being] responsible for the treatment of the offender.

(26) [(25)] "Qualified[,] Credentialed Counselor (QCC)" is a [--A] licensed chemical dependency counselor [(LCDC)] or one of the practitioners listed below who is licensed and in good standing in the state of Texas as defined by the DSHS [following professionals]:

(A) Licensed [licensed] professional counselor [(LPC)];

(B) Licensed [licensed] master social worker [(LMSW)];

(C) Licensed [licensed] marriage and family therapist [(LMFT)];

(D) Licensed [licensed] psychologist;

(E) Licensed [licensed] physician (MD or DO);

(F) Licensed [licensed] physician's assistant;

(G) Certified [certified] addictions registered nurse [(CARN)]; or

(H) Licensed [licensed] psychological associate; and

(I) Nurse [nurse] practitioner recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with specialty in psyche-mental health [(APN-P/MH)].

(27) [(26)] "Responsivity" is matching [--Matching] the characteristics of the offender with the program modality, and the knowledge, skills, and abilities of the staff. It includes offender's learning style and readiness for treatment; the quality of the treatment relationship; and the staff's therapeutic approach, cultural competency, use of reinforcement, and modeling.

(28) [(27)] "Screening" is the [--The] initial stage of a process when [in which] it is determined whether [if] an offender has

a chemical dependency problem that may require further assessment or evaluation.

(29) [~~(28)~~] "Senior Counselor, [~~/~~]Unit Manager, or [~~/~~] Unit Supervisor" is a [~~--A~~] supervisory staff member who directs, monitors, and oversees the work performance of subordinate staff members.

(30) [~~(29)~~] "Special Needs Populations" are offenders [~~-- Offenders~~] who have significant problems in the areas of mental health, diminished intellectual capacity, or medical needs.

(31) [~~(30)~~] "Structured Activity" is a [~~--A~~] planned, interactive, scheduled event that is overseen by staff in which participants actively take part in an activity related to recovery, health, life skills, or interpersonal skills.

(32) "Supportive Outpatient Treatment" is an outpatient treatment program that delivers no less than two hours per week of chemical dependency counseling.

(33) [~~(31)~~] "Treatment" is a [~~--A~~] planned, structured, and organized program, either residential or nonresidential [~~non-residential~~], designed to initiate and promote an offender's chemical free [~~chemical-free~~] status or to maintain the offender free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(34) [~~(32)~~] "Treatment Team" is the [~~-- The treatment~~] team consisting [~~shall consist~~] of at least the offender, the offender's counselor, and a CSO [~~and/~~]or residential CSO [~~(~~]when appropriate[~~)~~].

(b) Compliance. Compliance with TDCJ CJAD [~~TDCJ-CJAD~~] substance abuse treatment standards is required of all programs that provide substance abuse treatment and are funded directly or indirectly or managed by the TDCJ CJAD [~~TDCJ-CJAD~~]. Programs and facilities providing only substance abuse education are not subject to these standards.

(c) Accreditation of Personnel and [~~&~~] Staff Development[~~/Accreditation~~]. The employer shall ensure that employees acquire and maintain any credentials, licensing, certifications, or continuing education required to perform their duties, with copies kept in their personnel files.

(d) Admissions and Removals.

(1) Eligibility. [~~--~~] Programs shall have written eligibility criteria specific to the services and mission of the program. Offenders may be admitted into a program only by order of the court and only if they meet the minimum eligibility criteria as outlined in the program policies, licensure, or CJAD approved program design. Offenders found to be ineligible for admission within 10 days of arrival at the program shall not be counted in program admissions.

(2) Specific [~~There shall be documentation of specific~~] admission criteria and procedures shall be documented. Offenders are eligible for substance abuse treatment programs if:

(A) There [~~there~~] is responsivity between the treatment services provided by the program and the offender's criminogenic risks and [~~/~~] needs;

(B) A [~~a~~] court orders the offender into the program and the subsequent assessment indicates the need for treatment services; or

(C) The [~~the~~] program allows readmissions and the offender meets the admission criteria.

(3) For offenders [~~who are~~] placed in treatment programs who do not meet admission or eligibility criteria, a mechanism or procedure shall be developed for offender removal. A review and justification explaining the reason the offender does not meet admission criteria shall be required with copies kept in the offender's file. Offenders who do not meet eligibility criteria will be considered ineligible and shall not be counted as ["]discharged.["]

(e) Intake. There shall be written policies and procedures establishing an intake process to determine eligibility for offenders entering a substance abuse treatment program. The intake process must be completed within 10 [~~ten~~] working days of an offender's arrival in a program.

(f) Initial Assessment Procedures. Acceptable and recognized assessment tools shall be used in all substance abuse treatment programs within 10 [~~ten~~] working days from date of admission. Assessment policies and procedures shall require the use of approved clinical measurements and screening tests. If the screening identifies a potential mental health problem, the facility shall obtain a mental health assessment and seek appropriate mental health services when resources for mental health assessments and services are available internally or through referral at no additional cost to the program. Assessment procedures shall include the following:

(1) Identification [~~identification~~] of strengths, abilities, needs, and substance preferences of the offender;

(2) Summarization [~~summarization~~] and evaluation of each offender to develop individual treatment plans;

(3) Assessments [~~assessments~~] completed by a QCC or a CI. If[~~, or if~~] the assessor is a CI [~~Counselor Intern~~], [~~then~~] the documentation must be reviewed and signed by a QCC.

(g) Assessments. The assessment shall include:

(1) A [~~a~~] summary of the offender's alcohol or drug abuse history including substances used, date of last use, date of first use, patterns and consequences of use, types of and responses to previous treatment, and periods of sobriety;

(2) Family [~~family~~] information, including substance use and abuse by family members and supportive or dysfunctional relationships;

(3) Vocational [~~vocational~~] and employment status, including skills or trades learned, work record, and current vocational plans;

(4) Health [~~health~~] information, including medical conditions that present a problem or that might interfere with treatment;

(5) Emotional [~~emotional~~] or behavioral problems, including a history of psychiatric treatment;

(6) Educational [~~educational~~] achievement level;

(7) Intellectual [~~intellectual~~] functioning level;

(8) Responsivity [~~responsivity~~] analysis; and

(9) A [~~a~~] diagnostic summary signed and dated by a QCC.

(h) Orientation. Each program shall establish written policies and procedures for the orientation process. Orientation shall be provided at the onset of treatment and in accordance with the level of treatment to be provided. The orientation shall relay information concerning program rules, the grievance procedure, and the steps necessary for offenders to complete treatment successfully.

(i) Offender Rights. The offender's basic rights shall be respected and protected, free from abuse, neglect, exploitation, and discrimination. Each provider shall have written policies [~~policy~~] and

procedures [~~procedure~~] to ensure protection of the offender's rights according to federal and state guidelines.

(j) Release of Information. There shall be written policies and procedures for protecting and releasing offender information that conforms to federal and state confidentiality laws. The staff shall follow written policies and procedures for responding to oral and written requests for [~~offender-identifying~~] information that identifies an offender.

(k) Offender Records. There shall be written policies and procedures regarding the content of offender treatment records. Residential programs shall maintain separate individual treatment records for defendants. Case records, whether residential or outpatient, shall include the following information at a minimum:

(1) Court [~~court~~] order placing the offender into the program;

(2) Initial [~~initial~~] intake information form;

(3) Referral [~~referral~~] documentation;

(4) Case [~~case~~] information from referral source, if applicable;

(5) Release [~~release~~] of information forms;

(6) Relevant [~~relevant~~] medical information;

(7) Case [~~case~~] history and assessment including risk and needs assessment and Strategies for Case Supervision, if required;

(8) Individual [~~individual~~] treatment plan;

(9) Evaluation [~~evaluation~~] and progress reports; and

(10) Discharge [~~discharge~~] summary.

(l) Offender Records Review Policy. There shall be written policies and procedures to govern the access of offenders to their own substance abuse treatment records in accordance with Texas Health and [~~&~~] Safety Code and 42 Code of Federal Regulations [~~CFR~~] part 2 [~~(Code of Federal Regulations)~~]. This access does not apply to criminal justice records. Restrictions on [~~to~~] access to treatment records shall be specified and explained to offenders upon request. Exceptions may be made if providing the records to the offender has [~~must involve~~] the potential to [~~for~~] harm [~~to~~] the offender or others.

(m) Treatment Planning and Review. Initial individual treatment plans shall [~~Treatment Plans will~~] be completed by the counselor collaborating with the offender within 10 [~~ten~~] working days from the date of [~~an offender's~~] admission to a community corrections facility [~~Community Corrections Facility~~] (CCF), county correctional center, [~~County Correctional Center (CCC)~~] or any other substance abuse treatment program or through a similar process approved by the community supervision [~~Community Supervision~~] and corrections department [~~Corrections Department~~] (CSCD). Substance abuse treatment shall be based on substance abuse, chemical dependency or addiction, and other criminogenic risks and [~~/~~]needs identified through assessments and revised according to the offender's successful resolution of those substance abuse, chemical dependency, [~~or~~] addiction, and other criminogenic risks and [~~/~~]needs. Treatment plans shall include criteria for discharge that are based on the achievement of treatment plan goals and shall be reviewed at timely intervals with a minimum of once each month or when major changes occur such as a [~~(e.g.,~~] change in stage[~~)~~]. The treatment planning and review process shall ensure that:

(1) The [~~the~~] primary counselor meets with the offender as needed to review the treatment plan, evaluating goal progress and revisions;

(2) All [~~all~~] revised treatment plans are signed and dated by the counselor and the offender; and

(3) Results [~~results~~] of the review are documented and placed in the treatment file, with a copy to the CSO.

(n) Treatment Progress Notes. There shall be written policies and procedures to require all programs to record and maintain progress notes on all offender case records, document counseling sessions, and [~~to~~] summarize significant events that occur throughout the treatment process. Progress notes shall be documented at a minimum of once each week.

(o) Changes in Treatment Stages. Each treatment program shall develop written criteria based on achievement of treatment plan goals for an offender to advance or regress from a stage of treatment. An offender must meet the criteria for a change in the stage of treatment before such a change or a discharge is implemented. The treatment team shall confer when the offender is subject to a major setback in the program and prior to discharge.

(p) Discharges from Treatment. Discharge from a program shall be according to one of the following criteria:

(1) Completion of Program. The [~~Successful Discharge--the~~] offender has made sufficient progress towards meeting the objectives of the treatment plan [~~Treatment Plan~~], including addressing criminogenic risks and [~~/~~]needs and program requirements, or the offender has satisfied a period of placement as a condition of community supervision;

(2) Inappropriate Placement or Unable to Participate. The offender is removed:

(A) By order of the court;

(B) By operation of law for conduct occurring prior to admission into the program; or

(C) Because the program did not address the risks and needs of the offender.

~~[(2) Administrative Discharge--the offender has satisfied a period of placement as a condition of community supervision, the offender is removed by order of the court, or the offender is removed by operation of law for conduct occurring prior to admission into the program;]~~

(3) Violation of Program. The [~~Unsuccessful Discharge--the~~] offender has demonstrated noncompliance [~~non-compliance~~] with the program criteria or court order, including absconding from the program; or

(4) Other. The [~~Medical Discharge--the~~] offender manifests a medical or psychological problem, including death, which [~~that~~] prohibits participation or completion of the program requirements.

(q) Discharge Plan. The treatment team shall adopt a discharge plan for each offender prior to successful discharge. The discharge plan shall be sent to the offender's CSO [~~supervision officer~~] within seven days after discharge and provide a summary of:

(1) Clinical [~~clinical~~] problems at the onset of treatment and original diagnosis;

(2) The [~~the~~] problems or needs and strengths or weaknesses identified on the master treatment plan;

(3) The [~~the~~] goals and objectives established;

(4) The [~~the~~] course of treatment;

(5) The [~~the~~] outcomes achieved; and

(6) A [a] continuum of care and [/]relapse plan for aftercare treatment, which must be prepared with the offender and a family member or significant other, if appropriate and available.

(r) Discharge Summary. A discharge summary [Discharge Summary] shall be prepared, within 30 days, for all offenders who leave the program successfully [as an unsuccessful, administrative or medical discharge]. The summary shall include elements (1) - (5) [(6)] of the discharge plan [Discharge Plan].

(s) General Program Services Provisions. Specific services shall be required of all substance abuse treatment programs. Written policies and procedures shall ensure the following standards are met:

(1) All substance abuse services shall be delivered according to a written treatment plan that has been developed from the offender's assessment.[;]

(2) Group counseling sessions are limited to a maximum of 16 [sixteen] offenders. Group education and life skills training sessions are limited to a maximum of 35 [thirty-five] offenders. These limits do not apply to multi family [multi-family] educational groups, seminars, outside speakers, or other events designed for a large audience.

(3) All programs shall employ a QCC.

(4) All counselor interns shall work under the direct supervision of a QCC.

(5) Chemical dependency counseling shall [must] be provided by a QCC, graduate, or counselor who has the specialized education, training, or expertise in that [the] subject matter [to be delivered]. Chemical dependency education shall be provided by counselors or individuals who have the specialized education, training, or expertise in that [the] subject matter [to be delivered].

(6) Direct care staff shall be awake and alert on site during all hours of program operation.

(7) Residential programs shall have, at a minimum, [least] one counselor on duty at least eight hours a day, five days a week.

(8) Offenders in residential programs shall have an opportunity for eight continuous hours of sleep each night. Staff shall conduct and document at least three checks while offenders are sleeping.

(9) The program shall include a culturally diverse curriculum applicable to the population served and shall be evidenced through demonstrated, appropriate counseling, and instructional materials.

(10) Members of the offender treatment team shall demonstrate effective communications and coordination, as evidenced in staffing, treatment planning, and case management [case-management] documentation.

(11) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication that [which] provide for:

(A) Conformity [conformity] with state regulations; and

(B) Documentation [documentation] of the administration of medications, medication errors, and drug reactions.

(12) Chemical dependency education and life skills training shall follow a course outline that identifies lecture topics and major points to be discussed. All educational sessions shall include offender participation and discussion of the material presented.

(13) The program shall provide education about the health risks of tobacco products and nicotine addiction.

(14) The program shall provide human immunodeficiency virus (HIV) [HIV], Hepatitis B and C, and tuberculosis [Tuberculosis] education based on the Model Workplace Guidelines for Direct Service Providers developed by the DSHS [Texas Department of State Health Services].

(15) Offenders shall have access to HIV counseling and testing services directly or through referral, as follows:

(A) HIV services shall be voluntary, anonymous, and not limited by ability to pay.

(B) Counseling [counseling] shall be based on the model protocol developed by the DSHS [Texas Department of State Health Services].

(C) In [in] all TDCJ CJAD [TDCJ-CJAD] funded facilities, testing, as well as pre- and post-test counseling, shall [is to] be provided by the medical department or contracted medical provider.

(16) The program shall make testing and information[,] for tuberculosis and sexually transmitted diseases available to all offenders, unless the program has access to test results obtained during the past year, as follows:

(A) Services [services] may be made available directly or through referral.

(B) If [if] an offender tests positive for tuberculosis or a sexually transmitted disease, the program shall refer the offender to an appropriate health care provider and take appropriate steps to protect offenders and staff.

(C) A CCF [a community corrections facility] shall report to the local health department the release of an offender who is receiving treatment for tuberculosis.

(17) The program shall:

(A) Refer [refer] pregnant offenders who are not receiving prenatal care to an appropriate health care provider and verify services were received [monitor follow-through]; and

(B) Refer [refer] offenders to ancillary services, [(]such as mental health services,[)] necessary to meet treatment goals.

(18) CSCDs that contract for services shall give preference to available programs that include the following elements of best practices ["Best Practices"] in criminal justice treatment. CSCDs that conduct their own programs are required to incorporate the following elements of best practices ["Best Practices"] in criminal justice treatment:

(A) Validated [validated] treatment assessments that include substance abuse, dependency, or addiction, and other criminogenic risks and needs [risks/needs] factors;

(B) A [a] treatment regimen that focuses on changing substance abuse, dependency or addiction, and other criminogenic risks and [/]needs, behaviors, and thinking patterns;

(C) A [a] treatment regimen that includes a specific, cognitive behavioral [cognitive-behavioral] program that has been recognized in professional criminal justice journals; and

(D) Responsivity [responsivity] in addressing offenders' [offender's] needs and in employment of qualified staff.

(19) CSCDs that place offenders in substance abuse treatment programs shall ensure that offenders are referred to available aftercare services, giving preference to programs that incorporate best practices ["Best Practice"] elements.

(t) Stages of Treatment. All CCFs providing substance abuse treatment shall designate in the current facility's Community Justice Plan [~~(CJP)~~] program proposal stages of treatment to be provided as described in subsections (v) - (y) of this rule [~~(v) through (y) below~~].

(u) Detoxification. Offenders being referred to detoxification services shall [~~must~~] be referred to [~~appropriately~~] licensed service providers.

(v) Intensive Residential Treatment. Written policies and procedures shall ensure the following:

(1) All offenders admitted to intensive residential treatment [~~Intensive Residential Treatment~~] shall have written justification to support their admission, be medically stable, and able to participate in treatment.

(2) The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed 10 [~~ten~~] offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide all required program services, maintain an environment that is conducive to treatment, and ensure the safety and security of the offenders, according to the design of the facility and with the approval of the funding source.

(4) Program counselors shall complete a comprehensive offender assessment and individual treatment plan within 10 [~~ten~~] working days of admission.

(5) The facility shall deliver not less than 25 [~~twenty-five~~] hours of structured activities per week for each offender, including:

(A) Ten [~~ten~~] hours of chemical dependency counseling using a cognitive behavioral [~~cognitive-behavioral~~] approach with no less than one hour of individual counseling;

(B) Ten [~~ten~~] hours additional education, counseling, life skills, or rehabilitation activities; and

(C) Five [~~five~~] hours of structured social or recreational activities.

(6) Counseling and education schedules shall be submitted to the funding entity for approval.

(7) Each offender shall have an opportunity to participate in physical recreation at least weekly.

(8) Program staff shall offer chemical dependency education or services to identified significant others.

(9) The program shall provide each offender with opportunities to apply knowledge and practice skills in a structured, supportive environment. Cognitive behavioral programs shall have a published curriculum identified by the authors to contain cognitive, social, and behavioral elements. Anyone facilitating a cognitive curriculum shall [~~must~~] be trained in that specific curriculum. All direct care staff shall [~~must~~] receive training on the principles of a cognitive behavioral model as it relates to their job duties. This curriculum shall be approved by the TDCJ CJAD [~~TDCJ-CJAD~~] and implemented as designed. Components of the cognitive program shall [~~at a minimum~~] include, at a minimum:

(A) Ways [~~ways~~] to identify thinking patterns; and

(B) A [~~a~~] social skills training component.

(w) Supportive Residential Treatment. Written policies and procedures shall ensure the following:

(1) All offenders admitted to supportive residential treatment [~~Supportive Residential Treatment~~] shall have written justification to support their admission, be medically stable, be [~~and~~] able to function with limited supervision and support, and be able to participate in work release or community service and [~~/~~] restitution programs.

(2) The program shall have adequate staff to meet treatment needs within the context of the program description, with counselor caseloads not to exceed 20 [~~twenty~~] offenders, unless the program can provide research based [~~research-based~~] evidence in writing to justify a higher caseload size based on the program design, characteristics[~~,~~] and needs of the population served, and any other relevant factors.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide for the safety and security of the offenders, according to the design of the facility and with the approval of the funding source.

(4) Counselors shall complete a comprehensive offender assessment and individualized treatment plan within 10 [~~ten~~] working days of admission for each offender [~~all offenders~~].

(5) The program shall deliver no less than six hours per week of chemical dependency counseling with a cognitive behavioral [~~cognitive-behavioral~~] approach for each offender, of which [~~(~~]one hour per month [~~of which~~] shall be individual counseling[~~)~~ ~~for each offender~~].

(6) Counseling and education schedules shall be submitted to the funding entity for approval.

(7) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings. Cognitive behavioral programs shall have a published curriculum identified by the authors to contain cognitive, social, and behavioral elements. This curriculum shall be approved by the TDCJ CJAD [~~TDCJ-CJAD~~] and implemented as designed. Anyone facilitating a cognitive curriculum shall [~~must~~] be trained in that specific curriculum. All staff shall [~~must~~] receive training on the principles of a cognitive behavioral model as it relates to their job duties. Components of the cognitive program shall [~~at minimum~~] include, at a minimum:

(A) Ways [~~ways~~] to identify thinking patterns; and

(B) A [~~a~~] social skills training component.

(x) Outpatient Treatment. Written policies and procedures shall ensure the following:

(1) All offenders admitted to outpatient [~~Outpatient~~] treatment programs shall be medically stable, and have appropriate support systems in the community to live independently with minimal structure.

(2) The program shall have adequate staff to provide offenders support and guidance to ensure effective service delivery, safety, and security. Staffing patterns shall be submitted to the funding entity.

(3) The program shall set limits on counselor caseload size to ensure effective, individualized treatment and rehabilitation. Criteria used to set the caseload size shall be documented and approved by the funding entity.

(4) Didactic groups shall not exceed 35 [~~thirty-five~~] offenders per [~~in a~~] group.

(5) Therapeutic groups shall not exceed 16 [~~sixteen~~] offenders per [~~in a~~] group.

(6) For offenders in supportive outpatient programs, counselors shall complete a comprehensive offender assessment within 30 [~~thirty~~] calendar days of admission [~~for all offenders~~].

(7) For offenders in intensive outpatient programs, counselors shall complete a comprehensive offender assessment within 10 [~~ten~~] calendar days of admission [~~for all offenders~~].

(8) Intensive outpatient programs shall deliver no less than six hours per week of chemical dependency counseling with a cognitive behavioral approach.

(9) Supportive outpatient programs shall deliver no less than two hours per week of chemical dependency counseling.

(10) Each offender's progress shall be assessed regularly by clinical staff to help determine the length and intensity of the program.

(11) [~~(10)~~] Counseling and education schedules shall be submitted to the funding entity for approval.

(12) [~~(11)~~] The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings.

(13) [~~(12)~~] The outpatient treatment stages may be used [~~utilized~~] for residents in the work release phase of any residential substance abuse treatment program.

(y) Special Needs Populations. Written policies and procedures shall ensure the following:

(1) Programs that address the special mental health, intellectual capacity, or medical needs of offenders shall [~~must~~] provide appropriate treatment either by program staff or through contracted services.

(2) Admission to a special needs program shall [~~must~~] be based on a documented mental health, intellectual capacity, or medical need.

(3) When the assessment process indicates that the offender has coexisting disabilities and[~~/~~]disorders, the treatment plan [~~Treatment Plan~~] shall specifically address those issues that might impact treatment, recovery, relapse, and[~~/or~~] recidivism.

(4) Personnel qualified in the treatment of coexisting disabilities and [~~/~~] disorders shall be available as needed.

(5) Within 96 [~~ninety-six~~] hours of admission to a special needs residential program, an offender [~~offenders~~] shall be administered a medical and psychological evaluation.

(6) Within 10 [~~ten~~] days of admission to a residential program for special needs offenders, the program administrator or designee shall contact the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) regarding the offender's status. As soon as a discharge date is projected, TCOOMMI shall be notified in writing of plans for a continuum of care after discharge, regardless of whether or not the discharge is for successful completion of the program.

(7) Residential facilities providing services for special needs populations shall have procedures to provide access to health care services, including medical, dental, and mental health services, under the control of a designated health authority. When this authority is other than a physician, final medical judgments shall [~~must~~] rest with a single designated responsible physician licensed by the state.

(A) Services and [~~/~~] treatment shall be directed toward maximizing the functioning and reducing the symptoms of offenders.

(B) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication that [~~which~~] provide for:

(i) Conformity [~~conformity~~] with state regulations;

(ii) Documentation [~~documentation~~] of the rationale for use and goals of service and [~~/~~] treatment consistent with the individual treatment plan [~~of treatment~~];

(iii) Documentation [~~documentation~~] of the administration of medications, medication errors, and drug reactions; and

(iv) Procedures [~~procedures~~] to follow in case of emergencies.

(8) There shall be procedures for documenting that the offender has been informed of medication management procedures.

(9) Offenders shall be actively involved in decisions related to their medications.

(10) Programs for special needs offenders shall [~~must~~] follow the same staffing for treatment levels as the levels for other offenders, except all residential programs shall maintain caseloads of no greater than 16 [~~sixteen~~] offenders for each counselor.

(11) Programs operating in residential facilities shall ensure that offenders [~~will~~] have no less than 10 [~~ten~~] days of appropriate medication for use after discharge.

(z) Use of Force. The CSCD director and facility [~~Facility~~] director shall ensure that a residential treatment program has written policies, procedures, and practices that restrict the use of physical force to instances of self protection [~~self-protection~~], protection of offenders or others, or prevention of property damage. The [~~In no event is the~~] use of physical force against an offender is never justifiable as punishment. A written report shall be prepared following all uses of force, and all such written reports shall be promptly submitted to the CSCD director and facility [~~Facility~~] director for review and follow-up. Only an individual who is properly trained in the use of such devices may use [~~The application of~~] restraining devices, aerosol sprays, and chemical agents. These[~~, etc. shall only be accomplished by an individual who is properly trained in the use of such~~] devices shall [~~and~~] only be used in an emergency by such an [~~any~~] individual in self protection [~~self-protection~~], protection of others, or other circumstances as described previously.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 10, 2011.

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Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (936) 437-2141

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER A. ON-SITE CERTIFIED TRAINING PROVIDER

37 TAC §427.1

The Texas Commission on Fire Protection (Commission) proposes an amendment to Chapter 427, Training Facility Certification, Subchapter A, On-Site Certified Training Provider, concerning §427.1, Minimum Standards for Certified Training Facilities for Fire Protection Personnel. The purpose of the proposed amendment is to remove obsolete language referencing that the Commission would provide one free copy of its Certification Curriculum and Standards Manual on CD to an on-site training provider to be used by the certified on-site training provider's instructors.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for the first five years the proposed amendment is in effect, the public will benefit from the passage of this amendment in that all training providers will know that the Commission's manuals are available on-line and can be used by all certified instructors. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.008, General Powers and Duties; §419.025, Manual; and §419.029, Training Curriculum.

§427.1. Minimum Standards for Certified Training Facilities for Fire Protection Personnel.

(a) An on-site training facility must be certified by the commission in each discipline with a commission approved curriculum for which the facility provides accredited training for fire protection personnel certification. An on-site training facility is where instructors and students are in immediate proximity and where content is instructed primarily in classrooms, at demonstration projects, in fire simulation structures, on fire apparatus, or at training sites in the field under direct supervision of the training facility instructors.

(b) A certified on-site training facility may be approved to instruct in any one or all of the fire protection personnel curricula. Minimum requirements for each curriculum must be met to receive certification.

(c) Minimum requirements for certification as a certified on-site training facility shall include facilities, apparatus, equipment, reference materials, standard operating procedures, instructors, and records to support a quality education and training program. The resources must provide for classroom instruction, demonstrations, and practical exercises for the trainees to develop the knowledge and skills required for fire protection personnel certification.

(d) The on-site facilities and training shall be performance oriented, when required. Practical performance training with maximum participation by trainees shall be an integral part of the training program. The evaluation process for each phase of training will emphasize, as required, performance testing to determine if the trainee has acquired the knowledge and skills to achieve the required level of competency as required by the respective curriculum.

(e) It must be clearly understood that the minimum standard for training facilities is applicable only as the title implies and does not address the additional training facility resources which are required for the continuing in-service training essential to the development and maintenance of a well-coordinated and effective fire service organization.

(f) An organization, installation, or facility must submit a written application for certification as a certified on-site training facility to the commission. Such application will include descriptions and addresses of physical facilities together with inventory of apparatus, equipment, and reference material to be utilized in conducting the basic curriculum as specified by the commission. It is not required that the equipment be owned by, permanently assigned to, nor kept at a training facility, but must be readily available for instructional purposes. A training facility must submit a letter of commitment with the original training facility certification application authorizing the use of resources not controlled by the training facility from the provider of said resources. A copy of the letters of commitment must be maintained on-site and be available for review. Photographs of resources annotated to reflect their identity must be included with the application. When seeking training approvals, the facility shall certify that the resources are provided in accordance with this chapter.

(g) All training for certification must be submitted to the commission in writing for approval at least 20 days prior to the proposed starting date of the training. Approved courses are subject to audit by commission staff any time during the approved schedule. Any deviation in the approved course schedule or content must be reported to the commission within three business days of the deviation. The academy coordinator will:

(1) attest to the fact that the training meets the competencies in the applicable Commission Curriculum and/or NFPA Standards;

(2) submit a testing schedule for all required academy skills; and

(3) notify the Commission of any changes in instructor staff and/or field examiners.

~~[(h) An on-site training provider certified for the first time by the commission will receive, at no charge, one Commission Certification Curriculum and Standards Manual on CD that is to be utilized by the certified on-site training provider's instructors. The on-site provider is responsible for ensuring that all subjects are taught as required by the respective curriculum. Additional CD copies may be purchased from the commission or downloaded from the agency web site. On-site training providers that renew their certification will receive appropriate updates at no charge.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102080
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 936-3813

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SUBCHAPTER B. DISTANCE TRAINING PROVIDER

37 TAC §427.201

The Texas Commission on Fire Protection (Commission) proposes an amendment to Chapter 427, Training Facility Certification, Subchapter B, Distance Training Provider, concerning §427.201, Minimum Standards for Distance Training Provider. The purpose of the proposed amendment is to remove obsolete language referencing that the Commission would provide one free copy of its Certification Curriculum and Standards Manual on CD to be used by the certified distance training providers' instructors.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for the first five years the proposed amendment is in effect, the public will benefit from the passage of this amendment in that it will allow the Commission to maintain a clear, concise set of rules regarding its minimum standards for certification as aircraft rescue fire fighting personnel. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.008, General Powers and Duties; §419.025, Manual; and §419.029, Training Curriculum.

§427.201. Minimum Standards for Distance Training Provider.

(a) The following definition is applicable to this subchapter only. Approved distance training is defined as fire training where instructors and students are primarily in different locations and content is instructed primarily using the internet or an intranet and courses must contain some level of interactivity. Distance training that serves as nothing more than electronic text is not acceptable. Online courses must provide the opportunity for the student to interact or ask questions via e-mail, chat rooms or some other method of communication. Other computer-mediated methods of instruction may be used to enhance instruction; however, the primary delivery method must be through the internet or an intranet.

(b) A distance training provider must seek certification as a training facility in each discipline it intends to instruct.

(c) In order to become a Commission-approved distance training provider; the provider must submit a completed Commission training facility application with supporting documentation and fees. Such application will include descriptions and addresses of where the distance training provider will have their course delivery and materials. A distance training provider must provide documentation of its ability to meet all minimum requirements for each discipline for which it seeks certification. The documentation must also identify how students and instructors will access resources as identified in the curriculum.

(d) A distance training provider that applies for certification as a training facility in a discipline that includes skills training shall comply with Subchapter A of this chapter concerning minimum standards, facilities, apparatus, protective clothing, equipment, and live fire training utilized to teach and test the required skills.

~~[(e) A distance training provider certified for the first time by the Commission will receive, at no charge, one Commission Certification Curriculum and Standards Manual on CD to be utilized by the certified distance training providers' instructors. The distance training provider is responsible for ensuring that all subjects are taught as required by the curricula. Additional CD copies may be purchased from the Commission or downloaded from the agency website. Distance training providers that renew their certification will receive appropriate updates at no charge.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102081
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 936-3813

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION BASED ON REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2005

37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on Fire Protection (Commission) proposes to repeal Chapter 429, Minimum Standards for Fire In-

spectors, Subchapter A, Minimum Standards for Fire Inspector Certification Based on Requirements in Effect Prior to January 1, 2005, concerning §429.1, Minimum Standards for Fire Inspection Personnel; §429.3, Minimum Standards for Basic Fire Inspector Certification; §429.5, Minimum Standards for Intermediate Fire Inspector Certification; §429.7, Minimum Standards for Advanced Fire Inspector Certification; §429.9, Minimum Standards for Master Fire Inspector Certification; and §429.11, International Fire Service Accreditation Congress (IFSAC) Seal. The purpose of the proposed repeal is to remove Subchapter A in its entirety, since the expiration date for the subchapter has expired. The subject matter of the repealed subchapter is contained within Subchapter B of this chapter.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for the first five years the proposed repeal is in effect, the public will benefit from the passage of this repeal because it will allow the agency to maintain clear and concise rules regarding fire inspector certification. There will be no effect on micro businesses, small businesses or persons required to comply with the repeal as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed repeal may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The repeal is proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.008, General Powers and Duties; and §419.032, Appointment of Fire Protection Personnel.

§429.1. Minimum Standards for Fire Inspection Personnel.
§429.3. Minimum Standards for Basic Fire Inspector Certification.
§429.5. Minimum Standards for Intermediate Fire Inspector Certification.
§429.7. Minimum Standards for Advanced Fire Inspector Certification.
§429.9. Minimum Standards for Master Fire Inspector Certification.
§429.11. International Fire Service Accreditation Congress (IFSAC) Seal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102082
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 936-3813

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CHAPTER 437. FEES

37 TAC §§437.3, 437.5, 437.7, 437.13

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 437, Fees, §437.3, Certification Fees; §437.5, Renewal Fees; §437.7, Standards Manual and Certification Curriculum Manual Fees; and §437.13, Processing Fees for Test Application. The purpose of the proposed amendments to §§437.3, 437.5, and 437.13 is to raise the fees in the following respect: from up to $65 to $85 for initial certification; from up to $65 to $85 renewal fee; from up to $32.50 to $42.50 for thirty day late renewal fee; from up to $65 to $85 for more than 30 day late renewal fee; and from up to $65 to $85 test application fee. The fee increase is being proposed as a condition being considered by the legislature to allow the Texas Commission on Fire Protection to become essentially self-funded. The purpose of the proposed amendment to §437.7 is to let the public know where a current version of the Commission's Standards Manual and Certification Curriculum Manual can be found and it also identifies where a free printed copy of the Commission's Standards Manual and Certification Curriculum Manual can be obtained.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect, the total impact will be based upon the number of personnel within a fire fighting organization including, but not limited to, fire departments; fire marshal's offices and public safety departments that apply for additional certifications during the year and that increase would be $20 per each initial certification application. Individuals holding certification will also pay the $20 increase when they renew their certifications annually. The number of paid personnel that the jurisdiction renews annually at the end of the year will be increased $20 per person for their renewal application. Applications to test for additional certifications will cost an additional $20 each.

Mr. Soteriou has also determined that for each year the proposed amendments are in effect, the public benefit will be to ensure the existence of the Commission to enforce the rules for the safety of the fire fighters and citizens through inspections, testing, and renewing certifications of the fire fighters of the State of Texas. There will be no effect on micro businesses or small businesses. However, individuals who volunteer to hold certifications and comply with the proposed amendments will be responsible for paying the additional $20 fee.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting scheduled for August 1, 2011.

The amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.008, General Powers and Duties; §419.025, Manual; §419.026, Fees for Certificates; §419.029, Training Curriculum; §419.033, Certificate Expiration; §419.034, Certificate Renewal and §419.0341, Individual Certificate Holder; Certificate Renewal.

§437.3. Certification Fees.

(a) A non-refundable application fee of $85 [~~up to~~ ~~$65~~] is required for each certificate issued by the Commission. If a certificate is issued within the time provided in §401.125 of this title (relating to

Processing Periods), the fee will be applied to the certification. If the certificate is denied, the applicant must pay a new certification application fee to file a new application.

(b) The regulated employing entity shall be responsible for all certification fees required as a condition of appointment.

(c) Nothing in this section shall prohibit an individual from paying a certification fee for any certificate which he or she is qualified to hold, providing the certificate is not required as a condition of appointment (see subsection (b) of this section concerning certification fees).

(d) Any person who holds a certificate, and is no longer employed by an entity that is regulated by the Commission may submit in writing, a request, together with the required fee to receive a one-time certificate stating the level of certification in each discipline held by the person on the date that person left employment pursuant to the Texas Government Code, §419.033(b). Multiple certifications may be listed on the one-time certificate. The one-time fee for the one-time certificate shall be limited to the maximum amount allowed by §419.003(b) of the Texas Government Code.

(e) A facility that provides basic level training for any discipline for which the Commission has established a Basic Curriculum must be certified by the Commission. The training facility will be charged a separate certification fee for each discipline.

§437.5. Renewal Fees.

(a) A non-refundable annual renewal fee of $85 [~~up to $65~~] shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the Commission may collect only one renewal fee of $85 [~~up to $65~~], which will renew all certificates held by the individual or certified training facility.

(b) A regulated employing entity shall pay the renewal fee for all certificates which a person must possess as a condition of employment.

(c) If a person re-enters the fire service whose certificate(s) has been expired for less than one year, the regulated entity must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be renewed.

(d) If a person reapplies for a certificate(s) which has been expired less than one year and the individual is not employed by a regulated employing entity as defined in subsection (b) of this section, the individual must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fee(s), the certificate(s) previously held by the individual, for whom he or she continues to qualify, will be renewed.

(e) Nothing in this section shall prohibit an individual from paying a renewal fee for any certificate which he or she is qualified to hold providing the certificate is not required as a condition of employment.

(f) Certification renewal information will be sent to all regulated employing entities and individuals holding certification at least 60 days prior to October 31 of each calendar year. Certification renewal information will be sent to certified training facilities at least 60 days prior to February 1 of each calendar year.

(g) All certification renewal fees must be returned with the renewal statement to the Commission.

(h) All certification renewal fees must be paid on or before the renewal date posted on the certification renewal statement to avoid additional fee(s).

(i) The certification period shall be a period not to exceed one year. The certification period for employees of regulated employing entities, and individuals holding certification is November 1 to October 31. The certification period of certified training facilities is February 1 to January 31.

(j) All certification renewal fees received from one to 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable late fee of $42.50 [~~up to $32.50~~] in addition to the renewal fee for each individual for which a renewal fee was due.

(k) All certification renewal fees received more than 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable late fee of $85 [~~up to $65~~] in addition to the renewal fee for each individual for which a renewal fee was due.

(l) In addition to any non-refundable late fee(s) assessed for certification renewal, the Commission may hold an informal conference to determine if any further action(s) is to be taken.

(m) An individual or entity may petition the Commission for a waiver of the late fees required by this section if the person's certificate expired because of the individual or regulated employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

(n) An individual, upon returning from activation to military service, whose certification has expired, must notify the Commission in writing. The individual will have any normally associated late fees waived and will be required to pay a renewal fee of $85 [~~up to $65~~].

§437.7. Standards Manual and Certification Curriculum Manual [~~Fees~~].

(a) Current versions [~~A current version~~] of the [~~Commission's~~] Standards Manual for Fire Protection Personnel and Certification [~~the~~] Curriculum Manual are available [~~for free~~] on the commission's website. [~~web site at www.tcfp.state.tx.us.~~]

(b) The Commission does not provide printed copies of the manuals. A printed copy of the Commission's standards may be obtained from Thomson West, 610 Opperman Drive, Eagan, MN 55123[~~, (800) 328-9352~~], by requesting "Title 37, Public Safety and Corrections" of the Texas Administrative Code. The web address for Thomson West is www.west.thomson.com. [~~www.thomsonwest.com.~~]

§437.13. Processing Fees for Test Application.

(a) A non-refundable application processing fee of $85 [~~up to $65~~] shall be charged for each examination.

(b) Fees will be paid in advance with the application or the provider of training may be invoiced or billed if previous arrangements have been made with the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102083
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 24, 2011
For further information, please call: (512) 936-3813

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 12. WEIGHTS AND MEASURES

SUBCHAPTER B. DEVICES

4 TAC §12.12

The Texas Department of Agriculture withdraws the proposed amendment to §12.12 which appeared in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2809).

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102055
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: June 8, 2011
For further information, please call: (512) 463-4075

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.2

The Texas State Board of Pharmacy withdraws the proposed amendments to §281.2 which appeared in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1949).

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102058
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 8, 2011
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy withdraws the proposed amendments to §291.33 which appeared in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1950).

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102059
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 8, 2011
For further information, please call: (512) 305-8028

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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 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 204. INTERAGENCY CONTRACTS FOR INFORMATION RESOURCES TECHNOLOGIES

The Department of Information Resources (department) adopts amendments to 1 TAC Chapter 204, §§204.10 - 204.12 and §§204.30 - 204.32, concerning Interagency Contracts for Information Resources Technologies, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1207) and will not be republished.

The amendments are necessary and result from a rule review of the chapter, notice of which was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10061). The changes to the chapter apply to state agencies and institutions of higher education.

The department received no comments during the 30-day comment period.

SUBCHAPTER B. STATE AGENCY INTERAGENCY CONTRACTS

1 TAC §§204.10 - 204.12

The amendments are adopted under §2054.119(d), Texas Government Code, which authorizes the department to define circumstances in which certain interagency contracts costing less than a minimum amount are excepted from the requirements of §2054.119, Texas Government Code; and §2054.052(a), Texas Government Code, which provides the department authority to adopt rules to implement its responsibility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102073
Martin Zelinsky
General Counsel
Department of Information Resources
Effective date: June 28, 2011
Proposal publication date: February 25, 2011
For further information, please call: (512) 475-4700

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SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION INTERAGENCY CONTRACTS

1 TAC §§204.30 - 204.32

The amendments are adopted under §2054.119(d), Texas Government Code, which authorizes the department to define circumstances in which certain interagency contracts costing less than a minimum amount are excepted from the requirements of §2054.119, Texas Government Code, and §2054.052(a), Texas Government Code, which provides the department authority to adopt rules to implement its responsibility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102074
Martin Zelinsky
General Counsel
Department of Information Resources
Effective date: June 28, 2011
Proposal publication date: February 25, 2011
For further information, please call: (512) 475-4700

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.16

The Texas Medical Board (Board) adopts an amendment to §172.16, concerning Provisional Licenses for Medically Underserved Areas, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2688) and will not be republished.

The amendment provides that a temporary license shall be granted to a provisional license holder upon expiration of the provisional license, if the licensure applicant: (1) meets all requirements for full licensure; or (2) has been referred to the Licensure Committee (Committee) for review, but due to a force majeure, the Committee must defer action until the Committee's next scheduled meeting, yet the provisional license is set to expire before that next Committee meeting will occur.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §155.101, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102046
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: June 28, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 305-7016

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CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.1

The Texas Medical Board (Board) adopts an amendment to §173.1, concerning Profile Contents, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2689) and will not be republished.

The amendment provides that a physician must include on their profile whether the physician provides utilization review services for an insurance company and the name of the insurance company.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §154.006, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102047
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: June 28, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 305-7016

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CHAPTER 183. ACUPUNCTURE

22 TAC §183.20, §183.24

The Texas Medical Board (Board) adopts an amendment to §183.20, concerning Continuing Acupuncture Education, and new §183.24, concerning Procedure. Section 183.20 is adopted with one minor nonsubstantive change to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2079). The text of the rule will be republished. Section 183.24 is adopted without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2079) and will not be republished.

The amendment to §183.20 expands the scope of acceptable Continuing Acupuncture Education (CAE) to include courses approved by the National Certification Commission for Acupuncture and Oriental Medicine for professional development activity credit and courses that are provided outside of the United States by a provider of CAE that are acceptable to the Board.

New §183.24 provides that the procedural rules under Chapter 187 shall be applied to acupuncturists.

No comments were received regarding adoption of the amendment and new rule.

The amendment and new rule are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment and new rule are also authorized by §205.255, Texas Occupations Code.

§183.20. Continuing Acupuncture Education.

(a) Purpose. This section is promulgated to promote the health, safety, and welfare of the people of Texas through the establishment of minimum requirements for continuing acupuncture education (CAE) for licensed Texas acupuncturists so as to further enhance their professional skills and knowledge.

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the annual registration of the license of an acupuncturist, the acupuncturist shall complete 17 hours of CAE each year.

(1) The required hours shall be from courses that meet one of the following criteria at the time the hours are taken:

(A) are designated or otherwise approved for credit by the Texas State Board of Acupuncture Examiners based on a review and recommendation of the course content by the Education Committee of the board as described in subsection (n) of this section;

(B) are offered by approved providers;

(C) have been approved for CAE credit for a minimum of three years by another state acupuncture board having first gone through a formal approval process;

(D) approved by the NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) for professional development activity credit; or

(E) are provided outside of the United States by a provider of continuing acupuncture education that are acceptable to the Board.

(2) At least eight hours shall be in general acupuncture in order to ensure that a licensee's CAE is comprehensive and that the licensee's overall acupuncture knowledge, skills, and competence are enhanced.

(3) At least one of the required hours shall be from a course in ethics.

(4) At least two of the required hours shall be in herbology. More than two hours shall be expected of a licensee whose primary practice includes prescriptions of herbs.

(5) Effective for licensees applying for renewal of their licensees on or after November 30, 2010, at least one hour of biomedicine.

(6) No more than two of the required hours may be from courses that primarily relate to practice enhancement or business or office administration.

(7) Courses may be taught through live lecture, distance learning, or the Internet.

(8) No more than a total of eight hours completed under paragraph (1)(D) or (E) of this subsection may be applied to the total hours required each registration period.

(c) Reporting Continuing Acupuncture Education. An acupuncturist must report on the licensee's annual registration form whether the licensee has completed the required acupuncture education during the previous year.

(d) Grounds for Exemption from Continuing Acupuncture Education. An acupuncturist may request in writing and may be exempt from the annual minimum continuing acupuncture education requirements for one or more of the following reasons:

(1) catastrophic illness;

(2) military service of longer than one year in duration;

(3) acupuncture practice and residence of longer than one year in duration outside the United States; and/or

(4) good cause shown on written application of the licensee which gives satisfactory evidence to the board that the licensee is unable to comply with the requirements of continuing acupuncture education.

(e) Exemption Requests. Exemption requests shall be subject to the approval of the executive director of the board, and shall be submitted in writing at least 30 days prior to the expiration of the license.

(f) Exemption Duration and Renewal. An exemption granted under subsections (d) and (e) of this section may not exceed one year, but may be renewed annually upon written request submitted at least 30 days prior to the expiration of the current exemption.

(g) Verification of Credits. The board may require written verification of continuing acupuncture education hours from any licensee and the licensee shall provide the requested verification within 30 calendar days of the date of the request. Failure to timely provide the requested verification may result in disciplinary action by the board.

(h) Nonrenewal for Insufficient Continuing Acupuncture Education. Unless exempted under the terms of this section, the apparent failure of an acupuncturist to obtain and timely report the 17 hours of continuing education hours as required and provided for in this section shall result in nonrenewal of the license until such time as the acupuncturist obtains and reports the required hours; however, the executive director of the board may issue to such an acupuncturist a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license issued pursuant to this subsection may be issued to allow the board to verify the accuracy of information related to the continuing acupuncture education hours of the acupuncturist and to allow the acupuncturist who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(i) Fee for Issuance of Temporary License. The fee for issuance of a temporary license pursuant to the provisions of this section shall be in the amount specified under §175.1 of this title (relating to Application Fees); however, the fee need not be paid prior to the issuance of the temporary license, but shall be paid prior to the renewal of a permanent license.

(j) Application of Additional Hours. Continuing acupuncture education hours that are obtained to comply with the requirements for the preceding year as a prerequisite for licensure renewal, shall first be credited to meet the requirements for that previous year. Once the requirements of the previous year are satisfied, any additional hours obtained shall be credited to meet the continuing acupuncture education requirements of the current year. A licensee may carry forward CAE hours earned prior to an annual registration report which are in excess of the 17-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 34 total excess hours may be carried forward. Excess CAE hours may not be carried forward or applied to an annual report of CAE more than two years beyond the date of the annual registration following the period during which the hours were earned.

(k) False Reports/Statements. An intentionally false report or statement to the board by a licensee regarding continuing acupuncture education hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Act, §205.351(a)(2) and (6).

(l) Monetary Penalty. Failure to obtain and timely report the continuing acupuncture education hours for renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 and §175.3 of this title (relating to Registration and Renewal Fees and Penalties).

(m) Disciplinary Action, Conditional Licensure, and Construction. This section shall be construed to allow the board to impose requirements for completion of additional continuing acupuncture education hours for purposes of disciplinary action and conditional licensure.

(n) Required Content for Continuing Acupuncture Education Courses. Continuing Acupuncture Education courses must meet the following requirements:

(1) the content of the course, program, or activity is related to the practice of acupuncture or oriental medicine, and shall:

(A) be related to the knowledge and/or technical skills required to practice acupuncture; or

(B) be related to direct and/or indirect patient care;

(2) the method of instruction is adequate to teach the content of the course, program, or activity;

(3) the credentials of the instructor(s) indicate competency and sufficient training, education, and experience to teach the specific course, program, or activity;

(4) the education provider maintains an accurate attendance/participation record on individuals completing the course, program, or activity;

(5) each credit hour for the course, program, or activity is equal to no less than 50 minutes of actual instruction or training;

(6) the course, program, or activity is provided by a knowledgeable health care provider or reputable school, state, or professional organization;

(7) the course description provides adequate information so that each participant understands the basis for the program and the goals and objectives to be met; and

(8) the education provider obtains written evaluations at the end of each program, collate the evaluations in a statistical summary, and makes the summary available to the board upon request.

(o) Continuing Acupuncture Education Approval Requests. All requests for approval of courses, programs, or activities for purposes of satisfying CAE credit requirements shall be submitted in writing to the Education Committee of the board on a form approved by the board, along with any required fee, and accompanied by information, documents, and materials accurately describing the course, program, or activity, and necessary for verifying compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board or the Education Committee, supplemental information, documents, and materials may be requested as needed to obtain an adequate description of the course, program, or activity and to verify compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board or the Education Committee, inspection of original supporting documents may be required for a determination on an approval request. The Acupuncture Board shall have the authority to conduct random and periodic checks of courses, programs, or activities to ensure that criteria for education approval as set forth in subsection (n) of this section have been met and continue to be met by the education provider. Upon requesting approval of a course, program, or activity, the education provider shall agree to such checks by the Acupuncture Board or its designees, and shall further agree to provide supplemental information, documents, and material describing the course, program, or activity which, in the discretion of the Acupuncture Board, may be needed for approval or continued approval of the course, program, or activity. Failure of an education provider to provide the necessary information, documents, and materials to show compliance with the standards set forth in subsection (n) of this section shall be grounds for denial of CAE approval or recision of prior approval in regard to the course, program, or activity.

(p) Reconsideration of Denials of Approval Requests. Determinations to deny approval of a CAE course, program, or activity may be reconsidered by the Education Committee or the board based on additional information concerning the course, program, or activity, or upon a showing of good cause for reconsideration. A decision to reconsider a denial determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration shall be made in writing by the education provider, and may be made orally or in writing by board staff or a committee of the board.

(q) Reconsideration of Approvals. Determinations to approve a CAE course, program, or activity may be reconsidered by the Education Committee or the board based on additional information concerning the course, program, or activity, or upon a showing of good cause. A decision to reconsider an approval determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration may be made in writing by a member of the public or may be made orally or in writing by board staff or a committee of the board.

(r) Criteria for Provider Approval.

(1) In order to be an approved provider, a provider shall submit to the board a provider application on a form approved by the board, along with any required fee. All provider applications and documentation submitted to the board shall be typewritten and in English.

(2) To become an approved provider, a provider shall submit to the board evidence that the provider has three continuous years of previous experience providing at least one different CAE course in Texas in each of those years that were approved by the board. In addition the provider must have no history of complaints or reprimands with the board.

(3) The approval of the provider shall expire three years after it is issued by the board and may be renewed upon the filing of the required application, along with any required fee.

(4) Acupuncture schools and colleges which have been approved by the board, as defined under §183.2(2) of this title (relating to Definitions), who seek to be approved providers shall be required to submit an application for an approved provider number to the board.

(s) Requirements of Approved Providers.

(1) For the purpose of this chapter, the title "approved provider" can only be used when a person or organization has submitted a provider application form, and has been issued a provider number unless otherwise provided.

(2) A person or organization may be issued only one provider number. When two or more approved providers co-sponsor a course, the course shall be identified by only one provider number and that provider shall assume responsibility for recordkeeping, advertising, issuance of certificates and instructor(s) qualifications.

(3) An approved provider shall offer CAE programs that are presented or instructed by persons who meet the minimum criteria as described in subsection (t) of this section.

(4) An approved provider shall keep the following records for a period of four years in one identified location:

(A) Course outlines of each course given.

(B) Record of time and places of each course given.

(C) Course instructor curriculum vitaes or resumes.

(D) The attendance record for each course.

(E) Participant evaluation forms for each course given.

(5) An approved provider shall submit to the board the following within ten days of the board's request:

(A) A copy of the attendance record showing the name, signature and license number of any licensed acupuncturists who attended the course.

(B) The participant evaluation forms of the course.

(6) Approved providers shall issue, within 60 days of the conclusion of a course, to each participant who has completed the course, a certificate of completion that contains the following information:

(A) Provider's name and number.

(B) Course title.

(C) Participant's name and, if applicable, his or her acupuncture license number.

(D) Date and location of course.

(E) Number of continuing education hours completed.

(F) Description of hours indicating whether hours completed are in general acupuncture, ethics, herbology, biomedicine, or practice management.

(G) Statement directing the acupuncturist to retain the certificate for at least four years from the date of completion of the course.

(7) Approved providers shall notify the board within 30 days of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course, including name, address, or telephone number changes.

(8) Provider approval is non-transferable.

(9) The board may audit during reasonable business hours records, courses, instructors and related activities of an approved provider.

(t) Instructors.

(1) Minimum qualifications of an acupuncturist instructor. The instructor must:

(A) hold a current valid license to practice acupuncture in Texas or other state and be free of any disciplinary order or probation by a state licensing authority; and

(B) be knowledgeable, current and skillful in the subject matter of the course as evidenced through one of the following:

(i) hold a minimum of a master's degree from an accredited college or university or a post-secondary educational institution, with a major in the subject directly related to the content of the program to be presented;

(ii) have experience in teaching similar subject matter content within the last two years in the specialized area in which he or she is teaching;

(iii) have at least one year's experience within the last two years in the specialized area in which he or she is teaching; or

(iv) have graduated from an acceptable acupuncture school, as defined under §183.2(2) of this title, and have completed 3 years of professional experience in the licensed practice of acupuncture.

(2) Minimum qualifications of a non-acupuncturist instructor. The instructor must:

(A) be currently licensed or certified in his or her area of expertise if appropriate;

(B) show written evidence of specialized training or experience, which may include, but not be limited to, a certificate of training or an advanced degree in a given subject area; and

(C) have at least one year's teaching experience within the last two years in the specialized area in which he or she teaches.

(u) CAE Credit for Course Instruction. Instructors of board-approved CAE courses or courses taught through a program offered by an approved provider for CAE credit may receive three hours of CAE credit for each hour of lecture, not to exceed six hours of continuing education credit per year, regardless of how many hours taught. Participation as a member of a panel presentation for the approved course shall not entitle the participant to earn CAE credit as an instructor. No CAE credit shall be granted to school faculty members as credit for their regular teaching assignments.

(v) Expiration, Denial and Withdrawal of Approval.

(1) Approval of any CAE course shall expire three years after the date of approval.

(2) The board may withdraw its approval of a provider or deny an application for approval if the provider is convicted of a crime substantially related to the activities of a provider.

(3) Any material misrepresentation of fact by a provider or applicant in any information required to be submitted to the board is grounds for withdrawal of approval or denial of an application.

(4) The board may withdraw its approval of a provider after giving the provider written notice setting forth its reasons for withdrawal and after giving the provider a reasonable opportunity to be heard by the board or its designee.

(5) Should the board deny approval of a provider, the provider may appeal the action by filing a letter stating the reason(s) with the board. The letter of appeal shall be filed with the board within ten days of the mailing of the applicant's notification of the board's denial. The appeal shall be considered by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102048
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: June 28, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 305-7016

CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) adopts amendments to §190.8, concerning Violation Guidelines, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2691) and will not be republished.

The amendment provides that if a licensee submits an appropriate fee but an incomplete renewal application that is not complete within one year from the expiration date of the licensee's registration certificate, the licensee shall be found to have committed unprofessional conduct as defined under the Medical Practice Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.052, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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Proposal publication date: April 29, 2011
For further information, please call: (512) 305-7016

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CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.2, §195.4

The Texas Medical Board (Board) adopts amendments to §195.2, concerning Certification of Pain Management Clinics, and §195.4, concerning Operation of Pain Management Clinics, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2692) and will not be republished.

The amendments to §195.2 establishes the procedures for withdrawal and cancellation requests and ineligibility determinations for pain management clinic certificates. The amendment to §195.4 remedies incorrect citations.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §167.051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: June 28, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 305-7016

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CHAPTER 199. PUBLIC INFORMATION

22 TAC §199.4

The Texas Medical Board (Board) adopts an amendment to §199.4, concerning Charges for Copies of Public Records, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2694) and will not be republished.

The amendment provides updates to agency department names and updates descriptions of public information commonly requested by the public and the electronic format of the information.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §154.002, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201102051
Mari Robinson, J.D.
Executive Director
Texas Medical Board
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Proposal publication date: April 29, 2011
For further information, please call: (512) 305-7016

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.29

The Texas Funeral Service Commission (Commission) adopts an amendment to §203.29, concerning Funeral Establishment Names, without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2350) and will not be republished.

The amendment is adopted to clarify advertising media forms used by funeral establishments, crematories, commercial embalming establishments, and cemeteries.

The commission received no comments on the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.12. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2011.

TRD-201102043
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: June 27, 2011
Proposal publication date: April 15, 2011
For further information, please call: (512) 936-2456

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts amendments to §5.9331 and §5.9960 and new §5.9360 and §5.9361, concerning rate filing requirements for certain county mutual insurance companies. The amendments and new sections are adopted without changes to the proposed text as published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 218).

REASONED JUSTIFICATION. The amendments and new sections are necessary to implement House Bill (HB) 2449, 81st Legislature, Regular Session, effective September 1, 2009, relating to rate and rate manual filing requirements and territory rating requirements for certain county mutual insurance companies. The amendment to §5.9960 also removes an expired filing requirement. HB 2449 amended Insurance Code §912.056 to authorize a county mutual insurance company that, as of September 1, 2001, and continuously thereafter, appointed managing general agents, created districts, or organized local chapters to manage a portion of the county mutual insurance company's business independent of all other business of the company to continue to operate in that manner and to appoint and contract with one or more managing general agents in accordance with the Insurance Code only if the company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. HB 2449 further added §912.056(e), which requires a county mutual insurance company described in §912.056(d) to file for each managing general agent, district, or local chapter, the rating information required by the Commissioner by rule. Section 912.056(e) also provides that for a county mutual insurance company described in §912.056(d) each managing general agent, district, or organized local chapter that manages a portion of the county mutual insurance company's business independent of all other business of the company shall be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code.

Prior to HB 2449, appointed managing general agents, districts, or organized local chapters have previously engaged in managing a portion of the county mutual insurance company's business independent of all other business of the county mutual insurance company. Under this pre-HB 2449 system the county mutual insurance company made rate and form filings for each independently operating managing general agent, district, or organized local chapter. This process, however, did not lend itself to transparency as the filings were not necessarily designated by the independent entity.

In HB 2449, the legislature provided that this practice may continue only if the county mutual insurance company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. The legislature also continued the requirement that it is the obligation of the county mutual insurance company to file for each managing general agent, district, or local chapter, the rating information required by the Commissioner by rule.

To implement HB 2449, it is necessary to amend §5.9331 and §5.9960 and add new Division 10, consisting of §5.9360 and §5.9361. Section 5.9331(b)(2) revises the definition of "insurer," for the purposes of rate and rate manual filing requirements under Division 6 of Subchapter M. The amendment to the definition conforms to the Insurance Code §912.056, in that the county mutual insurance company must meet the requirements specified in §912.056(d) and that the entity must be an appointed managing general agent, district or local chapter that manages a portion of a county mutual company's business independent of all other business of the county mutual insurance company. Including these entities in the definition of insurer designates the information that must be filed, which is essentially the same information that any insurer must file.

Section 5.9360 provides that the purpose of new Division 10 of Subchapter M is to specify additional filing requirements under Divisions 4 and 6 of Subchapter M for county mutual insurance companies operating as described by the Insurance Code §912.056(d). The new division provides operational flexibility by allowing for both the default situation in which the county mutual insurance company will file the information on behalf of the appointed managing general agent, district or local chapter and an alternative situation in which the county mutual insurance company will provide the Department with written consent authorizing the appointed managing general agent, district or local chapter to submit the filings required under Divisions 4 and 6 of Subchapter M.

Section 5.9361 establishes additional filing requirements for a county mutual insurance company described by the Insurance Code §912.056(d) and their appointed managing general agents, districts, or local chapters. These additional requirements are necessary for the Department to efficiently track and evaluate the filing and to communicate with the filer. Section 5.9361(a) requires that, in addition to the information required by Division 4 of Subchapter M, the following information be included: (1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company; and (2) contact information for the county mutual if the county mutual's contact information has not already been provided under §5.9310(c)(8). Section 5.9361(b) provides that all rate filings shall be made directly by the county mutual insurance company on the county mutual insurance company's letterhead unless the county mutual insurance company submits written notice with the filing authorizing the submission of rate filings by the managing general agent, district, or local chapter of a county mutual insurance company. Section 5.9361(b) also provides that each rate filing shall include (1) all information required under §5.9332 of this subchapter, which shall be specific to the independent business operation of the managing general agent, district, or local chapter of a county mutual insurance

company, and (2) a list of policy forms and endorsements, including their name, number, and the Department file number, utilized by the managing general agent, district, or local chapter of a county mutual insurance company in its independent business operation. The form information is necessary because the Department must know the terms of the insurance contract and coverage to determine if the rate meets rating standards. Section 5.9361(b) further provides that the submission of a list of policy forms and endorsements does not constitute a form filing under Chapter 2301 of the Insurance Code.

Section 5.9960(c)(2) provides the definition of "insurer" for the purposes of territory rating requirements. This definition is the same definition as used in §5.9331(b) and also conforms to the Insurance Code §912.056.

The amendments and new sections in this adoption do not address the new solvency requirements for county mutual insurance companies resulting from HB 2449. The new solvency requirements for county mutual insurance companies resulting from HB 2449 are addressed in 28 Texas Administrative Code §7.403 (relating to Transition Period for Certain County Mutual Insurance Companies).

This adoption also updates obsolete statutory citations to the Insurance Code resulting from the nonsubstantive revision of the Insurance Code.

Finally, §5.9960(h) required a county mutual insurance company, a Lloyd's plan, or a reciprocal or interinsurance exchange that seeks to use a rate for a subdivision within a county that is greater than 15 percent higher than the rate used in any other subdivision within that county to file its data in support of a greater rate difference no later than March 1, 2004. Since this subsection has expired, this adoption removes the subsection from the rule.

HOW THE SECTIONS WILL FUNCTION. Section 5.9360 provides that the purpose of new Division 10 of Subchapter M is to specify additional filing requirements under Divisions 4 and 6 of Subchapter M for county mutual insurance companies operating as described by the Insurance Code §912.056(d).

Section 5.9361 provides the additional filing requirements for a county mutual insurance company described by the Insurance Code §912.056(d) and their appointed managing general agents, districts, or local chapters. Section 5.9361(a) requires that, in addition to the information required by Division 4 of Subchapter M, the following information be included: (1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company; and (2) contact information for the county mutual if the county mutual's contact information has not already been provided under §5.9310(c)(8). Section 5.9361(b) provides that all rate filings shall be made directly by the county mutual insurance company on the county mutual insurance company's letterhead unless the county mutual insurance company submits written notice with the filing authorizing the managing general agent, district, or local chapter of a county mutual insurance company to submit rate filings. Section 5.9361(b) also provides that each rate filing shall include: (1) all information required under §5.9332 of this subchapter, which shall be specific to the independent business operation of the managing general agent, district, or local chapter of a county mutual insurance company; and (2) a list of policy forms and endorsements, including their name, number, and the Department file number, utilized by the managing general agent, district, or local chapter of a county mutual insurance company in its independent business operation. Section 5.9361(b) further provides that the submission of a list of policy forms and endorsements does not constitute a form filing under Chapter 2301 of the Insurance Code.

Section 5.9960(c)(2) provides the definition of "insurer" for the purposes of territory rating requirements.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

SUBCHAPTER M. FILING REQUIREMENTS
DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING REQUIREMENTS

28 TAC §5.9331

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code §912.056 and §36.001. Section 912.056(e) provides for the commissioner to require, by rule, the filing of rating information by a company described by §912.056(d) for each managing general agent, district, or local chapter. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: January 21, 2011
For further information, please call: (512) 463-6327

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DIVISION 10. FILINGS MADE EASY--ADDITIONAL FILING REQUIREMENTS FOR CERTAIN COUNTY MUTUAL INSURANCE COMPANIES

28 TAC §5.9360, §5.9361

STATUTORY AUTHORITY. The new sections are adopted pursuant to the Insurance Code §912.056 and §36.001. Section 912.056(e) provides for the commissioner to require, by rule, the filing of rating information by a company described by §912.056(d) for each managing general agent, district, or local chapter. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: June 30, 2011
Proposal publication date: January 21, 2011
For further information, please call: (512) 463-6327

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SUBCHAPTER V. TERRITORY RATING REQUIREMENTS

28 TAC §5.9960

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code §912.056 and §36.001. Section 912.056(e) provides for the commissioner to require, by rule, the filing of rating information by a company described by §912.056(d) for each managing general agent, district, or local chapter. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 10, 2011.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

SUBCHAPTER M. REIMBURSABLE COST SPECIFICATIONS FOR THE PETROLEUM STORAGE TANK REIMBURSEMENT PROGRAM

30 TAC §334.560

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts an amendment to §334.560 *without changes* to the proposed text published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 723) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

On August 4, 2010, the TCEQ received a petition for rulemaking (Project Number 2010-051-PET-NR) from Grissom & Thompson, L.L.P., representing Talon/LPE, Grimes & Associates, and Ranger Environmental Services, Inc. (the Petitioner). At the September 29, 2010, Commissioners' Agenda, the commission directed staff to initiate rulemaking to address the concerns raised by the Petitioner. The Petitioner requested revisions to three reimbursable pay items in §334.560, Reimbursable Cost Specifications, for the Petroleum Storage Tank (PST) Reimbursement Program. The rules set reimbursement rates for expenses associated with corrective action activities conducted at Leaking Petroleum Storage Tank (LPST) sites by eligible owners and operators. The last revision to the reimbursable rates was on November 18, 2004. The Petitioner requested that reimbursable rates be increased for off-site access fees charged by municipalities; waste disposal costs; and per diem costs. The Petitioner indicated that increased market prices for these items have occurred over the last six years resulting in undue financial hardship to eligible owners and operators or their authorized assignees. Amending the reimbursable rates for these items allows eligible LPST owners and operators to receive reimbursement payments that are more representative of current market rates for these corrective action activities.

Section Discussion

The commission adopts administrative changes throughout the rulemaking to conform to Texas Register requirements.

The commission adopts changes to the municipality fee found in Activity 04: Site Assessments of the figure in §334.560. Municipality or government fees vary significantly throughout the state. The prior rule capped the reimbursement of these fees at $500.00 per well or boring. The amendment increases the reimbursable unit cost of a well or boring installation on property owned by a municipality or government agency to the actual cost of the permit, rather than being capped at $500.00. The adopted amendment caps reimbursement of the initial permit costs and annual fees at the rate the municipality or government entity charges upon the effective date of this rule.

The commission adopts the amendment to the waste management costs in §334.560. The revised waste management items are: vacuum truck rental and soil disposal costs. The change increases the reimbursable unit cost for the use of a vacuum truck to dispose of LPST wastes in Activities 02, 03, 04, 06, 07, 09, and 10 of the figure in §334.560 to $85.00 per hour. The increase is based on an average of quotes from major vacuum truck rental companies in various areas of the state. Additionally, the reimbursable soil disposal costs referenced in Activity 04 of the figure in §334.560 are also increased. The adopted rate change is $250.00 base + $50.00 per drum and $250.00 base + $35.00 per cubic yard. The change is based on reviews of quotes from major waste disposal companies throughout the state and in New Mexico.

Revisions to the per diem rates in §334.560 are also adopted. The per diem rates are referenced in Activities 02, 03, 04, 06, 07, 08, 09, 10, and 11 and in Part 4 - Travel Costs of the figure in §334.560. The adopted per diem rate will be consistent with per diem as allowed by the Texas Comptroller of Public Accounts.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it 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. Regarding the first part of this definition, the specific intent of this rulemaking is to "protect the environment" by increasing certain amounts that would be reimbursed by the PST Reimbursement Program to eligible owners and operators, or their authorized assignees, for performance of corrective action at LPST sites. However, the second part of the definition of a "major environmental rule" is not met: the rule would not 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 term "material" means "having real importance or great consequence" in contrast to incidental or insignificant impact. Because the rule increases amounts being reimbursed to eligible owners or operators, and because this rule does not involve any increase in costs being imposed on the public or regulated entities, there is no adverse effect on the state so as to constitute a "major environmental rule."

Further, even if it were considered a "major environmental rule," the rule does not meet any of the four requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) states: "This section applies only to a major environmental rule adopted by a state agency, 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 rule does not meet any of the four applicability requirements and thus is not subject to the regulatory analysis provisions of the Texas Government Code. Specifically, the rule does not exceed a standard set by federal law; does not exceed an express requirement of state law; does not exceed a requirement of a federal delegation agreement or contract; and is not adopted solely under the general powers of the agency but rather under specific authorizing statutes as referenced in the STATUTORY AUTHORITY sections of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rule is to increase certain amounts that would be reimbursed by the PST Reimbursement Program to eligible owners and operators, or their designated assignee contractors, for performance of corrective action at LPST sites. These increases are intended to take into account the rising market prices of performing certain corrective action activities and associated costs. The adopted rule would substantially advance this stated purpose by amending portions of §334.560 to make reasonable adjustments to reimbursable costs.

The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rule because the adopted rule in total is an action 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 does not impose a greater burden than is necessary to achieve the health and safety purpose. By increasing reimbursable amounts to be in keeping with certain costs in the marketplace, this rulemaking helps ensure that LPST cleanups continue to occur in the PST Reimbursement Program. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

The adopted rule is an "action taken in response to a real and substantial threat to public health and safety" in that contamination from releases from underground storage tanks pose a threat to both soils and groundwater with which the public may come into contact. The adopted rule is "designed to significantly advance the health and safety purpose" by helping to ensure that adequate reimbursements are available for the corrective action of this contamination. The adopted rule does not "impose a greater burden than is necessary to achieve the health and safety purpose" because the adopted rule revisions do not impose a burden, since it represents an increase in reimbursement payments rather than a lessening.

Nevertheless, the commission further performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The adopted rule adjusts the Reimbursable Cost Specifications by increasing amounts eligible owners or operators may receive from the PST Remediation Account for performance of necessary corrective action and related allowable costs. Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted rule. There are no burdens imposed on private real property from the adopted rule and the benefits to society are the adopted rule effect of increasing the likelihood that LPST sites will be cleaned up by ensuring that costs of such cleanups are being adequately addressed in the PST Reimbursement Program. As a whole, this rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rule include two of the goals listed in 31 TAC §505.12: (1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal

natural resource areas (CNRAs); and (2) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs. Because this rulemaking increases certain amounts that eligible owners or operators may be reimbursed for remediating LPST sites, it will therefore aid in ensuring that releases to the environment continue to be addressed. This rulemaking is consistent with the goals of protecting and preserving coastal environments.

None of the CMP policies stated in 31 TAC §501.13 are relevant to, nor are they adversely affected by, the rulemaking for the reason that there are no substantive changes relating to provision of information, monitoring of compliance, or variances. Additionally, none of the specific policies described in 31 TAC §§501.16 - 501.34 apply to this rulemaking.

Promulgation and enforcement of the rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the rulemaking is consistent with these CMP goals and policies, and because the rule does not create or have a direct or significant adverse effect on any CNRAs.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

A public hearing was held on March 3, 2011 in Austin, Texas. The comment period closed on March 13, 2011. The commission did not receive any comments concerning the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks; TWC, §26.3573, which states that the commission shall administer the petroleum storage tank remediation account and by rule adopt guidelines and procedures for the use of and eligibility for that account and which states that the commission may by rule adopt: (1) guidelines the commission considers necessary for determining the amounts that may be paid from the petroleum storage tank remediation account; and (2) guidelines concerning reimbursement for expenses incurred by an eligible owner or operator; and TWC, §26.011, which requires the commission to control the quality of water by rule.

The adopted rulemaking implements TWC, §26.3573(h), which requires the commission to administer the petroleum storage tank remediation account and by rule adopt guidelines and procedures for the use of and eligibility for that account.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102112

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2548

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.21

The Texas Youth Commission (TYC) adopts an amendment to §85.21, concerning Placement Assignment System, with changes to the proposed text as published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2819). Changes consist of adding clarification in subsection (f) that a designee of the executive director may grant an individual exception.

The justification for the amendment to the rule is to provide for community and facility safety through an enhanced process for reintegration of youth into the community by ensuring that youth are initially placed in a facility with the appropriate level of restriction based on identified risk and protective factors, level and types of treatment need, risk to the community, and demonstrated behavior patterns.

The amendment to the rule establishes that certain youth who were committed to TYC for offenses of moderate severity and who receive a score in the lowest category on the agency's risk assessment may be eligible for an initial placement at a medium restriction facility. The amendment to the rule also allows the executive director to make exceptions to placement requirements on a case-by-case basis, if justified by the youth's needs and public safety considerations.

TYC did not receive any comments on the proposed amendment.

The amendment is adopted under: (1) Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions; (2) Human Resources Code §61.045, which assigns TYC with responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the TYC; and (3) Human Resources Code §61.075, which, for youth committed to TYC, provides TYC with the authority to order confinement under conditions it believes are best designed for the youth's welfare and the interests of the public, and to permit liberty under supervision on conditions it believes to be conducive to acceptable behavior.

§85.21. Placement Assignment System.

(a) Purpose. The purpose of this rule is to establish an objective system of assigning youth to the most appropriate placement considering the Texas Youth Commission's (TYC's) responsibilities to provide for public protection and promotion of rehabilitation.

(b) General Provisions.

(1) This rule applies to placement decisions made:

(A) upon release from an intake unit on initial commitment or recommitment to TYC; and

(B) following a parole revocation hearing.

(2) Youth may be assigned to subsequent residential placements based on changing treatment needs, progress in rehabilitation programming, safety issues, or overpopulation concerns. For more information on transfers between facilities and transitions to less restrictive placements, see §85.45 of this title.

(3) Placements described in this rule will be to a facility of high or medium restriction. For more information on facility restriction levels, see §85.27 of this title.

(c) Placement System Factors. Placement decisions will be based on factors including but not limited to those listed in paragraphs (1) - (4) of this subsection, with each factor given priority in the order listed.

(1) Gender--Facilities are authorized to house males only, females only, and in certain facilities which provide specialized treatment services, both genders. Absent a specialized treatment need which can only be met at a co-educational facility, youth will be assigned to male-only or female-only placements. Youth in co-educational facilities have equal access to agency programs and activities.

(2) Treatment Needs--Of the placements available for the youth's gender, youth will be assigned to the placement that is best suited to meet the youth's individual treatment needs. Youth with the highest need for any of the following specialized treatment services will be assigned to a placement that provides those services: mental health, mental retardation, sexual behavior, capital/violent offender, or alcohol or other drugs. Whenever possible, youth with co-occurring specialized treatment needs will be assigned to placements providing each indicated type of treatment. See §87.51 of this title for more information on the assessment of specialized treatment needs. Age and medical needs will also be considered in determining an appropriate placement assignment.

(3) Risk Assessment--Of the placements available for the youth's gender and treatment needs, youth are assigned to a high or medium restriction facility based on a risk assessment. The youth's risk to re-offend is evaluated based on offense history, age at first referral to juvenile court, and other criminogenic factors. The assessment of risk to re-offend is combined with information about past facility escapes and behavior while at the intake unit or on parole and used to determine the required facility restriction level.

(A) Placement upon Initial Commitment or Recommitment to TYC.

(i) Except as provided in clause (ii) of this subparagraph, non-sentenced offenders with a committing offense of high or moderate severity and all sentenced offenders will initially be assigned to a program of high restriction.

(ii) Non-sentenced offenders with a committing offense of moderate severity who score in the lowest category on the risk assessment will initially be assigned to a program of high or medium restriction, depending on the nature of the committing offense and other factors identified in this rule.

(iii) Non-sentenced offenders with a committing offense of low severity will initially be assigned to a program of either high or medium restriction, depending on the results of the risk assessment and other factors identified in this rule.

(B) Placement upon Disciplinary Transfer from Parole to a Residential Facility.

(i) Following a Level I due process hearing held in accordance with §95.51 of this title, non-sentenced offenders found to have engaged in felony-level conduct while on parole and all sentenced offenders will be assigned to a program of high restriction.

(ii) Following a Level I due process hearing held in accordance with §95.51 of this title, non-sentenced offenders found to have engaged in misdemeanor-level conduct or violated conditions of parole which are not law violations will be assigned to a program of either high or medium restriction, depending on the results of the risk assessment and other factors identified in this rule.

(4) Proximity to Home--Of the placements available for the youth's gender, treatment needs, and risk assessment score, youth will be assigned to the placement closest to the residence of the youth's parent/guardian. In cases where the closest placement is at or above established population capacity or specialized treatment population capacity, the youth may be assigned to the next closest appropriate placement.

(d) Waivers. Except for non-sentenced offenders with a committing offense of high severity and sentenced offenders, the placement restriction level required under this rule may be waived by the division director over youth services or his/her designee. A designated restriction level may be waived in order to meet a youth's specific treatment needs or when it is determined that a youth has a disability or special medical condition that would prevent the youth from functioning in the designated restriction level.

(e) Parent Notification. Parents or guardians of youth under the age of 18 will be notified of all placement assignments. Youth 18 or older must give consent to disclose any placement information to a parent.

(f) Individual Exceptions. The executive director or his/her designee may make exceptions to placement assignments under this rule on a case-by-case basis, taking into consideration a youth's specific treatment needs and public safety.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cheryln K. Townsend
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6014

SUBCHAPTER C. MOVEMENT PRIOR TO PROGRAM COMPLETION

37 TAC §85.45

The Texas Youth Commission (TYC) adopts an amendment to §85.45, concerning Movement Prior to Program Completion, with changes to the proposed text as published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2821). Changes consist of adding clarification in subsection (l) that a designee of the executive director may grant an individual exception.

The justification for the amendment to the rule is to provide for community and facility safety through transitions to community-based facilities at appropriate times for youth based on their individual progress in the rehabilitation program and risk to the community. These transitions will allow for youth to demonstrate learned skills while retaining 24-hour supervision and support prior to release on parole.

The amendment to the rule makes several changes to the criteria which allow youth to transition to a medium restriction facility before the minimum length of stay is complete. The amendment to the rule also allows for transitions to medium restriction facilities for certain youth after the minimum length of stay has been completed.

For youth who were eligible under §85.21 of this title for initial placement in a medium restriction facility but were placed in a high restriction facility to address certain placement system factors (e.g., a specialized treatment need), the amended §85.45 allows for such youth to be re-assigned to a medium restriction facility as soon as those placement system factors have been addressed.

Other changes in the rule include the addition of a provision for the executive director to make exceptions to the rule on a case-by-case basis, and revisions to the provision for population control transitions and releases which allow the executive director to establish the parameters for any such movement of youth.

TYC received comments from Disability Rights Texas on the proposed amendment. A summary of the comments, along with TYC's responses, is below.

Comment: A specific provision should be added to subsection (l) stating that youth with disabilities would be highly considered for an individual exception to the requirements for transition to a medium restriction facility, allowing for diversion of these youth at any time after their admission.

Response: TYC policy currently provides for diversion from high restriction facilities for certain youth whose disabilities contra-indicate placement in high restriction facilities. This policy, 37 TAC §85.21, allows for a waiver when it is determined that the youth has a disability that would prevent the youth from functioning in the facility restriction level designated by the youth's offense severity and risk score. These waivers allow for such youth to be placed in medium restriction facilities directly from the orientation and assessment facility.

The provision in proposed §85.45(l) allowing for individual exceptions to transition requirements is written to apply equally to all youth under TYC's custody. Any youth, regardless of individual ability level, will be considered for an individual exception if the treatment team determines it is in the best interests of the youth and the public. The executive director will evaluate requests based on the individual circumstances of each case, without giving preference to any youth or group of youth. Additionally, any member of the treatment team, including the youth and his/her parent or guardian, has a right under TYC's grievance policy to request an exception if the treatment team recommends against pursuing the exception. No changes were made to the proposed text as a result of the comment.

Comment: A provision should be added giving a youth or the legal guardian of a youth the ability to petition TYC for a review of eligibility for transition, and the ability to petition the executive director for consideration of transition as an individual exception.

Response: TYC's policy on youth grievances, 37 TAC §93.31, currently gives a youth or a person on behalf of a youth the ability to file a grievance concerning any matter relating to the care, treatment, services, or conditions under TYC's jurisdiction. A petition for transition to a facility of lower restriction would be processed under this policy. The policy further provides that the grievant has the right to file an appeal with the executive director if the grievant is not satisfied with the response provided on first appeal. No changes were made to the proposed text as a result of the comment.

The amendment is adopted under: (1) Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions; (2) Human Resources Code §61.045, which assigns TYC with responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the TYC; and (3) Human Resources Code §61.075, which, for youth committed to TYC, provides TYC with the authority to order confinement under conditions it believes are best designed for the youth's welfare and the interests of the public, and to permit liberty under supervision on conditions it believes to be conducive to acceptable behavior.

§85.45. Movement Prior to Program Completion.

(a) Purpose. The purpose of this policy is to establish criteria and procedures for moving youth who have not met program completion requirements to placements of equal or lesser restriction.

(b) Definitions. Definitions pertaining to this rule are under §85.1 of this title.

(c) General Provisions.

(1) Prior to a transition, a youth may request and in doing so will be granted a Level II hearing.

(2) A plan to minimize risk factors for re-offending shall be developed for each youth prior to release.

(3) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE) pursuant to §85.79 of this title.

(4) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title regarding victim notification rights.

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title regarding sex offender registration requirements.

(6) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(d) Transition Movements Prior to Initial or Revocation Minimum Length of Stay.

(1) Eligibility.

(A) The following youth are not eligible for transition movement prior to completion of the initial or revocation minimum length of stay:

(i) sentenced offenders; and

(ii) sex offenders with court orders deferring their sex offender registration requirements who have not successfully completed an assigned sexual behavior treatment program.

(B) Youth of eligible classifications must meet transition criteria as set forth in paragraph (2) of this subsection to qualify for a transition movement.

(2) Transition Movement Criteria. Youth in a high restriction facility may be eligible for transition to a medium restriction facility prior to completion of the initial or revocation minimum length of stay when the following criteria have been met:

(A) no major rule violations confirmed through a Level II due process hearing:

(i) within 60 days prior to the exit review or during the approval process, for youth with committing offenses of low or moderate severity; or

(ii) within 120 days prior to the exit review or during the approval process, for youth with committing offenses of high severity; and

(B) completion of the following:

(i) for youth who have not completed the initial minimum length of stay:

(I) youth with a committing offense of low severity must complete six months of the initial minimum length of stay in high restriction facilities; or

(II) youth with a committing offense of moderate severity must complete nine months of the initial minimum length of stay in high restriction facilities; or

(III) youth with a committing offense of high severity must complete all but six months of the initial minimum length of stay in high restriction facilities; or

(ii) for youth placed in a high restriction facility following revocation of parole, the youth must complete at least 2/3 of the revocation minimum length of stay; and

(C) participation in or completion of assigned specialized treatment programs or curriculum as required under §87.51 of this title; and

(D) completion of rehabilitation program requirements:

(i) for TYC-operated facilities, assignment by the multi-disciplinary team to the second highest stage in the assigned rehabilitation program as described in §87.3 of this title, which reflects that the youth is currently:

(I) consistently participating in academic and/or workforce development programs commensurate with abilities as reflected in the youth's educational plan; and

(II) consistently participating in skills development groups, as reflected in the youth's individual case plan; and

(III) consistently demonstrating learned skills, as reflected in the individual youth log and daily ratings of performance expectations; or

(ii) for facilities operated under contract with TYC, completion of requirements for transition to a community residential placement as defined in the TYC-approved rehabilitation program; and

(E) completion of a draft community reintegration plan (or equivalent in a contract facility), to be finalized at the medium restriction facility, that demonstrates the youth's:

(i) understanding of his/her risk and protective factors; and

(ii) development of skills, abilities, and knowledge to reduce risk factors and increase protective factors; and

(iii) identification of goals and a plan of action to achieve goals in the medium restriction placement; and

(iv) identification of obstacles that may hinder successful community re-entry and plans to deal with those obstacles in the medium restriction placement; and

(F) completion of a criminal street gang intervention program, if required by court order.

(3) Decision Authority for Approval of Transition. The final decision authority will approve the youth's transition plan upon a determination that the youth meets all transition criteria and the community re-entry plan adequately addresses risk factors.

(A) For youth with a committing offense of low or moderate severity, the final decision authority is the:

(i) facility administrator if the youth is assigned to a TYC-operated facility; or

(ii) division director over youth services or his/her designee if the youth is assigned to a facility operated under contract with TYC.

(B) For youth with a committing offense of high severity, the final decision authority is the division director over youth services or his/her designee.

(e) Transition Movements after Completion of Initial or Revocation Minimum Length of Stay.

(1) Eligibility.

(A) The following youth are not eligible for transition movement after completion of the initial or revocation minimum length of stay:

(i) sentenced offenders; and

(ii) sex offenders with court orders deferring their sex offender registration requirements who have not successfully completed an assigned sexual behavior treatment program.

(B) Youth of eligible classifications must meet transition criteria as set forth in paragraph (2) of this subsection to qualify for a transition movement.

(2) Transition Movement Criteria. Youth in a high restriction facility may be eligible for transition to a medium restriction facility after completion of the initial or revocation minimum length of stay when the following criteria have been met:

(A) no major rule violations confirmed through a Level II due process hearing within 30 days prior to the exit review or during the approval process;

(B) participation in or completion of assigned specialized treatment programs or curriculum as required under §87.51 of this title; and

(C) completion of a criminal street gang intervention program, if required by court order.

(3) Decision Authority for Approval of Transition. The final decision authority will approve the youth's transition plan upon a determination that the youth meets all transition criteria and the community re-entry plan adequately addresses risk factors. The final decision authority for approving transitions after completion of the initial or revocation minimum length of stay is the division director over youth services or his/her designee.

(f) Population Control Movements.

(1) When overpopulation occurs in any high restriction facility, certain remedial actions are taken. The executive director or designee may initiate, revise, or cancel population control measures or youth movement options when necessary to manage facility populations. Should it become necessary to transition or release youth who do not otherwise qualify for such movements, the executive director will establish the criteria, taking into account factors including, but not limited to, the following:

(A) progress in the rehabilitation program;

(B) proximity to the minimum length of stay date;

(C) severity of the committing offense;

(D) completion of required specialized treatment programs;

(E) participation in or completion of any statutorily required rehabilitation programming; and

(F) current risk assessment.

(2) Youth will be transitioned to a suitable TYC-operated medium restriction placement, contract care facility, or released to a suitable home or home substitute.

(g) Administrative Transfers. Administrative transfers may be made for non-disciplinary, programmatic purposes among facilities of equal restriction without a due process hearing. An administrative transfer may not be made in lieu of a disciplinary transfer for which a due process hearing is mandatory.

(h) Reassignment of Youth Initially Eligible for Placement in a Medium Restriction Facility.

(1) A youth may be reassigned to a medium restriction facility if the youth was initially eligible for such placement under §85.21 of this title but was placed in a high restriction facility in order to address one or more placement system factors that could not be appropriately addressed in a medium restriction facility. Such youth are not required to meet transition criteria as set forth in subsection (d) or (e) of this section in order to be moved from a high restriction facility to a medium restriction facility.

(2) The division director over youth services or his/her designee is the final decision authority for approving the facility reassignment.

(i) Hardship Cases. In hardship cases, the executive director or his/her designee may approve placing a youth on parole status without meeting program completion criteria.

(j) Youth with Mental Illness or Mental Retardation. Pursuant to §87.79 of this title, certain youth shall be discharged following application for appropriate services to address their mental illness or mental retardation.

(k) Notification.

(1) TYC will provide the committing juvenile court a copy of the youth's re-entry/reintegration plan and a report concerning the youth's progress while committed to TYC no later than 30 days prior to the date of the youth's release. Additionally, if on release the youth is placed in another state or a county other than a county served by the committing juvenile court, TYC will provide the re-entry/reintegration plan and progress report to a juvenile court having jurisdiction over the county of the youth's residence.

(2) TYC will notify the committing juvenile court, the prosecuting attorney, the parole officer, and the chief juvenile probation officer in the county to which the youth is being moved no later than ten calendar days prior to the transition or release.

(l) Individual Exceptions. The executive director or his/her designee may make exceptions to provisions of this rule on a case-by-case basis, based on a consideration of the youth's best interests and public safety.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 10, 2011.

TRD-201102133
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Effective date: July 1, 2011
Proposal publication date: May 6, 2011
For further information, please call: (512) 424-6014

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PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts the repeal of §211.1, concerning Definitions, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 523) and will not be republished.

The repeal of §211.1 removes out-of-date language.

No comments were received regarding adoption.

The repeal is adopted under Texas Occupations Code §1701.151.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2011.

TRD-201102107
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new §211.1, concerning Definitions, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 524) and will not be republished.

The new section is necessary to provide clear and concise definitions for use throughout the rules.

No comments were received regarding adoption of this new section.

The new section is adopted under Texas Occupations Code §1701.151.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102098
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §211.26

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.26, concerning Law Enforcement Agency Audits, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 526) and will not be republished.

The amendment adds language to §211.26, Law Enforcement Agency Audits.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.162.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102092
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §211.27

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.27, concerning Reporting Responsibilities of Individuals, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 527) and will not be republished.

The amendment adds language to §211.27, Reporting Responsibilities of Individuals.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.3075.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102086
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §211.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.28, concerning Responsibility of a Law Enforcement Agency to Report an Arrest, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 528) and will not be republished.

The amendment adds language to §211.28, Responsibility of a Law Enforcement Agency to Report an Arrest.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.153 and §1701.3075.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102085
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.5, concerning Contractual Training, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 529) and will not be republished.

The amendment adds language to 37 TAC §215.5, Contractual Training.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.254.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102096
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §215.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.7, concerning Training Provider Advisory Board, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 530) and will not be republished.

The amendment adds language to 37 TAC §215.7, Training Provider Advisory Board.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.252.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102087
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §215.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.13, concerning Risk Assessment, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 531) and will not be republished.

The amendment adds language to 37 TAC §215.13, Risk Assessment.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.254.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102093
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.1, concerning Minimum Standards for Initial Licensure, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 533) and will not be republished.

The amendment adds language to 37 TAC §217.1, Minimum Standards for Initial Licensure.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §§1701.253, 1701.256, 1701.301, 1701.302, 1701.306, 1701.307, 1701.309, 1701.310, and 1701.311.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102088
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.7, concerning Reporting the Appointment and Termination of a Licensee, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 535) and will not be republished.

The amendment adds language to §217.7, Reporting the Appointment and Termination of a Licensee.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.451.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102084
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §217.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.19, concerning Reactivation of a License, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 536) and will not be republished.

The amendment adds language to 37 TAC §217.19, Reactivation of a License.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.304 and §1701.316.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102089
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts the repeal of §221.1, concerning Proficiency Certificate Requirements, without changes to the proposal published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1959).

The repeal of §221.1 is necessary to enable accurate issue dates for certain certificates.

No comments were received regarding adoption of the repeal.

The repeal is adopted in compliance with Texas Occupations Code §1701.402.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2011.

TRD-201102141
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: March 25, 2011
For further information, please call: (512) 936-7713

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37 TAC §221.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new §221.1, concerning Proficiency Certificate Requirements, with changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1959). The section will be republished.

The new section is necessary to enable accurate issue dates for certain certificates.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Occupations Code §1701.402.

§221.1. Proficiency Certificate Requirements.

(a) The commission shall issue proficiency certificates in accordance with the Texas Occupations Code §1701.402. Commission certificates issued pursuant to §1701.402 are neither required nor a prerequisite for establishing proficiency or training.

(b) To qualify for proficiency certificates, applicants must meet all the following proficiency requirements:

(1) submit any required application currently prescribed by the commission, requested documentation, and any required fee;

(2) have an active license or appointment for the corresponding certificate (not a requirement for Mental Health Officer Proficiency, Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency, Firearms Instructor Proficiency, Firearms Proficiency for Community Supervision Officers, Firearms Proficiency for Juvenile Probation Officers or Instructor Proficiency);

(3) must not have license(s) under suspension by the commission within the previous 5 years;

(4) meet the continuing education requirements for the previous training cycle;

(5) for firearms related certificates, not be prohibited by state or federal law or rule from attending training related to firearms or from possessing a firearm; and

(6) academic degree(s) must be issued by an accredited college or university.

(c) The commission may refuse an application if:

(1) an applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) an applicant has not affixed any required signature;

(3) required forms are incomplete;

(4) required documentation is incomplete, illegible, or is not attached; or

(5) an application contains a false assertion by any person.

(d) The commission shall cancel and recall any certificate if the applicant was not qualified for its issue and it was issued:

(1) by mistake of the commission or an agency; or

(2) based on false or incorrect information provided by the agency or applicant.

(e) If an application is found to be false, any license or certificate issued to the appointee by the commission will be subject to cancellation and recall.

(f) The issuance date of a proficiency certificate may be changed upon submission of an application along with documentation supporting the proposed date of eligibility and payment of any required fee.

(g) The effective date of this section is July 14, 2011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102101
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: March 25, 2011
For further information, please call: (512) 936-7713

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37 TAC §221.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts the repeal of §221.9, concerning Standardized Field Sobriety Testing (SFST) Proficiency, without changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1959) and will not be republished.

The repeal of §221.9 removes a certificate that did not relate to a licensee's training to conduct Standardized Field Sobriety Tests as instruction which is included in the Basic Peace Officer Course.

No comments were received regarding adoption of this repeal.

The repeal as adopted is in compliance with Texas Occupations Code, §1701.402, Proficiency Certificates.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102099
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: March 25, 2011
For further information, please call: (512) 936-7713

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37 TAC §221.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.28, concerning Advanced Instructor Proficiency, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 537) and will not be republished.

The amendment adds language to 37 TAC §221.28, Advanced Instructor Proficiency.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.402.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102090
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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CHAPTER 223. ENFORCEMENT

37 TAC §223.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.19, concerning Revocation of Licenses, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 539) and will not be republished.

The amendment adds language to 37 TAC §223.19, Revocation of Licenses.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102091
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 936-7713

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37 TAC §223.20

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.20, concerning Revocation of License for Constitutionally Elected Officials, without changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1961) and will not be republished.

The amendment adds language to §223.20, Revocation of License for Constitutionally Elected Officials.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.501.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102100
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 14, 2011
Proposal publication date: March 25, 2011
For further information, please call: (512) 936-7713

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 401. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

37 TAC §401.1

The Texas Commission on Fire Protection (the Commission) adopts amendments to Chapter 401, Practice and Procedure, Subchapter A, General Provisions and Definitions, concerning §401.1, Purpose and Scope. The amendments are adopted without changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1646).

The amendments are being adopted to remove language that references the Fire Department Emergency Program which was transferred to the Texas Forest Service effective January 1, 2010.

The adopted amendments will clarify which state agency is responsible for the Fire Department Emergency Program which provides grants, loans and scholarships to fire departments for fire protection training, equipment and facilities.

There were no comments received from the public regarding the proposed amendments.

The amendment is adopted under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments; §419.008, General Powers and Duties; and §419.0082, Rulemaking, which provide the Commission the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102077
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 28, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 936-3813

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CHAPTER 423. FIRE SUPPRESSION SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.3

The Texas Commission on Fire Protection (the Commission) adopts an amendment to Chapter 423, Fire Suppression, Subchapter A, Minimum Standards for Structure Fire Protection Personnel Certification, concerning §423.3, Minimum Standards for Basic Structure Fire Protection Personnel Certification. The amendment is adopted without changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1647).

The amendments are being adopted to remove language referencing completion of the five phase levels of the Basic Fire Suppression Curriculum as an avenue to become certified as basic structure fire protection personnel.

The adopted amendments will clarify and streamline the requirements for obtaining certification as basic structure fire protection personnel.

There were no comments received from the public regarding the proposed amendments.

The amendment is adopted under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments; §419.008, General Powers and Duties; §419.021, Definitions; and §419.032, Appointment of Fire Protection Personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102078
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 28, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 936-3813

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SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.201

The Texas Commission on Fire Protection (the Commission) adopts an amendment to Chapter 423, Fire Suppression, Subchapter B, Minimum Standards for Aircraft Rescue Fire Fighting Personnel, concerning §423.201, Minimum Standards for Aircraft Rescue Fire Fighting Personnel. The amendment is adopted without changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1648).

The amendment is being adopted to make grammatical changes.

The adopted amendments will correct grammatical errors in the sentence structure in §423.201(b).

There were no comments received from the public regarding the proposed amendment.

The amendment is adopted under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments; §419.008, General Powers and Duties; §419.021, Definitions; and §419.032, Appointment of Fire Protection Personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2011.

TRD-201102079
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 28, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 936-3813

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §163.40, Substance Abuse Treatment. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711 or Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-201102137
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: June 10, 2011

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Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapters contained in Title 22, Part 11, of the Texas Administrative Code:

Chapter 211, General Provisions, §§211.1 - 211.9

Chapter 217, Licensure, Peer Assistance and Practice, §§217.1 - 217.20

Chapter 219, Advanced Practice Nurse Education, §§219.1 - 219.13

Chapter 223, Fees, §223.1 and §223.2

In conducting its review, the Board will assess whether the reasons for originally adopting these chapters continue to exist. Each section of these chapters will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the Board, and whether it is in compliance with Chapter 2001 of the Government Code (The Administrative Procedure Act).

The public has thirty (30) days from the publication of this rule review in the *Texas Register* to comment and submit any response or suggestions. No action is required by the Board. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101. Any proposed changes to the rules as a result of this review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for an additional comment period prior to the final adoption or repeal by the Board.

This rule review is undertaken pursuant to the Board's 2011 rule review plan that is available on the Secretary of State's website.

TRD-201102176
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: June 15, 2011

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TABLES & GRAPHICS

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: 25 TAC §601.9

DISCLOSURE AND CONSENT - ANESTHESIA and/or PERIOPERATIVE PAIN MANAGEMENT (ANALGESIA)

TO THE PATIENT: *You have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure.*

I voluntarily request that anesthesia and/or perioperative pain management care (analgesia) as indicated below be administered to me (the patient). I understand it will be administered by: (1) an anesthesiologist, (2) the operating practitioner, and/or (3) an anesthesiologist assistant or certified registered nurse anesthetist under the delegation and/or medical direction of an anesthesiologist or the operating practitioner to the extent allowed by law, and such other health care providers as necessary. Perioperative means the period immediately before and until immediately after the procedure.

I understand that anesthesia/analgesia involves additional risks and hazards but I request the use of anesthetics/analgesia for the relief and protection from pain during the planned and additional procedures. I realize the type of anesthesia/analgesia may have to be changed possibly without explanation to me.

I understand that serious, but rare, complications can occur with all anesthetic/analgesic methods. Some of these risks are breathing and heart problems, drug reactions, nerve damage, cardiac arrest, brain damage, paralysis, or death.

I also realize that other complications may occur that are more specific to the following anesthetic/analgesic methods:

(Check all applicable anesthesia/analgesia methods and have the patient/other legally responsible person initial.)

☐ _____ GENERAL ANESTHESIA - minor discomfort; injury to vocal cords, teeth, lips, eyes; awareness during the procedure; memory dysfunction/loss; permanent organ damage.

☐ _____ SPINAL ANESTHESIA/ANALGESIA - nerve damage; back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia.

☐ _____ EPIDURAL ANESTHESIA/ANALGESIA - nerve damage; back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia.

☐ _____ MONITORED ANESTHESIA CARE (MAC) or SEDATION/ANALGESIA - memory dysfunction/loss; medical necessity to convert to general anesthesia.

☐ _____ REGIONAL BLOCK ANESTHESIA/ANALGESIA - nerve damage; persistent pain; bleeding/ hematoma; infection; medical necessity to convert to general anesthesia.

Additional comments/risks:

_____

_____

_____

I understand that no promises have been made to me as to the result of anesthesia/analgesia methods.

I have been given an opportunity to ask questions about my anesthesia/analgesia methods, the procedures to be used, the risks and hazards involved, and alternative forms of anesthesia/analgesia. I believe that I have sufficient information to give this informed consent.

This form has been fully explained to me, I have read it or have had it read to me, the blank spaces have been filled in, and I understand its contents.

PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)

_____

DATE: _____ **TIME:** _____ **A.M. /P.M.**

WITNESS:

_____

Signature

_____

Name (Print)

_____

Address (Street or P.O. Box)

_____

City, State, Zip

Figure: 30 TAC §115.112(a)(1)

Table I(a): Required Control for Storage Tanks Storing Volatile Organic Compounds (VOC) Other than Crude Oil and Condensate

True Vapor Pressure (pounds per square inch absolute (psia))	Storage Capacity (gallon (gal))	Control Requirements
≥1.5 psia and < 11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe or Vapor recovery system
≥1.5 psia and < 11 psia	> 25,000 gal and ≤ 40,000 gal	Internal floating cover, or External floating roof (any type), or Vapor recovery system
≥1.5 psia and < 11 psia	> 40,000 gal	Internal floating cover, or External floating roof with primary seal (any type) and secondary seal, or Vapor recovery system
≥11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe or Vapor recovery system
≥11 psia	> 25,000 gal	Submerged fill pipe and Vapor recovery system

Table II(a): Required Control for Storage Tanks Storing Crude Oil and Condensate

True Vapor Pressure (pounds per square inch absolute (psia))	Storage Capacity (gallon (gal))	Control Requirements
≥1.5 psia and < 11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe or Vapor recovery system
≥1.5 psia and < 11 psia	> 40,000 gal	Internal floating cover, or External floating roof with primary seal (any type) and secondary seal, or Vapor recovery system
≥11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe or Vapor recovery system
≥11 psia	> 40,000 gal	Submerged fill pipe and Vapor recovery system

Figure: 30 TAC §115.112(c)(1)

Table I(b): Required Control for Storage Tanks Storing Volatile Organic Compounds (VOC) Other than Crude Oil and Condensate

True Vapor Pressure (pounds per square inch absolute (psia))	Storage Capacity (gallon (gal))	Control Requirements
≥1.5 psia and < 11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe or Vapor recovery system
≥1.5 psia and < 11 psia	> 25,000 gal	Internal floating cover, or external floating roof (any type), or Vapor recovery system
≥11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe or Vapor recovery system
≥11 psia	> 25,000 gal	Submerged fill pipe and Vapor recovery system

Figure: 30 TAC §115.112(e)(1)

Table 1: Required Control for Storage Tanks Storing Volatile Organic Compounds (VOC) Other Than Crude Oil and Condensate

True Vapor Pressure (pounds per square inch absolute (psia))	Storage Capacity (gallon (gal))	Control Requirements
≥1.5 psia and < 11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe, or Vapor recovery unit, or Control device
≥1.5 psia and < 11 psia	> 25,000 gal and ≤ 40,000 gal	Internal floating cover, or External floating roof (any type), or Vapor recovery unit, or Control device
≥1.5 psia and < 11 psia	> 40,000 gal	Internal floating cover, or External floating roof with primary seal (any type) and secondary seal, or Vapor recovery unit, or Control device
≥11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe, or Vapor recovery unit, or Control device
≥11 psia	> 25,000 gal	Submerged fill pipe and Either a vapor recovery unit or a control device

Table 2: Required Control for Storage Tanks Storing Crude Oil and Condensate

True Vapor Pressure (pounds per square inch absolute (psia))	Storage Capacity (gallon (gal))	Control Requirements
≥1.5 psia and < 11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe, or Vapor recovery unit, or Control device
≥1.5 psia and < 11 psia	> 40,000 gal	Internal floating cover, or External floating roof with primary seal (any type) and secondary seal, or Vapor recovery unit, or Control device
≥11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe, or Vapor recovery unit, or Control device
≥11 psia	> 40,000 gal	Submerged fill pipe and Either a vapor recovery unit or a control device

Figure: 30 TAC §115.112(f)(1)

Table f1: Required Control for Storage Tanks Storing Volatile Organic Compounds (VOC) Other Than Crude Oil and Condensate

True Vapor Pressure (pounds per square inch absolute (psia))	Storage Capacity (gallon (gal))	Control Requirements
≥1.5 psia and < 11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe, or Vapor recovery unit, or Control device
≥1.5 psia and < 11 psia	> 25,000 gal and ≤ 40,000 gal	Internal floating cover, or External floating roof (any type), or Vapor recovery unit, or Control device
≥1.5 psia and < 11 psia	> 40,000 gal	Internal floating cover, or External floating roof with primary seal (any type) and secondary seal, or Vapor recovery unit, or Control device
≥11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe, or Vapor recovery unit, or Control device
≥11 psia	> 25,000 gal	Submerged fill pipe and Either a vapor recovery unit or a control device

Table f2: Required Control for Storage Tanks Storing Crude Oil and Condensate

True Vapor Pressure (pounds per square inch absolute (psia))	Storage Capacity (gallon (gal))	Control Requirements
≥1.5 psia and < 11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe, or Vapor recovery unit, or Control device
≥1.5 psia and < 11 psia	> 40,000 gal	Internal floating cover, or External floating roof with primary seal (any type) and secondary seal, or Vapor recovery unit, or Control device
≥11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe, or Vapor recovery unit, or Control device
≥11 psia	> 40,000 gal	Submerged fill pipe and Either a vapor recovery unit or a control device

Figure: 30 TAC 115.118(a)(3)

$$EIReportable = (E_{1Seal} - E_{2Seals}) \times \left(\frac{G_m - G_a}{G_a} \right) \times \left(\frac{G_{8thL}}{\pi D} \right) \times 90$$

Where:

E_{1Seal} = The AP-42 estimate of emissions from a floating roof or floating cover tank with a primary seal only. The material is assumed to be stored at a temperature equal to the maximum of the local monthly average temperatures during the emission inventory reporting year as reported by the National Weather Service. Units are pounds per day.

E_{2Seals} = The AP-42 estimate of emissions from a floating roof or floating cover tank with primary and secondary seals. The material is assumed to be stored at a temperature equal to the maximum of the local monthly average temperatures during the emission inventory reporting year as reported by the National Weather Service. Units are pounds per day.

G_m = The area of measured seal gaps greater than 1/8 inch wide. Units are square inches.

G_a = The area of allowable seal gaps greater than 1/8 inch wide, equal to one square inch per foot of tank diameter. Units are square inches.

G_{8thL} = The length of measured seal gaps greater than 1/8 inch wide. Units are linear feet.

D = The diameter of the storage tank. Units are feet.

90 = Constant. Units are days.

Figure: 30 TAC §115.432(c)(3)

$$E = \frac{(VOC - S)}{VOC}$$

Where:

E = The required overall control efficiency.

VOC = The volatile organic compounds (VOC) content of the coatings used on the printing line on a pounds of VOC per gallon of solids basis.

S = The applicable VOC emission limit on a pounds of VOC per gallon of solids basis calculated using Equation 1 in Figure: 30 TAC §115.473(a)(3).

Figure: 30 TAC §115.435(a)(8)(B)(i)

$$CE = \frac{Gw}{(Gw + Fw)}$$

Where:

CE = The capture efficiency, decimal fraction.

G_W = The mass of volatile organic compounds (VOC) captured and delivered to control device using a temporary total enclosure (TTE) (use Procedure G.2).

F_W = The mass of fugitive VOC that escapes from a TTE (use Procedure F.1).

Figure: 30 TAC §115.435(a)(8)(B)(ii)

$$CE = \frac{(L - F)}{L}$$

Where:

CE = The capture efficiency, decimal fraction.

L = The mass of liquid volatile organic compounds (VOC) input to process (use Procedure L).

F = The mass of fugitive VOC that escapes from a temporary total enclosure (TTE) (use Procedure F.1).

Figure: 30 TAC §115.435(a)(8)(B)(iii)

$$CE = \frac{G}{(G + F_B)}$$

Where:

CE = The capture efficiency, decimal fraction.

G = The mass of volatile organic compounds (VOC) captured and delivered to a control device (use Procedure G.2).

F_B = The mass of fugitive VOC that escapes from building enclosure (use Procedure F.2).

Figure: 30 TAC §115.435(a)(8)(B)(iv)

$$CE = \frac{L}{F_B - L}$$

Where:

CE = The capture efficiency, decimal fraction.

L = The mass of liquid volatile organic compounds (VOC) input to process (use Procedure L).

F_B = The mass of fugitive VOC that escapes from a building or room enclosure (use Procedure F.2).

Figure: 30 TAC §115.450(b)(11)

$$\text{Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt compounds)} = \frac{W_V}{(V_M - V_W - V_{ES})}$$

Where:

W_V = The weight of VOC contained in V_M gallons of coating measured in pounds.

V_M = The volume of coating, generally assumed to be one gallon.

V_W = The volume of water contained in V_M gallons of coating measured in gallons.

V_{ES} = The volume of exempt solvents contained in V_M gallons of coating measured in gallons.

Figure: 30 TAC §115.450(b)(12)

$$\text{Pounds of volatile organic compounds (VOC) per gallon of solids} = \frac{W_V}{V_M - V_V - V_W - V_{ES}}$$

Where:

W_V = The weight of VOC contained in V_M gallons of coating measured in pounds.

V_M = The volume of coating, generally assumed to be one gallon.

V_V = The volume of VOC contained in V_M gallons of coating measured in gallons.

V_W = The volume of water contained in V_M gallons of coating measured in gallons.

V_{ES} = The volume of exempt solvents contained in V_M gallons of coating measured in gallons.

Figure: 30 TAC §115.453(a)(1)(A)

Table 1.

Coating Type	Baked pounds of volatile organic compounds per gallon coating	Air-Dried pounds of volatile organic compounds per gallon coating
General Coating, One-Component	2.3	2.3
General Coating, Multi-Component	2.3	2.8
Extreme High-Gloss Coating	3.0	2.8
Extreme Performance Coating	3.0	3.5
Heat-Resistant Coating	3.0	3.5
Metallic Coating	3.5	3.5
Pretreatment Coating	3.5	3.5
Solar-Absorbent Coating	3.0	3.5

Table 2.

Coating Type	Baked pounds of volatile organic compounds per gallon solids	Air-Dried pounds of volatile organic compounds per gallon solids
General Coating, One-Component	3.3	3.3
General Coating, Multi-Component	3.3	4.5
Extreme High-Gloss Coating	5.1	4.5
Extreme Performance Coating	5.1	6.7
Heat-Resistant Coating	5.1	6.7
Metallic Coating	6.7	6.7
Pretreatment Coating	6.7	6.7
Solar-Absorbent Coating	5.1	6.7

Figure: 30 TAC §115.453(a)(1)(B)

Table 1.

Coating Type	Baked pounds of volatile organic compounds per gallon coating	Air-Dried pounds of volatile organic compounds per gallon coating
General Coating, One-Component	2.3	2.3
General Coating, Multi-Component	2.3	2.8
Extreme High-Gloss Coating	3.0	2.8
Extreme Performance Coating	3.0	3.5
Heat-Resistant Coating	3.0	3.5
Metallic Coating	3.5	3.5
Pretreatment Coating	3.5	3.5
Solar-Absorbent Coating	3.0	3.5

Table 2.

Coating Type	Baked pounds of volatile organic compounds per gallon solids	Air-Dried pounds of volatile organic compounds per gallon solids
General Coating, One-Component	3.3	3.3
General Coating, Multi-Component	3.3	4.5
Extreme High-Gloss Coating	5.1	4.5
Extreme Performance Coating	5.1	6.7
Heat-Resistant Coating	5.1	6.7
Metallic Coating	6.7	6.7
Pretreatment Coating	6.7	6.7
Solar-Absorbent Coating	5.1	6.7

Figure: 30 TAC §115.453(a)(1)(C)

Table 1.

Coating Category	Air-Dried pounds of volatile organic compounds per gallon coating	Baked pounds of volatile organic compounds per gallon coating
General Coating, One-Component	2.8	2.3
General Coating, Multi-Component	2.8	2.3
Camouflage Coating	3.5	3.5
Electric-Insulating Varnish Coating	3.5	3.5
Etching Filler Coating	3.5	3.5
Extreme High-Gloss Coating	3.5	3.0
Extreme Performance Coating	3.5	3.0
Heat-Resistant Coating	3.5	3.0
High Performance Architectural Coating	6.2	6.2
High Temperature Coating	3.5	3.5
Metallic Coating	3.5	3.5
Military Specification Coating	2.8	2.3
Mold-Seal Coating	3.5	3.5
Pan-Backing Coating	3.5	3.5
Prefabricated Architectural Coating, Multi-Component	3.5	2.3
Prefabricated Architectural Coating, One-Component	3.5	2.3
Pretreatment Coating	3.5	3.5
Repair and Touch-Up Coating	3.5	3.0
Silicone Release Coating	3.5	3.5
Solar-Absorbent Coating	3.5	3.0
Vacuum-Metalizing Coating	3.5	3.5
Drum Coating, New, Exterior	2.8	2.8
Drum Coating, New, Interior	3.5	3.5
Drum Coating, Reconditioned, Exterior	3.5	3.5
Drum Coating, Reconditioned, Interior	4.2	4.2

Table 2.

Coating Category	Air-Dried pounds of volatile organic compounds per gallon solids	Baked pounds of volatile organic compounds per gallon solids
General Coating, One-Component	4.52	3.35
General Coating, Multi-Component	4.52	3.35
Camouflage Coating	6.67	6.67
Electric-Insulating Varnish Coating	6.67	6.67
Etching Filler Coating	6.67	6.67
Extreme High-Gloss Coating	6.67	5.06
Extreme Performance Coating	6.67	5.06
Heat-Resistant Coating	6.67	5.06
High Performance Architectural Coating	38.0	38.0
High Temperature Coating	6.67	6.67
Metallic Coating	6.67	6.67
Military Specification Coating	4.52	3.35
Mold-Seal Coating	6.67	6.67
Pan-Backing Coating	6.67	6.67
Prefabricated Architectural Coating, Multi-Component	6.67	3.35
Prefabricated Architectural Coating, One-Component	6.67	3.35
Pretreatment Coating	6.67	6.67
Silicone Release Coating	6.67	6.67
Solar-Absorbent Coating	6.67	5.06
Vacuum-Metalizing Coating	6.67	6.67
Drum Coating, New, Exterior	4.52	4.52
Drum Coating, New, Interior	6.67	6.67
Drum Coating, Reconditioned, Exterior	6.67	6.67
Drum Coating, Reconditioned, Interior	9.78	9.78

Figure: 30 TAC §115.453(a)(1)(D)

Table 1.

Coating Category	pounds of volatile organic compounds per gallon coating
General Coating, One-Component	2.3
General Coating, Multi-Component	3.5
Electric-Dissipating and Shock-Free Coating	6.7
Extreme Performance Coating, Multi-Component	3.5
Metallic Coating	3.5
Military Specification Coating, One-Component	2.8
Military Specification Coating, Multi-Component	3.5
Mold-Seal Coating	6.3
Multi-Colored Coating	5.7
Optical Coating	6.7
Vacuum-Metalizing Coating	6.7

Table 2.

Coating Category	pounds of volatile organic compounds per gallon solids
General One-Component	3.35
General Multi-Component	6.67
Electric-Dissipating and Shock-Free	74.7
Extreme Performance Multi-Component	6.67
Metallic	6.67
Military Specification One-Component	4.52
Military Specification Multi-Component	6.67
Mold-Seal	43.7
Multi-Colored	25.3
Optical	74.7
Vacuum-Metalizing	74.7

Figure: 30 TAC §115.453(a)(1)(E)

Table 1.

Automotive/Transportation Coating Category	pounds of volatile organic compounds per gallon coating	pounds of volatile organic compounds per gallon solids
Flexible Primer, Baked, Interior and Exterior Parts	4.5	11.58
Non-flexible Primer, Baked, Interior and Exterior Parts	3.5	6.67
Base Coats, Baked, Interior and Exterior Parts	4.3	10.34
Clear Coat, Baked, Interior and Exterior Parts	4.0	8.76
Non-basecoat/clear coat, Baked, Interior and Exterior Parts	4.3	10.34
Primers, Air-Dried, Exterior Parts	4.8	13.80
Basecoat, Air-Dried, Exterior Parts	5.0	15.59
Clear coats, Air-Dried, Exterior Parts	4.5	11.58
Non-basecoat/clear coat, Air-Dried, Exterior Parts	5.0	15.59
Air-Dried Coatings, Interior Parts	5.0	15.59
Touch-up and Repair Coatings	5.2	17.72

Table 2.

Business Machine Coating Category	pounds of volatile organic compounds per gallon coating	pounds of volatile organic compounds per gallon solids
Primers	2.9	4.80
Topcoat	2.9	4.80
Texture Coat	2.9	4.80
Fog Coat	2.2	3.14
Touch-up and repair	2.9	4.80

Figure: 30 TAC §115.453(a)(1)(F)

Table 1.

Coating Category	pounds of volatile organic compounds per gallon coating
Extreme High-Gloss Topcoat	4.1
High-Gloss Topcoat	3.5
Pretreatment Wash Primers	6.5
Finish Primer-Surfacer	3.5
High Build Primer-Surfacer	2.8
Aluminum Substrate Antifoulant	4.7
Other Substrate Antifoulant	2.8
All other pleasure craft surface coatings for metal or plastic	3.5

Table 2.

Coating Category	pounds of volatile organic compounds per gallon solids
Extreme High-Gloss Topcoat	9.2
High-Gloss Topcoat	6.7
Pretreatment Wash Primers	55.6
Finish Primer-Surfacer	6.7
High Build Primer-Surfacer	4.6
Aluminum Substrate Antifoulant	12.8
Other Substrate Antifoulant	4.4
All other pleasure craft surface coatings for metal or plastic	6.7

Figure: 30 TAC §115.453(a)(2)

Coating Category	pounds of volatile organic compounds per gallon coating
Motor vehicle cavity wax	5.4
Motor vehicle sealer	5.4
Motor vehicle deadener	5.4
Motor vehicle gasket/gasket sealing material	1.7
Motor vehicle underbody	5.4
Motor vehicle trunk interior	5.4
Motor vehicle bedliner	1.7
Motor vehicle lubricating wax/compound	5.8

Figure: 30 TAC §115.453(a)(3)

Table 1.

Assembly Coating Process	volatile organic compounds (VOC) Limit
Electrodeposition primer (EDP) operations (including application area, spray/rinse stations, and curing oven) When solids turnover ratio (R_T) $\geq$ 0.16	0.7 pound per gallon (lb/gal) coating solids applied
EDP operations (including application area, spray/rinse stations, and curing oven) When 0.040$\leq R_T <$0.16	$0.7x350^{0.160-R_T}$ lb/gal coating solids applied
EDP operations (including application area, spray/rinse stations, and curing oven) When $R_T <$0.0400	No VOC emission limit
Primer-surfacer operations (including application area, flash-off area, and oven)	12.0 lbs VOC/gal of solids deposited
Topcoat operations (including application area, flash-off area, and oven)	12.0 lbs VOC/gal of solids deposited
Combined primer-surfacer and topcoat operations	12.0 lbs VOC/gal of solids deposited
Final repair operations	4.8 lb VOC/gal of coating (minus water and exempt solvents)

Table 2.

Material	volatile organic compounds (VOC) Limit (excluding water and exempt compounds, as applied)
Automobile and light-duty truck glass-bonding primer	7.51 pounds volatile organic compounds per gallon (lb VOC/gal)
Automobile and light-duty truck adhesive	2.09 lb VOC/gal
Automobile and light-duty truck cavity wax	5.42 lb VOC/gal
Automobile and light-duty truck sealer	5.42 lb VOC/gal
Automobile and light-duty truck deadener	5.42 lb VOC/gal
Automobile and light-duty truck gasket/gasket sealing material	1.67 lb VOC/gal
Automobile and light-duty truck underbody coating	5.42 lb VOC/gal
Automobile and light-duty truck trunk interior coating	5.42 lb VOC/gal
Automobile and light-duty truck bedliner	1.67 lb VOC/gal
Automobile and light-duty truck weatherstrip adhesive	6.26 lb VOC/gal
Automobile and light-duty truck lubricating wax/compound	5.84 lb VOC/gal

Figure: 30 TAC §115.453(a)(4)

Coating Type	Pounds of volatile organic compounds per pound solids	Pounds of volatile organic compounds per pound coating
Pressure Sensitive Tape and Label Surface Coating	0.2	0.067
Paper, Film, and Foil Surface Coating (Not including Pressure Sensitive Tape and Label)	0.4	0.08

Figure: 30 TAC §115.453(a)(5)

$$E = \frac{(VOC - S)}{VOC}$$

Where:

E = The required overall control efficiency.

VOC = The volatile organic compounds (VOC) content of the coatings used on the coating line expressed on a solids basis in units consistent with the VOC emission limits provided in paragraph (1) or (4) of this subsection.

S = The applicable VOC emission limit in paragraph (1) or (4) of this subsection expressed on a solids basis in units consistent with the units expressed in the VOC variable above.

Figure: 30 TAC §115.455(a)(2)(B)(i)

$$U_P = T_P\left(\frac{100}{S_P}\right)$$

$$U_B = T_B\left(\frac{100}{S_B}\right)$$

$$U_C = T_C\left(\frac{100}{S_C}\right)$$

Where:

U_P = The relative primer usage in gallons of primer per square inch of solids applied.

T_P = The target dry film thickness of the primer in mils (0.001 inch).

S_P = The volume percentage of solids in the primer, minus water and exempt solvents.

U_B = The relative basecoat usage in gallons of basecoat per square inch of solids applied.

T_B = The target dry film thickness of the basecoat in mils (0.001 inch).

S_B = The volume percentage of solids in the basecoat, minus water and exempt solvents.

U_C = The relative clearcoat usage in gallons of clearcoat per square inch of solids applied.

T_C = The target dry film thickness of the clearcoat in mils (0.001 inch).

S_C = The volume percentage of solids in the clearcoat, minus water and exempt solvents.

Figure: 30 TAC §115.455(a)(2)(B)(ii)

$$Q = \frac{(U_P \times V_P) + (U_B \times V_B) + (U_C \times V_C)}{(U_P) + (U_B) + (U_C)}$$

Where:

Q = The occurrence weighted average in pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents) as applied.

U_P = The relative primer usage in gallons of primer per square inch of solids applied.

V_P = The VOC content of the primer in pounds per gallon.

U_B = The relative basecoat usage in gallons of basecoat per square inch of solids applied.

V_B = The VOC content of the basecoat in pounds per gallon.

U_C = The relative clearcoat usage in gallons of clearcoat per square inch of solids applied.

V_C = The VOC content of the clearcoat in pounds per gallon.

Figure: 30 TAC §115.455(a)(4)(B)(i)

$$CE = \frac{Gw}{(Gw + Fw)}$$

Where:

CE = The capture efficiency, decimal fraction.

G_W = The mass of volatile organic compounds (VOC) captured and delivered to control device using a temporary total enclosure (TTE) (use Procedure G.2).

F_W = The mass of fugitive VOC that escapes from a TTE (use Procedure F.1).

Figure: 30 TAC §115.455(a)(4)(B)(ii)

$$CE = \frac{(L - F)}{L}$$

Where:

CE = The capture efficiency, decimal fraction.

L = The mass of liquid volatile organic compounds (VOC) input to process (use Procedure L).

F = The mass of fugitive VOC that escapes from a temporary total enclosure (TTE) (use Procedure F.1).

Figure: 30 TAC §115.455(a)(4)(B)(iii)

$$CE = \frac{G}{(G + F_B)}$$

Where:

CE = The capture efficiency, decimal fraction.

G = The mass of volatile organic compounds (VOC) captured and delivered to a control device (use Procedure G.2).

F_B = The mass of fugitive VOC that escapes from building enclosure (use Procedure F.2).

Figure: 30 TAC §115.455(a)(4)(B)(iv)

$$CE = \frac{L}{F_B - L}$$

Where:

CE = The capture efficiency, decimal fraction.

L = The mass of liquid volatile organic compounds (VOC) input to process (use Procedure L).

F_B = The mass of fugitive VOC that escapes from building or room enclosure (use Procedure F.2).

Figure: 30 TAC §115.465(2)(B)(i)

$$CE = \frac{Gw}{(Gw + Fw)}$$

Where:

CE = The capture efficiency, decimal fraction.

G_W = The mass of volatile organic compounds (VOC) captured and delivered to control device using a temporary total enclosure (TTE) (use Procedure G.2).

F_W = The mass of fugitive VOC that escapes from a TTE (use Procedure F.1).

Figure: 30 TAC §115.465(2)(B)(ii)

$$CE = \frac{(L - F)}{L}$$

Where:

CE = The capture efficiency, decimal fraction.

L = The mass of liquid volatile organic compounds (VOC) input to process (use Procedure L).

F = The mass of fugitive VOC that escapes from a temporary total enclosure (use Procedure F.1).

Figure: 30 TAC §115.465(2)(B)(iii)

$$CE = \frac{G}{(G + F_B)}$$

Where:

CE = The capture efficiency, decimal fraction.

G = The mass of volatile organic compounds (VOC) captured and delivered to a control device (use Procedure G.2).

F_B = The mass of fugitive VOC that escapes from building or room enclosure (use Procedure F.2).

Figure: 30 TAC §115.465(2)(B)(iv)

$$CE = \frac{L}{F_B - L}$$

Where:

CE = The capture efficiency, decimal fraction.

L = The mass of liquid volatile organic compounds (VOC) input to process (use Procedure L).

F_B = The mass of fugitive VOC that escapes from a building or room enclosure (use Procedure F.2).

Figure: 30 TAC §115.473(a)

Table 1.

General Adhesive Application Processes	pounds of volatile organic compounds per gallon adhesive
Reinforced Plastic Composite	1.7
Flexible vinyl	2.1
Metal	0.3
Porous Material (Except Wood)	1.0
Rubber	2.1
Wood	0.3
Other Substrates	2.1

Table 2.

Specialty Adhesive Application Processes	pounds of volatile organic compounds per gallon adhesive
Ceramic Tile Installation	1.1
Contact Adhesive	2.1
Cove Base Installation	1.3
Floor Covering Installation (Indoor)	1.3
Floor Covering Installation (Outdoor)	2.1
Floor Covering Installation (Perimeter Bonded Sheet Vinyl)	5.5
Metal to Urethane/Rubber Molding or Casting	7.1
Motor Vehicle Adhesive	2.1
Motor Vehicle Weatherstrip Adhesive	6.3
Multipurpose Construction	1.7
Plastic Solvent Welding acrylonitrile butadiene styrene (ABS)	3.3
Plastic Solvent Welding (Except ABS)	4.2
Sheet Rubber Lining Installation	7.1
Single-Ply Roof Membrane Installation/Repair (Except Ethylene Propylene Diene Monomer)	2.1
Structural Glazing	0.8
Thin Metal Laminating	6.5
Tire Repair	0.8
Waterproof Resorcinol Glue	1.4

Table 3.

Adhesive Primer Application Processes	Pounds of volatile organic compounds per gallon adhesive
Motor Vehicle Glass-Bonding Primer	7.5
Plastic Solvent Welding Adhesive Primer	5.4
Single-Ply Roof Membrane Adhesive Primer	2.1
Other Adhesive Primer	2.1

Figure: 30 TAC §115.473(a)(3)

Equation 1.

$$S = \frac{C}{\left(1 - \left(\frac{C}{D}\right)\right)}$$

Where:

S = The applicable volatile organic compounds (VOC) emission limit expressed on a pounds of VOC per gallon of solids basis.

C = The applicable VOC content limit from §115.471 of this title (relating to Exemptions) expressed on a pounds of VOC per gallon of coating basis.

D = An assumed density of 7.36 pounds of VOC per gallon of VOC.

Equation 2.

$$E = \frac{(VOC - S)}{VOC}$$

Where:

E = The required overall control efficiency.

VOC = The volatile organic compounds (VOC) content of the coatings used on the coating line expressed on a solids basis in pounds of VOC per gallon of solids.

S = The applicable VOC emission limit expressed on a pounds of VOC per gallon of solids basis calculated using Equation 1.

Figure: 30 TAC §115.475(3)(B)(i)

$$CE = \frac{Gw}{(Gw + Fw)}$$

Where:

CE = The capture efficiency, decimal fraction.

G_W = The mass of volatile organic compounds (VOC) captured and delivered to control device using a temporary total enclosure (TTE) (use Procedure G.2).

F_W = The mass of fugitive VOC that escapes from a TTE (use Procedure F.1).

Figure: 30 TAC §115.475(3)(B)(ii)

$$CE = \frac{(L - F)}{L}$$

Where:

CE = Capture efficiency, decimal fraction.

L = The mass of liquid volatile organic compounds (VOC) input to process (use Procedure L).

F = The mass of fugitive VOC that escapes from a temporary total enclosure (use Procedure F.1).

Figure: 30 TAC §115.475(3)(B)(iii)

$$CE = \frac{G}{(G + F_B)}$$

Where:

CE = Capture efficiency, decimal fraction.

G = The mass of volatile organic compounds (VOC) captured and delivered to a control device (use Procedure G.2).

F_B = The mass of fugitive VOC that escapes from the building or room enclosure (use Procedure F.2).

Figure: 30 TAC §115.475(3)(B)(iv)

$$CE = \frac{L}{F_B - L}$$

Where:

CE = The capture efficiency, decimal fraction.

L = The mass of liquid volatile organic compounds (VOC) input to process (use Procedure L).

F_B = The mass of fugitive VOC that escapes from building or room enclosure (use Procedure F.2).

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.

Cancer Prevention and Research Institute of Texas

Request for Applications: Evidence-Based Cancer Prevention Services P-12-EBP1

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that propose to deliver evidence-based services in at least one of the following cancer prevention and control areas: 1) Primary cancer prevention (e.g., vaccine-conferred immunity, healthy diet, avoidance of alcohol misuse, physical activity, sun protection); 2) Secondary prevention (e.g., screening/early detection for breast, cervical, and/or colorectal cancer); or 3) Tertiary prevention (e.g., survivorship services such as physical rehabilitation/therapy, psychosocial interventions, navigation services, palliative care). Comprehensive projects that include a continuum of services comprised of all or some of the following are preferred: Public and/or professional education and training, patient support of behavior modification, outreach, delivery of prevention and screening services, follow-up navigation, and survivorship services. CPRIT expects measurable outcomes of supported activities. Successful applicants are eligible for a grant award of up to $3 million in direct costs for up to 36 months. Applicant budget requests for funding will vary depending on the project, and it is anticipated that the majority of applicants will request significantly less than the maximum.

A request for applications titled Evidence-Based Cancer Prevention Services is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on June 30, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on Friday, September 16, 2011. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201102159
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: June 14, 2011

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Comptroller of Public Accounts

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) State Energy Conservation Office announces this notice of a contract awarded to Apple Energy Group, LLC, 4501 Spicewood Springs Road, Suite 1033, Austin, Texas 78759, in connection with the Request for Proposals (RFP) #201e for Building Energy Codes and Standards Training. The total amount of the contract is not to exceed $398,350.00. The term of the contract is June 7, 2011 through December 31, 2012.

The notice of request for proposals (RFP #201e) was published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1586).

TRD-201102075
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 8, 2011

♦ ♦ ♦

Notice of Contract Awards

The Comptroller of Public Accounts (Comptroller) State Energy Conservation Office announces this notice of grant agreements awarded in connection with the Request for Applications (RFA) #ET-G1-2011 for Energy Training and Education Program Grants, of the State Energy Program (SEP).

Comptroller announces that the following contracts were awarded:

1. Texas State Technical College West Texas, 300 Homer K. Taylor Drive, Sweetwater, Texas 79556. The total amount of the contract is not to exceed $149,743.00. The term of the contract is May 10, 2011 through December 31, 2011; and

2. Collin County Community College District, 4800 Preston Park Blvd., Plano, Texas 75093. The total amount of the contract is not to exceed $133,626.00. The term of the contract is June 7, 2011 through May 31, 2012.

The notice of request for applications (RFA #ET-G1-2011) was published in the January 28, 2011, issue of the *Texas Register* (36 TexReg 451).

TRD-201102076
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 8, 2011

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this Request for Proposals (RFP 202a) for provision of statistician consulting services to the Comptroller. The successful respondent will advise the Comptroller on statistical issues and provide other related services in connection with the Comptroller's Annual Property Value Study (Study). The successful respondent will be expected to begin performance of the Contract on or about September 1, 2011, or as soon thereafter as practical.

Background: The Comptroller requires highly specialized statistical consulting expertise and experience for the services to be provided under the Contract. The Consultant will advise the Comptroller periodically during the year regarding complex statistical and other issues relating to the Study and provide all other reasonably-related services. The anticipated contract budget is not to exceed $45,000.00.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, Room-201, LBJ State Office Building, 111 East 17th St.,

Austin, Texas, 78774, telephone number: (512) 936-5854, regarding the request. The Comptroller will provide further information only to those specifically requesting it. Non-mandatory Letters of Intent and Questions must be sent in writing via facsimile to Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, facsimile number: (512) 463-3669. All Non-mandatory Letters of Intent, Questions, and inquiries must be received in writing no later than 2:00 p.m. Central Standard Time (CT) on Friday, July 8, 2011. Official responses to questions and inquiries received by the deadline will be posted electronically on or about Friday, July 22, 2011, or as soon thereafter as practicable, on the Electronic State Business Daily, located at the following URL: http://esbd.cpa.state.tx.us. Respondents are solely responsible for verifying timely receipt of all letters and questions in the Issuing Office on or before the deadline; late letters of intent and questions may not be accepted.

Closing Date: To be considered, all proposals must be received at the foregoing address in the issuing office on or before 2:00 p.m. CT on Friday, July 29, 2011. Proposals received after this time and date will not be considered. Respondents are solely responsible for verifying timely receipt of all proposals in the Issuing Office on or before the deadline; late proposals will not be accepted.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the Request for Proposals. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice. The Comptroller shall pay for no costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows: Issuance of RFP - June 24, 2011, after 10:00 a.m. CT; Deadline for Questions and Non-mandatory Letters of Intent - 2:00 p.m. CT, July 8, 2011; Release of Official Responses to Questions - after 2:00 p.m. CT, July 22, 2011, or as soon thereafter as practical; Deadline for Proposals - 2:00 p.m. CT, July 29, 2011; Contract Execution - September 1, 2011, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2011.

TRD-201102181
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 15, 2011

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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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/20/11 - 06/26/11 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 06/20/11 - 06/26/11 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-201102155
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 14, 2011

♦ ♦ ♦

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Prestige Community Credit Union (Dallas) seeking approval to merge with Texas First Choice Federal Credit Union (Irving), with Prestige Community Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201102175
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 15, 2011

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Texas Commission on Environmental Quality

Agreed Orders

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 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 **July 25, 2011.** 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 July 25, 2011.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforce-

ment 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: Anadarko E&P Company LP; DOCKET NUMBER: 2011-0360-AIR-E; IDENTIFIER: RN102585965; LOCATION: Carthage, Panola County; TYPE OF FACILITY: natural gas transmission; RULE VIOLATED: 30 TAC §122.143(4), Federal Operating Permit Number O-00739, General Operating Permit (GOP) Number 514, Site-wide requirements (b)(8)(B)(iv)(c), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain an observation log for visible emissions from stationary vents; 30 TAC §§122.143(4), 122.145(2)(B) and 122.146(5)(C), Federal Operating Permit Number O-00739, GOP Number 514, Site-wide requirements (b)(2), and THSC, §382.085(b), by failing to include all deviations in deviation reports and the annual permit compliance certification; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Gena Hawkins, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Aziz Mansoor dba Prime Corner; DOCKET NUMBER: 2011-0515-PST-E; IDENTIFIER: RN102230083; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST; PENALTY: $2,380; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Borders & Long Oil, Incorporated dba I 20 Exxon; DOCKET NUMBER: 2011-0514-PST-E; IDENTIFIER: RN102274503; LOCATION: Terrell, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and by failing to conduct reconciliation of detailed inventory control records at least once each; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Raymondville; DOCKET NUMBER: 2011-0607-MWD-E; IDENTIFIER: RN100525955; LOCATION: Willacy County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010365001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; PENALTY: $7,150; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: City of San Marcos; DOCKET NUMBER: 2011-0336-EAQ-E; IDENTIFIER: RN106067804; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: municipal utility drainage project; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to submit and obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $4,000; Supplemental Environmental Project offset amount of $3,200 applied to Texas State University River Systems Institute Continuous Water Quality Monitoring Network; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: Devon Energy Production Company, L.P.; DOCKET NUMBER: 2010-1830-AIR-E; IDENTIFIER: RN105780712, RN105780613, RN105780746, and RN105780837; LOCATION: Odessa, Ector County; TYPE OF FACILITY: tank battery; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization for the Floyd Tank Battery; 30 TAC §122.121 and §122.130(b)(1) and THSC, §382.054 and §382.085(b), by failing to submit an abbreviated application for a federal operating permit when the potential to emit (PTE) exceeded 100 tons per year (tpy) of volatile organic compounds (VOC); 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance emissions on September 24, 2010; 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance odor emissions on September 29, 2010; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization for the Aunt Bee Tank Battery; 30 TAC §122.121 and §122.130(b)(1) and THSC, §382.054 and §382.085(b), by failing to submit an abbreviated application for a federal operating permit when the PTE exceeded 100 tpy of VOC; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization for the Helen Crump Tank Battery; 30 TAC §122.121 and §122.130(b)(1) and THSC, §382.054 and §382.085(b), by failing to submit an abbreviated application for a federal operating permit when the PTE exceeded 100 tpy of VOC; and 30 TAC §106.4(c) and THSC, §382.0518(a) and §382.085(b), by failing to maintain all emission control equipment in good working order; PENALTY: $72,777; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(7) COMPANY: DTE Gas Resources, LLC.; DOCKET NUMBER: 2010-1976-WR-E; IDENTIFIER: RN106019862; LOCATION: Perrin, Jack County; TYPE OF FACILITY: drill site property; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain the required authorization prior to impounding, diverting, or using state water; PENALTY: $1,027; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: El Paso Independent School District; DOCKET NUMBER: 2011-0468-PST-E; IDENTIFIER: RN102523354; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $5,850; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: Esker Payne; DOCKET NUMBER: 2011-0532-MSW-E; IDENTIFIER: RN101728376; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: automotive repair shop; RULE VIOLATED: 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(d)(3), by failing to perform cleanup action upon detection of a release of used oil; PENALTY: $262; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: EXXONMOBIL OIL CORPORATION dba MOBIL CHEMICAL COMPANY; DOCKET NUMBER: 2011-0300-IWD-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petrochemical plant with an associated wastewater treatment facility; RULE VIOLATED: TWC,

§26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0000462000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $23,900; Supplemental Environmental Project offset amount of $9,560 applied to Jefferson County Government Cheek Community First Time Sewer Service for Low Income Owners; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: FALCON HOSPITALITY, INCORPORATED; DOCKET NUMBER: 2011-0408-EAQ-E; IDENTIFIER: RN102731676; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a) and (j) and Water Pollution Abatement Plan (WPAP) Number 11-01073101, Special Condition, by failing to obtain approval of a modification to an approved WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(12) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2011-0310-AIR-E; IDENTIFIER: RN102663671; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: Federal Operating Permit Number O1904, Special Terms and Conditions Number 21, New Source Review Permit Numbers 7186 and PSDTX1079, Special Conditions Number 1, 30 TAC §§101.20(3), 116.115(c), and 122.143(4), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,625; Supplemental Environmental Project offset amount of $2,250 applied to Houston Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: J MAC TOOL INCORPORATED; DOCKET NUMBER: 2011-0366-MLM-E; IDENTIFIER: RN105205033; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: machine shop; RULE VIOLATED: TPDES Multi-Sector General Permit Number TXR050000 Part II Section C.1, 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; and TWC, §26.121(a) and 30 TAC §335.4, by failing to prevent an unauthorized discharge; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: KM Liquids Terminals LLC; DOCKET NUMBER: 2011-0250-AIR-E; IDENTIFIER: RN100237452; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: bulk storage terminal; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), TCEQ Air Permit Number 2193, Special Conditions Number 33, Federal Operating Permit Number 988, Special Terms and Conditions Number 16, and THSC §382.085(b), by failing to maintain the minimum operating temperature in the Vapor Combustion Unit (VCU) of 1,520 degrees Fahrenheit for Vapor Combustor VCU-1A, 1,556 degrees Fahrenheit for Vapor Combustor VCU-1B, and 1,800 degrees Fahrenheit for Vapor Combuster VCU-2; PENALTY: $37,950; Supplemental Environmental Project offset amount of $15,180 applied to Barbers Hill Independent School District Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: KNOLLWOOD MERCANTILE COMPANY dba Bullseye Beverage; DOCKET NUMBER: 2011-0387-PST-E; IDENTIFIER: RN102241387; LOCATION: Denison, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $4,322; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: KUNWAR INCORPORATED dba Quick Stop 1; DOCKET NUMBER: 2011-0132-PST-E; IDENTIFIER: RN102446978; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Lorenzo E. Mata; DOCKET NUMBER: 2011-0324-WOC-E; IDENTIFIER: RN105968192; LOCATION: Mirando City, Webb County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003 and THSC, §341.034(b), by failing to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Andrea Byington, (512) 239-2579; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(18) COMPANY: PANTHER AVIATION, INCORPORATED; DOCKET NUMBER: 2011-0389-PST-E; IDENTIFIER: RN102385176; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: airport; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A), (2) and (2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized and suction piping associated with the USTs; PENALTY: $10,443; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: QUARTERS, LLC; DOCKET NUMBER: 2011-0565-MWD-E; IDENTIFIER: RN101517589; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1),

TPDES Permit Number WQ0012318001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0012318001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report for the monitoring period ending June 30, 2010, by the 20th day of the following month; PENALTY: $2,390; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Rogers Prairie Mercantile Incorporated dba Yellow Rose Country Store; DOCKET NUMBER: 2011-0560-PST-E; IDENTIFIER: RN101671428; LOCATION: Leona, Madison County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,737; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Ruble Petroleum, Incorporated dba Nat Mart 2; DOCKET NUMBER: 2011-0377-PST-E; IDENTIFIER: RN101898922; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the USTs; PENALTY: $2,091; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Springer & Springer, Incorporated; DOCKET NUMBER: 2011-0555-AIR-E; IDENTIFIER: RN106095201; LOCATION: Cleveland, Montgomery County; TYPE OF FACILITY: sandblasting and spray painting; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: TEXAS EASTERN TRANSMISSION, LP dba Spectra Energy Corporation; DOCKET NUMBER: 2011-0194-PST-E; IDENTIFIER: RN102406006; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), also by failing to provide release detection for the piping associated with the USTs; PENALTY: $2,005; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: THE WILSON N. JONES MEMORIAL HOSPITAL; DOCKET NUMBER: 2011-0339-PST-E; IDENTIFIER: RN100617505; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: UST which supplies an emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Total Consolidation, Incorporated dba Convenience Food Mart; DOCKET NUMBER: 2011-0588-PST-E; IDENTIFIER: RN102719424; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: $2,348; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951 (817) 588-5800.

(26) COMPANY: Ty Osmani dba Lucky Stop 12; DOCKET NUMBER: 2011-0392-PST-E; IDENTIFIER: RN101560977; LOCATION: Denison, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,875; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Z Q INVESTMENTS, INCORPORATED dba Kirby Food Mart; DOCKET NUMBER: 2011-0445-PST-E; IDENTIFIER: RN101775351; LOCATION: Kirby, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.49(a)(1) and TWC §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201102158
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 14, 2011

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Notice of District Petition

Notice issued June 3, 2011.

TCEQ Internal Control No. 03172011-D01; Varner Creek Utility District of Brazoria County (the "District") has applied to the Texas Commission on Environmental Quality (TCEQ) for authority to adopt and impose an annual uniform operation and maintenance standby fee in the amount of $5.00 per month per equivalent single family connection for calendar years 2012, 2013, and 2014, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293,

and the procedural rules of the TCEQ. The TCEQ may approve the standby fee as requested, or it may approve a lower standby fee, but it shall not approve a standby fee greater than the amount requested. The standby fee is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of his pro-rated share of the standby fee obligation on transfer of title to the property. On January 1 of each year, a lien is attached to the undeveloped property to secure payment of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District. The purpose of standby fees is to distribute a fair portion of the cost burden for operation and maintenance costs of District facilities to owners of property who have not constructed vertical improvements but have water, wastewater, or drainage facilities or services available. Any revenues collected from the operation and maintenance standby fee shall be used to supplement the District's operation and maintenance account.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201102184
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 15, 2011

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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 **July 25, 2011.** 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 July 25, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Ace Pumping & Septic Services, Inc.; DOCKET NUMBER: 2010-0060-SLG-E; TCEQ ID NUMBER: RN103916227; LOCATION: 200 Knox Road, Tolar, Hood County; TYPE OF FACILITY: registered domestic septage transportation service company; RULES VIOLATED: 30 TAC §312.143, by failing to dispose of domestic septage at an authorized facility; PENALTY: $12,305; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Benny Kirkpatrick and a Texas Blue Moon Corporation; DOCKET NUMBER: 2010-1445-PWS-E; TCEQ ID NUMBER: RN101224269; LOCATION: 2002 Pace Bend Road North, Spicewood, Travis County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d), 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples for the months of January 2008, September 2008, October 2008, November 2008, and December 2009; PENALTY: $1,784; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Elim Gas Station Corporation dba Speed Max 4; DOCKET NUMBER: 2009-1631-PST-E; TCEQ ID NUMBER: RN101564391; LOCATION: 301 Legacy Drive, Plano, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by TCEQ personnel; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the

USTs; 30 TAC §334.50(b), (b)(1)(A) and (2)(A)(i)(III), (d)(1)(B)(ii) and (iii)(I), and TWC, §26.3475(a)(1) and (c)(1), by failing to provide proper release detection for the pressurized piping associated with the USTs in that respondent did not conduct the annual piping tightness test, failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to test the line leak detectors at least once per year for performance and operational reliability, by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and amount still remaining in the tank each operating day; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operating procedures of the Stage II equipment; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification whichever occurs first; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number listed on the UST registration and self-certification form is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube of each UST according to the UST registration and self-certification form; PENALTY: $17,179; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Gainesville Foundry, Inc.; DOCKET NUMBER: 2010-1132-MLM-E; TCEQ ID NUMBER: RN100778547; LOCATION: 2301 North Foundry Road, Gainesville, Cooke County; TYPE OF FACILITY: iron foundry; RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121, by failing to manage industrial solid waste in a manner as to prevent unauthorized discharges; 30 TAC §335.6(c), by failing to maintain an accurate Notice of Registration (NOR); 30 TAC §335.9(a)(2), by failing to submit a complete Annual Waste Summary for 2008; 30 TAC §335.112(a)(1) and 40 Code of Federal Regulations (CFR) §265.16(a)(2), (c), (d)(3) and (4), by failing to provide proper training to personnel handling hazardous baghouse dust at the facility; 30 TAC §335.112(a)(3) and 40 CFR §265.52(a), (d) and (f), by failing to maintain an adequate contingency plan; 30 TAC §335.262(c)(2)(A), by failing to properly store and manage paint waste; 30 TAC §335.69(a) and 40 CFR §262.34(a), by failing to store hazardous waste on-site for less than 90 days; 30 TAC §§335.503, 335.504, 335.62 and 40 CFR §262.11, by failing to conduct hazardous waste determinations; 30 TAC §106.433(6)(C) and THSC, §382.085(b), by failing to maintain paint booth filters in order to ensure a minimum of 95% removal efficiency for particulate matter; PENALTY: $56,465; STAFF ATTORNEY: Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Ganiu Bello; DOCKET NUMBER: 2010-0538-PST-E; TCEQ ID NUMBER: RN100801232; LOCATION: 2501 Miller Avenue, Fort Worth, Tarrant County; TYPE OF FACILITY: UST system and former automotive repair shop; RULES VIOLATED: 30 TAC §334.47(a)(2), 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; PENALTY: $2,625; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Intergulf Corporation; DOCKET NUMBER: 2010-0888-IHW-E; TCEQ ID NUMBER: RN101517852; LOCATION: 10020 Bayport Boulevard, Pasadena, Harris County; TYPE OF FACILITY: treatment, storage, and disposal facility; RULES VIOLATED: 30 TAC §335.2(a) and Industrial Solid Waste Permit Number 39068, Provision Number IV-B-1, by failing to receive and surfer the disposal of a load of industrial hazardous waste (IHW), however, management of IHW was not allowed under respondent's permit; and 30 TAC §335.12(a)(2), 40 CFR §265.72(f)(6) and Industrial Solid Waste Permit Number 39068, Provision Number II-C-1-h, by failing to ensure waste manifests were properly completed; PENALTY: $52,600, Supplemental Environmental Project (SEP) offset amount of $13,150 applied to Galveston Bay Foundation, The Galveston Bay Restoration 'Marsh Mania' and SEP offset amount of $13,150 applied to Armand Bayou Nature Center Coastal Tall Grass Prairie Management Prescribed Burn Program and Prairie Restoration Project; STAFF ATTORNEY: Kari Gilbreth, Litigation Division; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Jeffy's, Inc. dba Jeffy's Exxon Mobil; DOCKET NUMBER: 2010-1756-PST-E; TCEQ ID NUMBER: RN102262730; LOCATION: 8015 Interstate 10 East, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification; PENALTY: $2,923; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: John Alihemati dba Station 66; DOCKET NUMBER: 2010-1869-AIR-E; TCEQ ID NUMBER: RN103937389; LOCATION: 7500 Gateway Boulevard North, El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: THSC, §382.085(b) and 30 TAC §114.100(a), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 through March 31; PENALTY: $1,400; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: Robert N. Gates; DOCKET NUMBER: 2010-1306-PST-E; TCEQ ID NUMBER: RN101728012; LOCATION: 120 Farm-to-Market Road 92 South, Woodville, Tyler County; TYPE OF FACILITY: inactive UST system; RULES VIOLATED: 30 TAC §334.47(a)(2), 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 30 TAC §334.7(d)(3), by failing to notify the agency of any change

or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: $3,500; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: RV Express Amarillo, LLC; DOCKET NUMBER: 2011-0163-PWS-E; TCEQ ID NUMBER: RN105163281; LOCATION: 2715 Arnot Road, Amarillo, Potter County; TYPE OF FACILITY: public water system; RULES VIOLATED: THSC, §341.033(d), 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis for the months of November 2008, September 2009, and October 2009, and by failing to provide public notification of the failure to collect routine distribution water samples for the months of November 2008, September 2009, and October 2009; 30 TAC §290.109(c)(3)(A)(i) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for routine samples collected in March 2009 and November 2009, and by failing to provide public notification of the failure to collect repeat distribution samples during the month of March 2009; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five distribution coliform samples the month following a coliform-positive samples result, and by failing to provide public notification of the failure to sample for the month of April 2009; PENALTY: $2,136; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-201102162
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 14, 2011

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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 an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and 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 **July 25, 2011.** 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 July 25, 2011.** 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, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Evelyn Patricia Walker dba Walker Waterfront; DOCKET NUMBER: 2010-0901-PWS-E; TCEQ ID NUMBER: RN101277770; LOCATION: 320 Tripple Creek Loop, Livingston, Polk County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(l) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.a.ii., by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.41(c)(1)(F) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.c.ii, by failing to provide a sanitary control easement or an approved exception to the easement requirement that covers the land within 150 feet of the well; 30 TAC §290.42(j) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.a.ii, by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation standards; 30 TAC §290.42(l) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provisions Number 2.c.iv, by failing to compile and maintain a facility operations manual for operator review and reference; 30 TAC §290.46(m)(1)(B) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.b.iii., by failing to conduct an annual inspection of the water system's pressure tank; 30 TAC §290.45(b)(1)(E)(i), Texas Health and Safety Code (THSC), §341.0315(c), and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.d.ii, by failing to provide a well capacity requirement of at least 1.0 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(A)(ii), THSC, §341.0315(c), and TCEQ DO Order Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.d.iii., by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(f)(2) and (3)(B)(iii), and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.a.v., by failing to provide disinfectant residual monitoring records to commission personnel at the time of the investigation; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for routine distribution coliform samples collected during the months of August and September 2009, and by failing to provide public notice of the failures to collect repeat distribution samples within 24 hours of being notified of total coliform positive samples for August and September 2009; 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform during the month of September 2009, and by failing to provide public notice of the exceedence for September 2009; and 30 TAC §290.109(c)(2)(F), by failing to collect at least five distribution coliform samples the month following a total coliform positive result for the month of March 2010; PENALTY: $3,960; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: General Sams Off Road Park, Inc.; DOCKET NUMBER: 2010-1769-PWS-E; TCEQ ID NUMBER: RN105963912; LOCATION: 224 Bishop Road, Huntsville, Walker County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be located easily during emergencies; 30 TAC §290.42(l), by failing to compile and maintain a complete and up-to-date plant operations manual for operator review and reference; 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 the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence for all potable water storage tanks and pressure maintenance facilities; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data to the commission for review and approval prior to placing a well into service; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank; 30 TAC §290.44(d) and §290.46(r), by failing to maintain a minimum pressure of 35 per square inch (psi) throughout the distribution system at all times; 30 TAC §290.110(c)(4)(A) and (d)(1)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days using a commission approved chlorine test kit; 30 TAC §290.41(c)(3)(N), by failing to provide the well with a flow measuring device; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.39(e)(1) and (h)(1) and THSC, §341.035(a), by failing to submit and receive approval of as-built plans and specifications that are prepared by a licensed professional engineer; 30 TAC §290.42(e)(3), by failing to install disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.43(c)(1), by failing to provide the roof vent opening on the ground storage tank (GST) with a 16-mesh or finer corrosion resistant screening; 30 TAC §290.43(c)(2), by failing to provide the GST with a roof hatch that is designed, fabricated, and erected in strict accordance with American Water Works Association standards, that terminates with a gravity-hinged and weighted cover; 30 TAC §290.43(c)(4), by failing to provide the GST with a liquid level indicator; PENALTY: $3,185; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Industrial Scrap Materials, Inc.; DOCKET NUMBER: 2011-0007-MSW-E; TCEQ ID NUMBER: RN105078679; LOCATION: 3708 North Commerce Street, Fort Worth, Tarrant County; TYPE OF FACILITY: scrap metal and salvage yard; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ Agreed Order Docket Number 2009-0008-MSW-E, Ordering Provisions Numbers 2.a. and 2.b., by failing to prevent the unauthorized disposal of municipal solid waste (MSW); PENALTY: $8,100; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Krebs Utilities, Inc. dba Padok Timbers Subdivision WS; DOCKET NUMBER: 2011-0416-UTL-E; TCEQ ID NUMBER: RN101267177; LOCATION: Harris County Appraisal District KEY MAP 418N, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §13.1395(b)(2), and 30 TAC §290.39(o)(1) and §291.162(a) and (j), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $735; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Oscar Benitez dba Los Arcos Mexican Restaurant; DOCKET NUMBER: 2010-1939-PWS-E; TCEQ ID NUMBER: RN101217511; LOCATION: 13811 Highway 6, Arcola, Fort Bend County; TYPE OF FACILITY: public water system; VIOLATED: THSC, §341.031(a) and 30 TAC §290.109(f)(3) and §290.122(b)(2)(B), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform for the month of April 2008, and by failing to provide public notice to the persons served by the facility for exceeding the MCL for total coliform for the month of April 2008; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B) by failing to collect a set of four repeat samples within 24 hours of being notified of a total coliform-positive result on a routine sample collected during the month of April 2008, and by failing to provide public notice to the persons served by the facility regarding the failure to collect repeat samples during the month of April 2008; and THSC, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification to the persons served by the facility regarding the failure to sample for the months of October 2008 and April, July, August, and December 2009; PENALTY: $3,077; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Rene Mendez and Delores Mendez; DOCKET NUMBER: 2010-2028-PST-E; TCEQ ID NUMBER: RN101884716; LOCATION: 6161 West Port Arthur Road, Port Arthur, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a restaurant; RULES VIOLATED: 30 TAC §334.47(a)(2), 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; PENALTY: $2,625; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Seaberg Farms, Inc.; DOCKET NUMBER: 2010-1912-PST-E; TCEQ ID NUMBER: RN101805026; LOCATION: two miles southwest of the City of Dayton at the end of County Road 496, Liberty County; TYPE OF FACILITY: UST system and real property; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition; PENALTY: $3,850; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Terry Dodd dba Dodd's Unique Lawn Service & Tree Trimming; DOCKET NUMBER: 2010-1863-LII-E; TCEQ ID NUMBER: RN105970099; LOCATION: 305 Sioux Trail, Leander, Williamson County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a person who can perform service for which a license or registration is

required; PENALTY: $262; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(9) COMPANY: Westfield Mobile Home Community, Ltd. dba Westfield Mobile Home Park; DOCKET NUMBER: 2011-0113-MWD-E; TCEQ ID NUMBER: RN101527018; LOCATION: 520 Gulf Bank Road, approximately 1,300 feet east of Airline Drive, Houston, Harris County; TYPE OF FACILITY: residential wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012555001, Interim Effluent Limitations and Monitoring Requirement Number 1, by failing to comply with permitted effluent limits; PENALTY: $4,800; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201102163
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 14, 2011

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and 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. In accordance with 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 **July 25, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/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 S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/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 S/DO shall be sent to the attorney designated for the S/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 July 25, 2011.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Rajinder Singh dba K Food Mart; DOCKET NUMBER: 2011-0149-PST-E; TCEQ ID NUMBER: RN102957180; LOCATION: 4101 O'Neal Street, Greenville, Hunt County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs at the facility for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide release detection for the piping associated with the USTs; TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system at the facility; PENALTY: $5,121; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Roohi-Joohi Inc. dba Double M Grocery; DOCKET NUMBER: 2011-0091-PST-E; TCEQ ID NUMBER: RN102447695; LOCATION: 7700 Farm to Market Road 969, Austin, Travis County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the USTs; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $5,110; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-201102161
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 14, 2011

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, and the United States Environmental Protection Agency (EPA) concerning SIPs. Additionally, the commission will also receive testimony regarding the proposed Dallas-Fort Worth (DFW) Attainment Demonstration SIP Revision and the DFW Reasonable Further Progress (RFP) SIP Revision for the 1997 Eight-Hour Ozone Standard.

The commission proposes to amend Chapter 115, Subchapter B, Division 1, Storage of Volatile Organic Compounds, to require a more stringent level of control for volatile organic compounds (VOC) storage in the DFW 1997 eight-hour ozone nonattainment area. In addition, the proposed rulemaking would clarify rule requirements and allow for the

use of alternative control options for affected owners or operators in the following areas: Houston-Galveston-Brazoria 1997 eight-hour ozone nonattainment area, Beaumont-Port Arthur area, and in Aransas, Bexar, Calhoun, El Paso, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties. (Rule Project Number 2010-025-115-EN)

The proposed amendments to Chapter 115, Subchapter E, Solvent-Using Processes, would implement reasonably available control technology (RACT) requirements for the following eight Control Techniques Guidelines (CTG) emission source categories: Flexible Packaging Printing Materials; Industrial Cleaning Solvents; Large Appliance Coatings; Metal Furniture Coatings; Paper, Film, and Foil Coatings; Auto and Light-Duty Truck Assembly Coatings; Miscellaneous Industrial Adhesives; and Miscellaneous Metal and Plastic Parts Coatings. (Rule Project Number 2010-016-115-EN)

The proposed DFW attainment demonstration SIP revision contains Federal Clean Air Act-required SIP elements, including a photochemical modeling analysis, a weight of evidence analysis, a RACT analysis, a reasonably available control measures analysis, a motor vehicle emissions budget (MVEB) for 2012, and a contingency plan. This revision includes concurrent rulemakings to update control requirements for certain coatings operations to meet recommended RACT requirements in CTG documents issued by the EPA and VOC storage tank rule revisions to update existing and new control measures for the DFW area. (SIP Project Number 2010-022-SIP-NR)

The proposed DFW RFP SIP revision contains an analysis of the DFW area's progress toward attainment of the 1997 eight-hour ozone standard. RFP requirements include annual incremental reductions in ozone precursor emissions (nitrogen oxides and VOC) out to an area's attainment year, reductions in ozone precursor emissions as contingency measures for designated milestone years and for the attainment year, and updated RFP MVEB for an area's milestone years. This proposed SIP revision would incorporate a concurrently proposed revision to Chapter 115 that would reduce VOC emissions from affected sources in the DFW area. (SIP Project Number 2010-023-SIP-NR)

Public hearings on these proposals will be held at the following times and locations: in Arlington on July 14, 2011, 10:00 a.m. and 6:30 p.m., at the Arlington City Council Chambers, 101 W. Abrams Street; and in Austin on July 22, 2011, 2:00 p.m., at the Texas Commission on Environmental Quality complex, Building E, Room 201S, 12100 Park 35 Circle. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposals 30 minutes before each hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Sandy Wong, Texas Register Team, at (512) 239-1802. Requests should be made as far in advance as possible.

Comments may be submitted to Charlotte Horn, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference the rule or SIP project number that the comment pertains to: Rule Project Number 2010-025-115-EN for the proposed VOC storage rule amendments; Rule Project Number 2010-016-115-EN for the proposed CTG RACT rule amendments; SIP Project Number 2010-022-SIP-NR for the proposed DFW SIP Attainment Demonstration revision; and SIP Project Number 2010-023-SIP-NR for the proposed DFW RFP revision. The comment period closes July 25, 2011. Copies of the proposed rules can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. Copies of the proposed SIP revisions and all appendices can be obtained from the commission's website at *http://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone*. For additional information regarding the proposed rules and SIP revisions, please contact Ray Schubert, Air Quality Planning Section, at (512) 239-6615.

TRD-201102119
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 10, 2011

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, and the United States Environmental Protection Agency (EPA) concerning SIPs. Additionally, the commission will also receive testimony regarding the proposed Houston-Galveston-Brazoria (HGB) Reasonably Available Control Technology (RACT) Analysis Update SIP Revision for the 1997 Eight-Hour Ozone Standard.

The commission proposes to amend Chapter 115, Subchapter B, Division 1, Storage of Volatile Organic Compounds, to require a more stringent level of control for volatile organic compounds (VOC) storage in the Dallas-Fort Worth 1997 eight-hour ozone nonattainment area. In addition, the proposed rulemaking would clarify rule requirements and allow for the use of alternative control options for affected owners or operators in the following areas: HGB 1997 eight-hour ozone nonattainment area, Beaumont-Port Arthur area, and in Aransas, Bexar, Calhoun, El Paso, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties. (Rule Project Number 2010-025-115-EN)

The proposed amendments to Chapter 115, Subchapter E, Solvent-Using Processes, would implement RACT requirements for the following eight Control Techniques Guidelines (CTG) emission source categories: Flexible Packaging Printing Materials; Industrial Cleaning Solvents; Large Appliance Coatings; Metal Furniture Coatings; Paper, Film, and Foil Coatings; Auto and Light-Duty Truck Assembly Coatings; Miscellaneous Industrial Adhesives; and Miscellaneous Metal and Plastic Parts Coatings. (Rule Project Number 2010-016-115-EN)

The proposed HGB SIP revision would provide a RACT analysis update to address CTG documents that have not yet been included in the HGB Attainment Demonstration (AD) SIP Revision for the 1997 Eight-Hour Ozone Standard and incorporate concurrently proposed CTG-related rulemaking for the HGB area. (SIP Project Number 2010-028-SIP-NR)

Public hearings on these proposals will be held at the following times and locations: in Houston on July 18, 2011, 6:30 p.m., in Conference Room C at the Houston-Galveston Area Council, 3555 Timmons Lane; and in Austin on July 22, 2011, 10:00 a.m., at the Texas Commission on Environmental Quality complex, Building E, Room 201S, 12100 Park 35 Circle. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30

minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposals 30 minutes before each hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Sandy Wong, Texas Register Team, at (512) 239-1802. Requests should be made as far in advance as possible.

Comments may be submitted to Charlotte Horn, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *htpp://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference the rule or SIP project number that the comment pertains to: Rule Project Number 2010-025-115-EN for the proposed VOC storage rule amendments; Rule Project Number 2010-016-115-EN for the proposed CTG RACT rule amendments; and SIP Project Number 2010-028-SIP-NR for the proposed HGB RACT analysis update SIP revision. The comment period closes July 25, 2011. Copies of the proposed rules can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. Copies of the proposed SIP revisions and all appendices can be obtained from the commission's website at *http://www.tceq.texas.gov/airquality/sip/hgb/hgb-latest-ozone*. For additional information regarding the proposed rules and SIP revision, please contact Ray Schubert, Air Quality Planning Section, at (512) 239-6615.

TRD-201102120
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 10, 2011

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, and the United States Environmental Protection Agency concerning SIPs.

The commission proposes to amend Chapter 115, Subchapter B, Division 1, Storage of Volatile Organic Compounds, to require a more stringent level of control for volatile organic compounds (VOC) storage in the Dallas-Fort Worth 1997 eight-hour ozone nonattainment area (DFW area). In addition, the proposed rulemaking would clarify rule requirements and allow for the use of alternative control options for affected owners or operators in the following areas: Houston-Galveston-Brazoria 1997 eight-hour ozone nonattainment area, Beaumont-Port Arthur area, and in Aransas, Bexar, Calhoun, El Paso, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties.

Public hearings on this proposal will be held at the following times and locations: in Arlington on July 14, 2011, 10:00 a.m. and 6:30 p.m., at the Arlington City Council Chambers, 101 W. Abrams Street; in Houston on July 18, 2011, 6:30 p.m., in Conference Room C at the Houston-Galveston Area Council, 3555 Timmons Lane; and in Austin on July 22, 2011, 10:00 a.m. and 2:00 p.m., at the Texas Commission on Environmental Quality complex, Building E, Room 201S, 12100 Park 35 Circle. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Sandy Wong, Texas Register Team, at (512) 239-1802. Requests should be made as far in advance as possible.

Comments may be submitted to Charlotte Horn, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-025-115-EN. The comment period closes July 25, 2011. Copies of the proposed rules can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For additional information regarding the proposed rules, please contact Ray Schubert, Air Quality Planning Section, at (512) 239-6615.

TRD-201102121
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 10, 2011

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Notice of Water Quality Applications

The following notices were issued on June 3, 2011 through June 10, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing 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 DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

TXI OPERATIONS, LP, which operates Midlothian Cement Plant, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004379000, which authorizes the discharge of: non-contact cooling water, plant/vehicle washdown water, materials/roads dust suppression runoff, raw mill water tanks overflow water, air cooling condensate, material QC lab sink rinse water, water from mechanical cooling leaks, and storm water runoff at an intermittent and flow variable when discharge occurs from Outfall 001. The facility is located at 245 Ward Road, at the northeast corner of the intersection of U.S. Highway 67 South and Ward Road, two miles southwest of the City of Midlothian, Ellis County, Texas 76065.

TERRA RENEWAL SERVICES, INC. has applied for a new permit, Proposed TCEQ Permit No. WQ0004946000, to authorize the land application of sewage sludge and water treatment plant sludge for beneficial use on 379.7 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is August 1, 2011. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site is located adjacent to the east side of Farm-to-Market Road 47, approximately 1.0 mile north

of the intersection of Farm-to-Market Road 47 and County Road 751, in Van Zandt County, Texas 75169.

CITY OF HENDERSON has applied for a renewal of TPDES Permit No. WQ0010187001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 3492 Farm-to-Market Road 225 South, approximately 1.5 miles southwest of the intersection of State Highway 79 and Farm-to-Market Road 225 in Rusk County, Texas 75654.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of TPDES Permit No. WQ0010232003, issued to NEW BRAUNFELS UTILITIES, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,100,000 gallons per day. The minor amendment is to change the method of sampling of cyanide amenable to chlorination from composite sampling to grab sampling. New Braunfels Utilities has also submitted to a request for a substantial modification to its approved pretreatment program under the TPDES program. Approval of the request for modification to the pretreatment program will allow New Braunfels Utilities to revise the technically based local limits and to continue to regulate the discharge of pollutants by industrial users into its treatment works facilities, to perform inspections, surveillance, and monitoring, to determine compliance with applicable pretreatment standards and requirements, and to enforce against noncompliant industrial users. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication. The facility is located at 1922 Kuehler Road, approximately 0.5 mile east of Farm-to-Market Road 725 and 0.5 mile south of Interstate Highway 35, off Kuehler Avenue in the City of New Braunfels in Comal County, Texas 78131.

CITY OF GLADEWATER has applied for a renewal of TPDES Permit No. WQ0010433002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility is located at 1025 south Roden Lane, approximately 600 feet east of Roden Lane, approximately one mile south of the intersection of U.S. Highway 271 and Highway 80, and approximately 1150 feet southeast of the intersection of Loop 485 and Roden Lane in Gregg County, Texas 75647.

CITY OF PORT NECHES has applied for a renewal of TPDES Permit No. WQ0010477001 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 48,000 gallons per day. The facility is located at 601 Avenue C, Port Neches, approximately 1.25 miles northwest of the intersection of Farm-to-Market Road 366 and State Highway Loop 136 in Jefferson County, Texas 77651.

SEQUOIA IMPROVEMENT DISTRICT has applied for a renewal of TPDES Permit No. WQ0010785001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 5310 McDermott Drive in the Sequoia Estates Subdivision, on the north bank of Greens Bayou, approximately 2,000 feet west of U.S. Highway 59 and 0.7 mile south of Farm-to-Market Road 525 in Harris County, Texas 77032.

THE CITY OF CALDWELL has applied for a renewal of TPDES Permit No. WQ0010813001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 711,000 gallons per day. The facility is located at 831 State Highway 36 South on the west bank of Davidson Creek, 1 mile southeast of the intersection of State Highway 21 and State Highway 36 in Burleson County, Texas 77836.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 6 has applied for a renewal of TPDES Permit No. WQ0012499001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 13600 Cherry Hollow Lane, approximately 2,000 feet west of Synott Road, 4,300 feet south of Westheimer Road and 5,800 feet east of Highway 6 in Harris County, Texas 77082.

MANSFIELD INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0013352001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via non-public access subsurface drainfields with a minimum area of 90,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1,000 feet west of the Tarver-Rendon Elementary School at 12350 Rendon Road in Tarrant County, Texas 76063.

CITY OF BAILEY has applied for a renewal of TPDES Permit No. WQ0013584001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 26,000 gallons per day. The facility is located approximately 900 feet west of Farm-to-Market Road 816 and 3,000 feet southwest of the intersection of Farm-to-Market Road 816 and State Highway 11 in Fannin County, Texas 75413.

BEN WHEELER WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013905001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 9,000 gallons per day. The facility is located at 1581 County Road 4517, approximately 400 feet north of the intersection of County Road 4517 and Farm-to-Market Road 1995 and approximately 1.9 miles southwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 314 in Van Zandt County, Texas 75790.

INLINE UTILITIES, LLC has applied for a renewal of TPDES Permit No. WQ0013942002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located at 23822 State Highway 249, approximately 850 feet north of the intersection of State Highway 249 and Coons Road in Harris County, Texas 77375.

BEN WHEELER WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013974001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 5,500 gallons per day. The facility is located at 1534 Farm-to-Market Road 279, approximately 100 feet south of Farm-to-Market Road 279 (behind the First State Bank Building) which is adjacent and on the south side of Farm-to-Market Road 279 in the Community of Ben Wheeler in Van Zandt County, Texas 75751.

BEN WHEELER WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013974002, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 5,500 gallons per day. The facility is located approximately 450 feet south of the intersection of Van Zandt County Road 4512 and Van Zandt County Road 4513, on Van Zandt County Road 4513 in Van Zandt County, Texas 75754.

CAROTEX, INC., which operates the Carotex Facility, a barge cleaning and repair facility, has applied for a renewal of TPDES Permit No. WQ0001674000, which authorizes the discharge of treated barge washwater, tank washwater, ballast water, Marpol water, hydrostatic test water, spills cleanup, storm water, bilge water, boiler blowdown, and storage tank condensate water at a daily average flow not to exceed 48,000 gallons per day via Outfall 001; and storm water on an intermit-

tent and flow variable basis via Outfall 002. The facility is located at 1500 Intracoastal Drive, approximately one (1) mile downstream and southeast of the Rainbow/Veterans Bridge, in the City of Port Arthur, Jefferson County, Texas 77643.

NEWPORT MUNICIPAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011329001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 1501 South Diamondhead Boulevard, west of the confluence of Gum Gully and Jackson Bayou, approximately 1.8 miles northwest of the intersection of Farm-to-Market Road 2100 and U.S. Highway 90 in Harris County, Texas 77532.

BOGGS SUGAR PINES, LLC, has applied for a renewal of TPDES Permit No. WQ0014049001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The facility is located approximately 1,000 feet due north of West Circle Drive and approximately 3,000 feet due west of the intersection of West Circle Drive and Farm-to-Market Road 105 in Orange County, Texas 77662.

ERA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014864001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located at Farm-to-Market Road 922 at Hornet Drive in the City of Era in Cooke County, Texas 76238. The treated effluent is discharged to an unnamed tributary; thence to Duck Creek; thence to Clear Creek; thence to Lewisville Lake in Segment No. 0823 of the Trinity River Basin

AGUA SPECIAL UTILITY DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0014415002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 7,550,000 gallons per day. The facility will be located approximately 1 mile south of Loop 374 on Goodwin Road, on the east side of Goodwin Road, south of the City of Palmview in Hidalgo County, Texas 78572.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201102185
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 15, 2011

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Notice of Water Rights Application

APPLICATION NO. 12637; XTO Energy, Inc., 810 Houston St., Fort Worth, Texas 76102, Applicant, has applied for a temporary water use permit to divert and use not to exceed 200 acre-feet of water from Weatherby Pond, located on an unnamed tributary of Valley Branch, tributary of Walnut Creek, tributary of Joe Pool Lake on Mountain Creek, tributary of West Fork Trinity River, tributary of the Trinity River, Trinity River Basin within a period of three years for mining purposes in Johnson County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on October 5, 2010. Additional information and fees were received on January 20, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 10, 2011. The TCEQ Executive Director has completed the technical review of the application and prepared a draft temporary permit. The draft temporary permit, if granted, would contain special conditions, including but not limited to, the installation of screens on diversion structures, and installing and maintaining measuring devices which accounts for, within 5% accuracy, the quantity of water diverted. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by June 27, 2011.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant(s) name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our website at www.tceq.state.tx.us. Si desea informaciòn en Español, puede llamar al 1-800-687-4040.

TRD-201102183
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 15, 2011

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 14, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Rodolfo Esparza and Angelica Esparza; SOAH Docket No. 582-11-0872; TCEQ Docket No. 2010-0244-MLM-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the

enforcement action against Rodolfo Esparza and Angelica Esparza on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201102186
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 15, 2011

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Request for Preliminary Comments for Review and Revision of the Texas Surface Water Quality Standards and the Procedures to Implement the Texas Surface Water Quality Standards

The Texas Commission on Environmental Quality (TCEQ) is requesting preliminary written comments on the Texas Surface Water Quality Standards (Title 30, Chapter 307 of the Texas Administrative Code). This request for written comments is in preparation of review and revision as needed to the Texas Surface Water Quality Standards.

The Texas Surface Water Quality Standards establish instream water quality requirements for Texas streams, rivers, lakes, estuaries, and other water bodies. TCEQ is directed to establish water quality standards in Texas Water Code, §26.023. The federal Clean Water Act, §303(c), requires that states publicly review and revise their water quality standards as needed every three years. Revisions are made to: 1) incorporate new information on potential pollutants; 2) include additional data about water quality conditions in specific water bodies; 3) address new state and federal regulatory requirements; and 4) accommodate public concerns and public goals for water quality in the state.

TCEQ is also requesting preliminary written comments in preparation for review and revision of the closely related guidance document, *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194, June 2010) (Implementation Procedures). The Implementation Procedures address how the Texas Surface Water Quality Standards are implemented in wastewater permitting and how effluent limits are derived to maintain instream water quality standards. Review and revision of the Implementation Procedures will be conducted concurrently with review and revision of the Texas Surface Water Quality Standards.

TCEQ will review and consider preliminary comments during the development of draft proposals for revisions of the Texas Surface Water Quality Standards and Implementation Procedures. Written responses to these preliminary comments will not be provided. Any proposed revisions whether resulting from these comments or not will be subject to a formal public hearing and a public comment period prior to adoption.

Written preliminary comments on the Texas Surface Water Quality Standards and the Implementation Procedures should be submitted separately. Written comments on the Texas Surface Water Quality Standards may be submitted to Ms. Debbie Miller, MC 234, Water Quality Planning Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4410. Electronic comments may be submitted via e-mail to *standards@tceq.texas.gov.* File size restrictions may apply to comments being submitted via e-mail. All comments should reference the Texas Surface Water Quality Standards. The preliminary comment period closes at 5:00 p.m. on Monday, July 25, 2011.

Written comments on the Implementation Procedures may be submitted to Mr. David Galindo, MC-150, Water Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4420. Electronic comments may be submitted via e-mail to *IPCOMMENT@tceq.texas.gov.* File size restrictions may apply to comments being submitted via e-mail. All comments should reference the Implementation Procedures. The preliminary comment period closes at 5:00 p.m. on Sunday, July 24, 2011.

Copies of the 2010 versions of the Texas Surface Water Quality Standards and the Implementation Procedures are available on the commission's website at: *http://www.tceq.texas.gov/permitting/water_quality/wq_assessment/standards/eq_swqs.html/.*

For further information on the Texas Surface Water Quality Standards, please contact Ms. Debbie Miller, Water Quality Planning Division, at (512) 239-1703. For further information on the Implementation Procedures, please contact Mr. David Galindo, Water Quality Division, at (512) 239-0951.

TRD-201102157
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 14, 2011

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Texas Facilities Commission

Requests for Proposals #303-1-20283

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-1-20283. TFC seeks a 5 or 10 year lease of approximately 13,727 square feet of office space in Laredo, Webb County, Texas.

The deadline for questions is July 13, 2011 and the deadline for proposals is July 27, 2011 at 3:00 p.m. The award date is September 21, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95165.*

TRD-201102172
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 14, 2011

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Request for Proposals #303-2-20284

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety announces the issuance of Request for Proposals (RFP) #303-2-20284. TFC seeks a 5 or 10 year lease of approximately 7,081 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is July 8, 2011, and the deadline for proposals is July 18, 2011, at 3:00 p.m. The target award date is August 17, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. All inquiries **shall be submitted in writing** to Evelyn Esquivel, at facsimile (512) 236-6187 or by email to evelyn.esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95184.*

TRD-201102177
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 15, 2011

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Texas Health and Human Services Commission

Notice of Proposed Reimbursement Rates for Non-State Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Proposed Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) proposes the following per diem reimbursement rates for the non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program operated by the Texas Department of Aging and Disability Services (DADS). The Notice of Public Hearing for these proposed rates was published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3642).

Reimbursement rates for the non-state operated ICF/MR program are proposed to be effective September 1, 2011, as follows:

Per Diem Rates for Non-State Operated ICF/MR Services by Level of Need and Facility Size

Level of Need	8 or Less Beds	9-13 Beds	14+ Beds
1 Intermittent	141.40	115.70	109.86
5 Limited	157.56	131.40	117.27
8 Extensive	179.19	155.76	130.58
6 Pervasive	219.44	186.46	175.85
9 Pervasive +	398.07	378.20	379.58

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, and Subchapter D, §355.456, Rate Setting Methodology. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, §355.109, Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs and 1 TAC Chapter 355, Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission. These rate adjustments are being made as a result of the 2012-2013 General Appropriations Act (Article II, H.B. 1, 82nd Legislature, Regular Session, 2011).

TRD-201102156
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 14, 2011

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Notice of Public Hearing on Proposed Medicaid Payment Reductions for Durable Medical Equipment, Prosthetics, Orthotics and Supplies, and Early and Periodic Screening, Diagnosis and Treatment

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 12, 2011, at 9:00 a.m., to receive comment on proposed Medicaid payments for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services to include: Durable Medical Equipment, Prosthetics, Orthotics, and Supplies, Nutritional Products, Hearing and Vision Care Devices. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282, Texas Administrative Code, Title 1 (1 TAC), §355.105 and §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The Medicaid payments for the services outlined above are proposed to be reduced in response to direction received in the 2012-2013 General Appropriations Act (Article II, H.B. 1, 82nd Legislature, Regular Session, 2011), effective September 1, 2011.

Methodology and Justification. The proposed reimbursements are calculated in accordance with the previously cited sections of 1 TAC and the following sections, as applicable:

§355.201, which addresses the establishment and adjustment of reimbursement rates by the Health and Human Services Commission;

§355.8001, which addresses the reimbursement methodology for vision care services;

§355.8021, which addresses the reimbursement methodology for home health professional services and durable medical equipment, prostheses, orthotics and supplies;

§355.8087, which addresses the reimbursement methodology for in-home total parenteral hyperalimentation services;

§355.8141, which addresses the reimbursement methodology for hearing aid services;

§355.8441, which addresses the reimbursement methodology for durable medical equipment, prostheses, orthotics, and supplies in early and periodic screening, diagnosis, and treatment (EPSDT);

§355.8461, which addresses the reimbursement methodology for the eyeglass program;

Briefing Package. A briefing package describing the proposed payments will be available at www.hhsc.state.tx.us/medicaid/programs/rad/ratepackets.html on or after June 28, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payments may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201102170
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 14, 2011

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2011.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for:

Birthing Centers

Case Management for Children and Pregnant Women

Chemical Dependency Treatment Facilities

Durable Medical Equipment

Early and Periodic Screening, Diagnosis and Treatment

Hearing and Audiometric Evaluations

Home Health Services

Tuberculosis Clinics

Vendor Drug Dispensing Fee, fixed component of the fee

Vision Services

The proposed amendments are estimated to result in a fiscal impact of $(3,861,473) for federal fiscal year (FFY) 2011, with approximately $(2,578,465) in federal funds and $(1,283,008) in State General Revenue (GR). For FFY 2012, the estimated fiscal impact is $(192,032,904), with approximately $(126,858,026) in federal funds and $(65,174,878) in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201102171
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 14, 2011

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Texas Department of Insurance

Company Licensing

Application to change the name of COMMERCE TITLE INSURANCE COMPANY to PREMIER LAND TITLE INSURANCE COMPANY, a foreign title company. The home office is in Anaheim, California.

Application for admission to the State of Texas by PMSLIC INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Mechanicsburg, Pennsylvania.

Application for admission to the State of Texas by UNIVERSAL SURETY COMPANY, a foreign fire and/or casualty company. The home office is in Lincoln, Nebraska.

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 Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201102179
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 15, 2011

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Texas Lottery Commission

Notice of Public Hearing

A public hearing to receive public comments regarding proposed new 16 TAC §402.110, relating to Temporary Increase of License Fees, will be held on Thursday, July 14, 2011, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201102167

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 14, 2011

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Texas Department of Public Safety

Request for Applications from Local Emergency Planning Committees for Hazardous Materials Emergency Preparedness Grants

INTRODUCTION: The Texas Department of Public Safety - Texas Division of Emergency Management (TDEM), acting on behalf of the State Emergency Response Commission (SERC), is requesting applications from Local Emergency Planning Committees (LEPC) for Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to cities/counties represented by LEPCs to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to the use, storage and/or transit of hazardous chemicals. The U.S. Department of Transportation (DOT) has made grant money available to enhance communities' readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC in various ways depending on a community's needs.

ELIGIBLE APPLICANTS: Each application must be developed by an LEPC in cooperation with county and/or city governments. LEPC membership must be recognized by the SERC. The application must be approved by an LEPC vote. Each LEPC shall arrange for a city or county to serve as its fiscal agent for the management of any and all money awarded under this grant.

CERTIFICATION: The fiscal agent must provide appropriate certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or an authorization to commit funds from the city.

LIMITATIONS: Total funding for these grants is dependent on the amount granted to the State from the U.S. DOT. This is the 20th of a series of annual grant awards, which will be issued through FY 2012. Grants will be awarded based upon project, population, hazardous materials risk, need, and cost-effectiveness as determined by the SERC. TDEM will fund 80% of the total project amount approved by the SERC and the remaining 20% must be borne by the grantee. Approved in-kind contributions may be used to satisfy this 20% requirement. In addition to the grant, LEPCs must maintain the same level of spending for planning as an average of the past two years.

EXAMPLES OF PROPOSALS:

(a) Development, improvement, and implementation of emergency plans required under the EPCRA, as well as exercises, which test the emergency plan. Improvement of emergency plans may include hazard analysis or risk assessment as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.

(b) An assessment to determine flow patterns of hazardous materials within a State, between a State and another State, Territory or Native American Land, and development and maintenance of a system to keep such information current.

(c) An assessment of the need for regional hazardous materials emergency response teams or to assess local response capabilities.

(d) Conducting emergency response drills and exercises associated with transportation-related emergency response plans.

(e) Temporary technical staff to support the planning effort. (Staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)

(f) Public outreach about hazardous materials training issues such as community protection, chemical emergency preparedness, or response.

(g) Any other planning project related to the transportation of hazardous materials approved by TDEM, using U.S. DOT approved projects as a reference base.

CONTRACT PERIOD: Grant contracts begin as early as October 1, 2011, and end August 31, 2012.

FINAL SELECTION: TDEM will review the applications and the SERC Subcommittee on Planning will make the final selections. The State is under no obligation to award grants to any or all applicants.

APPLICATION FORMS AND DEADLINE: You can obtain a "Request for Application" package by downloading the documents from the TDEM website at http://www.txdps.state.tx.us/dem/pages/downloadableforms.htm#serc, by requesting a copy from the HazMat Preparedness Officer at emdtechhaz@txdps.state.tx.us, or by calling (512) 424-5985. The completed (original) "Request for Application" package must be sent via certified/registered mail, or other private mail delivery service requiring a signature, to the Texas Division of Emergency Management, Preparedness Section, Technological Hazards Unit, P.O. Box 4087, Austin, Texas 78773-0225. The applications must be received by 5:00 p.m. on August 1, 2011.

TRD-201102174
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: June 14, 2011

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Public Utility Commission of Texas

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 13, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Potter County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed 115-kV Transmission Line within Potter County. Docket Number 39467.

The Application: The proposed project is designated as the Rolling Hills substation to Hastings substation transmission line project. The proposed project is presented with seven alternate routes consisting of a combined 15 segments and is estimated to be approximately 3.5 to 7 miles in length depending on which route is chosen. The commission may approve any route presented in the application. All routes begin at the proposed Rolling Hills substation and end at the existing Hastings substation in south central Potter County. Depending on the route chosen the total cost of the project, including the transmission line and substation costs, is estimated to be between approximately $13.7 million to $16 million.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas 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. The deadline for intervention in this proceeding is July 28, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 39467.

TRD-201102169
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 14, 2011

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Public Notice of Workshop on Reserve Adequacy and Shortage Pricing

The Public Utility Commission of Texas (commission) will hold a workshop regarding reserve adequacy and shortage pricing in ERCOT, on Wednesday, June 29, 2011, at 10:00 a.m. and Thursday, June 30, 2011, at 9:00 a.m. in the Commissioners' Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 37897 has been established for this proceeding. This two-day workshop is the second in a series of workshops on reserve adequacy and shortage pricing. The first day will address reserve planning, outage coordination, and demand response actions taken to prevent firm service outages during extreme weather events. The second day will focus upon scarcity pricing and factors affecting resource investment decisions. Prior to the workshop, the commission requests interested persons file comments to the following questions:

1. Does Texas have the right scarcity pricing and resource adequacy mechanisms in place for the ERCOT and non-ERCOT regions to ensure reliable electric service in the future?

2. Should the commission establish reliability requirements by rule rather than relying on ERCOT and the stakeholder process?

Responses may be filed by submitting 16 copies to the Commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Monday, June 20, 2011. All responses should reference Project Number 37897. This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Ten days prior to the workshop the commission shall make available in Central Records under Project Number 37897 an agenda for the format of the workshop.

Questions concerning Project Number 37897 or this notice should be referred to Doug Whitworth, Competitive Markets Division, (512) 936-7368, or Jason Haas, Legal Division, (512) 937-7295. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201102135
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 2011

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Texas Department of Transportation

Public Notice of Draft Environmental Impact Statement - Grand Parkway (SH 99), Segments H and I-1

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(5), the Texas Department of Transportation is announcing to the public the availability of the Draft Environmental Impact Statement (DEIS) dated February 2011, for the proposed construction of Segments H and I-1 of the Grand Parkway (State Highway 99), from US 59 (N) to IH 10 (E). Written comments may be submitted to the Grand Parkway Association (GPA), Attention: Segments H and I-1 Comments, 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or to Texas Department of Transportation Houston District, Attention: Director of Project Development, P.O. Box 1386, Houston, Texas 77251-1386. Comments will also be accepted by e-mail to segmentsHandI-1comments@grandpky.com. The comment period closes on September 21, 2011.

Transportation improvements are needed in the Segments H and I-1 study area because there are inefficient connections between suburban communities and major radial roadways, the current and future transportation demand exceeds capacity, many roadways in the study area have a high accident rate, and there is an increasing strain on transportation infrastructure from population growth. The purpose of the proposed transportation improvements in the Segments H and I-1 study area is to provide system linkage to the suburban communities and major roadways, enhance mobility and safety, and provide infrastructure to support population growth. The goal is to improve system linkage, address current and future transportation demand, improve safety and hurricane evacuation, and accommodate population growth.

The study process included consideration of a full range of alternatives. The Study Team considered the No-Build Alternative, various transportation modes, alternative corridors, and various Build Alternative Alignments. Transportation System Management (TSM), Travel Demand Management (TDM), Smart Street improvements, and modal transportation improvements such as bus transit, high-occupancy vehicle lanes, rail feasibility, and new planned roadway construction were considered. Alternatives determined not to meet the need for and purpose of the project were eliminated from further consideration, while other reasonable alternatives were identified and carried forward for detailed study. The Build Alternative was selected because it is the only alternative that fulfills the need for and purpose of the project. The study approach first emphasized avoidance, and then minimization to ensure that the identified Recommended Alternative Corridor, and ultimately the Recommended Alternative Alignment, minimizes adverse impacts to the greatest extent possible. The Recommended Alternative Alignment was identified after careful consideration of comments received from the public and resource agencies.

The Recommended Alternative Alignment consists of a controlled access toll road on new location. The proposed facility would include four main lanes and intermittent frontage roads within a right-of-way width of 400 feet. A total of ten Build Alternative Alignments (2 through 11), in addition to the No-Build Alternative (Alternative 1), are presented in the DEIS. All reasonable build alternative alignments extend from US 59 (N) to IH 10 (E) and are described as follows.

1. Alternative Alignment 2 begins at US 59 (N) and Roman Forest Boulevard approximately 1.5 miles north of FM 1485 and passes through the center of the study area and passes between SH 146 and the Union Pacific Railroad. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 38.2 miles in length.

2. Alternative Alignment 3 begins at the same location as Alternative Alignment 2 and passes through the center of the study area and passes west of the Union Pacific Railroad. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 39.4 miles in length.

3. Alternative Alignment 4 begins at the same location as Alternative Alignment 2 and passes through the center of the study area and passes between SH 146 and the Union Pacific Railroad. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 35.4 miles in length.

4. Alternative Alignment 5 begins at the same location as Alternative Alignment 2 and passes through the center of the study area and passes west of the Union Pacific Railroad. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 36.6 miles in length.

5. Alternative Alignment 6 begins at the same location as Alternative Alignment 2 and passes through the center of the study area west of Alternative Alignment 5. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 35.4 miles in length.

6. Alternative Alignment 7 begins at US 59 (N) and Community Drive approximately 1.5 miles south of FM 1485 and passes through the center of the study and passes between SH 146 and the Union Pacific Railroad. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 39.7 miles in length.

7. Alternative Alignment 8 begins at the same location as Alternative Alignment 7 and passes through the center of the study area and passes west of the Union Pacific Railroad. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 41.0 miles in length.

8. Alternative Alignment 9 begins at the same location as Alternative Alignment 7 and passes through the center of the study area and passes between SH 146 and the Union Pacific Railroad. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 36.9 miles in length.

9. Alternative Alignment 10 (Recommended Alternative) begins at the same location as Alternative Alignment 7 and passes through the center of the study area and passes west of the Union Pacific Railroad. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 37.4 miles in length.

10. Alternative Alignment 11 begins at the same location as Alternative Alignment 7 and passes through the center of the study area west of Alternative Alignment 10. This alignment alternative ends at IH 10 (E) approximately 2.0 miles east of SH 146 and is 37.0 miles in length.

The Recommended Alternative Alignment that has emerged from the study is a combination of alternative alignments. The Recommended Alternative Alignment allows for impact avoidance and minimization for a number of resources, fulfills the need for and purpose of the project, and provides feasible engineering alternatives. The Recommended Alternative Alignment best balances the expected project benefits with the overall effects.

The Recommended Alternative Alignment for Segments H and I-1 would require the taking of right-of-way, the adjustment of utility lines, and the filling of aquatic resources including approximately 40.8 acres of potentially jurisdictional wetlands. The displacement of 5 businesses, 41 existing residences and 2 churches would occur. Additionally, like all alignments considered, the Recommended Alternative Alignment would affect visual resources in the immediate area, present potential access impacts, and cause changes to community cohesion. No effects to schools, archeological sites, historic properties, cemeteries, publicly-owned parks, riparian forests, or endangered species are expected. The separation of farmland from homesteads is also not expected. No disproportionate affects to minority or low-income populations would result from this alternative. Although a Recommended Alternative Alignment is presented, selection of the final Preferred Alternative Alignment will not be made until after the public comment period is completed, comments on the DEIS are received and considered, and the environmental effects are fully evaluated.

The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act) requires that comparable, decent, safe, and sanitary replacement housing within a person's financial means be made available to all affected residents. The State's Relocation Assistance Program will be available to all individuals, families, businesses, farmers, ranchers, and nonprofit organizations displaced as a result of the proposed project. Acquisitions of businesses and residences will be conducted in accordance with the Uniform Act, as amended in 1987. Relocation assistance would be made available to all businesses and residences without discrimination, consistent with the requirements of the Civil Rights Act of 1964 and the Housing and Urban Development Amendment of 1974. Representatives from the State of Texas will be available at the Public Hearing to answer questions and provide information concerning the property acquisition process and benefits offered by relocation assistance. The property acquisition process for this project is scheduled to begin in 2014. Construction could begin as early as 2016, depending on the completion of property acquisition and the availability of funds.

Copies of the DEIS and other information about the project may be obtained by contacting Mr. David Gornet at the GPA, at (713) 965-0871. The document is on file and available for review at the following seven locations: (1) Grand Parkway Association 4544 Post Oak Place, Suite 222, Houston, Texas 77027; (2) Texas Department of Transportation, 7600 Washington Avenue, Houston, Texas 77007; (3) Houston Public Library (Texas Room) 500 McKinney, Houston, Texas 77002; (4) Montgomery County Library, R.B. Tullis Branch, 21130 U.S. Hwy. 59 #K, New Caney, Texas 77357; (5) Harris County Library, Kingwood Branch, 4102 Rustic Woods, Kingwood, Texas 77345; (6) Jones Public Library, 307 West Houston Street, Dayton, Texas 77535; and (7) West Chambers County Library, 10616 Eagle Drive, Mont Belvieu, Texas 77580. A digital version of the DEIS may be downloaded from the Grand Parkway website at www.grandpky.com.

TRD-201102182
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 15, 2011

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The Texas A&M University System

Request for Proposals

RFP Main 11-0028 Consulting Services for Airport Contract Negotiation

The Texas A&M University is seeking proposals from interested firms to assist the University in conducting negotiations for Air Carrier Use and Lease Agreements for Easterwood Airport, an airport owned and operated by Texas A&M University. Firms shall also assist in the annual recalculation and negotiation of air carrier rates, the ongoing support of the Passenger Facility Charge Program, the implementation of a Customer Facility Charge, negotiations for Rental Car Concession agreements and other airport financial related analysis as needed.

The request for proposal documentation may be obtained by contacting: Patty Winkler, CTP, C.P.M., Senior Buyer, Texas A&M University, Procurement Services, P.O. Box 30013, College Station, Texas 77842-3013 or e-mail at p-winkler@tamu.edu.

Texas A&M University, Easterwood Airport will base its choice on overall experience with airport contract negotiations/methodology, passenger facility charge programs, rental car concession agreement

negotiations and Customer Facility Charge programs; References; Pricing.

Proposals must be received on or before 2:00 p.m. CST on July 22, 2011.

TRD-201102173
Donna Harrell
Buyer
The Texas A&M University System
Filed: June 14, 2011

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Texas Water Development Board

Applications for June, 2011

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62509, a request from North San Saba Water Supply Corporation, P.O. Box 598, San Saba, Texas 76877, received February 7, 2011, for a loan in the amount of $271,000, from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #21705, a request from Moffat Water Supply Corporation, 5456 Lakeaire Blvd., Temple, Texas 76502, received February 25, 2011, for a loan in the amount of $2,000,000 from the Rural Water Assistance Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #21639, a request from San Jacinto River Authority, P.O. Box 329, Conroe, Texas 77305, received January 13, 2011, for a loan in the amount of $67,470,000 from the Texas Water Development Fund to finance construction of a water supply project, utilizing the pre-design funding option.

TRD-201102178
Ingrid Hansen
Deputy General Counsel
Texas Water Development Board
Filed: June 15, 2011

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Public Hearing Notice for State Fiscal Year 2012 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Intended Use Plans

The Texas Water Development Board (TWDB) will hold a public hearing on the draft State Fiscal Year (SFY) 2012 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP) and the Drinking Water State Revolving Fund (DWSRF) IUP. The hearing for the DWSRF and CWSRF IUPs will begin promptly at 2:00 p.m. on July 21, 2011, in Room 170 of the Stephen F. Austin Building at 1700 N. Congress Avenue, Austin, Texas 78701.

The DWSRF IUP contains a list of water infrastructure projects in prioritized order which will be considered for funding in SFY 2012. The draft SFY 2012 DWSRF IUP has been prepared pursuant to the rules adopted by the TWDB in 31 Texas Administrative Code Chapter 371.

The CWSRF IUP contains a list of wastewater projects in prioritized order which will be considered for funding in 2012. The draft SFY 2012 CWSRF IUP has been prepared pursuant to rules adopted by the TWDB in 31 Texas Administrative Code Chapter 375.

Interested persons are encouraged to attend the hearings and to present relevant and material comments concerning the draft IUPs. In addition, persons may submit written comments to Ms. Stacy Barna, Texas Water Development Board, P.O. Box, 13231, Austin, Texas 78711, or may email comments to *iupcomments@twdb.state.tx.us.* Comments may also be received online utilizing an electronic form located at *http://www.twdb.state.tx.us/apps/iup.* Comments and supplemental information will only be accepted by electronic submission at the addresses stated, written comments to Ms. Stacy Barna, or at the public hearing on July 21, 2011. Any comments and supplemental information must be received by 5:00 p.m. Central Standard Time, July 22, 2011, to be considered. Interested persons also may review the draft DWSRF and CWSRF IUPs at the Board's website at *www.twdb.state.tx.us/financial/programs/doc/dwsrf/draft_FY12_DWSRF_IUP.pdf* and *www.twdb.state.tx.us/financial/programs/doc/cwsrf/draft_FY12_CWSRF_IUP.pdf* respectively.

Please note that time limits on public comments may be imposed to allow all members of the public to be heard.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Merry Klonower at (512) 463-8165 two (2) working days prior to the hearing so that appropriate arrangements can be made.

TRD-201102160
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: June 14, 2011

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Workforce Solutions Deep East Texas

Request for Quotes for Hearing Officer

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking the services of a qualified individual or organization to serve on an as needed basis as a Hearing Officer. The Board was organized in October 1996 under Texas SB 642 and HB 1863 to plan and oversee an integrated workforce system in the Deep East Texas Workforce Development Area (WDA). The WDA is a 12-county, rural area. Additional information on the Board can be accessed at the Board's website www.detwork.org.

The Hearing Officer will conduct hearings and issue written decisions on appeals involving Child Care Services (CCS), Workforce Investment Act (WIA), Temporary Assistance to Needy Families (TANF) Choices, Supplemental Nutrition Assistance Program (SNAP) or food stamps, and Project Reintegration of Offenders (RIO), as well as other programs from time to time. The programs are federal and state funded and assist with employment and training, as well as support services such as child care assistance. The complainant will have filed a complaint or appeal against the Board or its contractors. The complaint or appeal was not resolved through the informal resolution process, and the complainant will have asked to proceed to a Board hearing. The basis of the complaints or appeals may be denial of service due to failure to comply with program requirements or a lack of funds to provide certain services. All hearings are to be scheduled and conducted in keeping with the requirements in Texas Workforce Commission rules at 40 TAC Chapters 809, 811, 813, 841, and 847; Workforce Development Letter 08-08 at http://www.twc.state.tx.us/twcinfo/rules/20072008/07adopch823r.pdf and the Board's policies. The Hearing Officer will report to the Executive Director on all matters regarding the Hearing procedure and outcome.

The successful bidder will have the education, experience, and knowledge, skills, and abilities to conduct the hearings in a professional, objective, and unbiased manner. The hearings may be conducted in person or by telephone conference. Minimum qualifications include either a law degree and/or experience with the Board's programs; knowledge of legal proceedings, civil procedure, administrative law, and regulatory laws in the State of Texas; the programs under the Board's oversight, and their related legislation. The Hearing Officer must be able to conduct appeals hearings; to interpret and apply laws; to communicate effectively; and write concisely.

Interested persons or entities should submit a description of current and past related experience, a proposal of how they will be available to fulfill the duties of Hearing Officer when needed, and cost of services with a narrative that includes justification of the expense and of how each element of cost was arrived at.

Proposals must be submitted by email, fax, or mail no later than 3:00 p.m., June 30, 2011 to:

Darla Johnson

539 S. Chestnut Street, Suite 300

Lufkin, Texas 75901

Phone: (936) 639-8898

Fax: (936) 633-7491

darla.johnson@twc.state.tx.us

The intent of this RFQ is to identify various prospective contract alternatives and obtain estimates of costs of services being solicited. The Board is under no legal requirement to execute a contract on the basis of any proposal received.

No employee, member of a Board of Directors or other governing body, or representative of a proposer who submits a proposal under this request may have any contact outside of the formal review process with any employee of the Deep East Texas Local Workforce Development Board, Inc. or any member of the Deep East Texas Local Workforce Development, Inc., for purposes of discussing or lobbying on behalf of the proposer's proposal. This contact includes written correspondence, telephone calls, personal meetings, or other kinds of personal contact. The Board will reject proposals of those proposers who violate this condition.

The Board is the responsible authority for handling complaints or protests regarding the proposal selection process. No protest will be accepted by the State Grantor Agency (Texas Workforce Commission) until all administrative remedies at the grantee (Board) level have been exhausted. This includes, but is not limited to, disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law shall be referred to such authority as may have proper jurisdiction. As a condition of an award under Title I of WIA, the Proposer assures that it will comply fully with the nondiscrimination and equal opportunity provisions as defined by 29 CFR 37.20.

The Board reserves the right to accept or reject any or all proposals received; to cancel this Request in part, or in its entirety; or to reissue the Request. The Board reserves the right to waive any defect in this procurement process or to make changes to this solicitation as deemed necessary. The Board reserves the right to request additional information and/or negotiate issues prior to making a selection.

TRD-201102102

Charlene Meadows

Executive Director

Workforce Solutions Deep East Texas

Filed: June 9, 2011

How to Use the Texas Register

Information Available: The 14 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.

Secretary of State - opinions based on the election laws.

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.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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.

Review of Agency Rules - notices of state agency rules review.

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 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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, Room 245, 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 ***Register*** is available in an .html version as well as a .pdf (portable document format) 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 following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

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
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
40 TAC §3.704.....950 *(P)*