TEXAS REGISTER

Volume 39 Number 52 *December 26, 2014* *Pages 10095 - 10560*

Sergio Ledesma

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*.

Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $259.00 ($382.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711-3824
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In This Issue

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.texas.gov.

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1233-GA

Requestor:

The Honorable René O. Oliveira

Chair, Committee on Business & Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of Investment Pools under the Public Funds Investment Act (RQ-1233-GA)

Briefs requested by January 12, 2015

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201406152
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: December 17, 2014

♦ ♦ ♦

Opinions

Opinion No. GA-1094

The Honorable Lori J. Kaspar

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Disposition of surplus property purchased with proceeds of the sheriff's commissary account (RQ-1207-GA)

S U M M A R Y

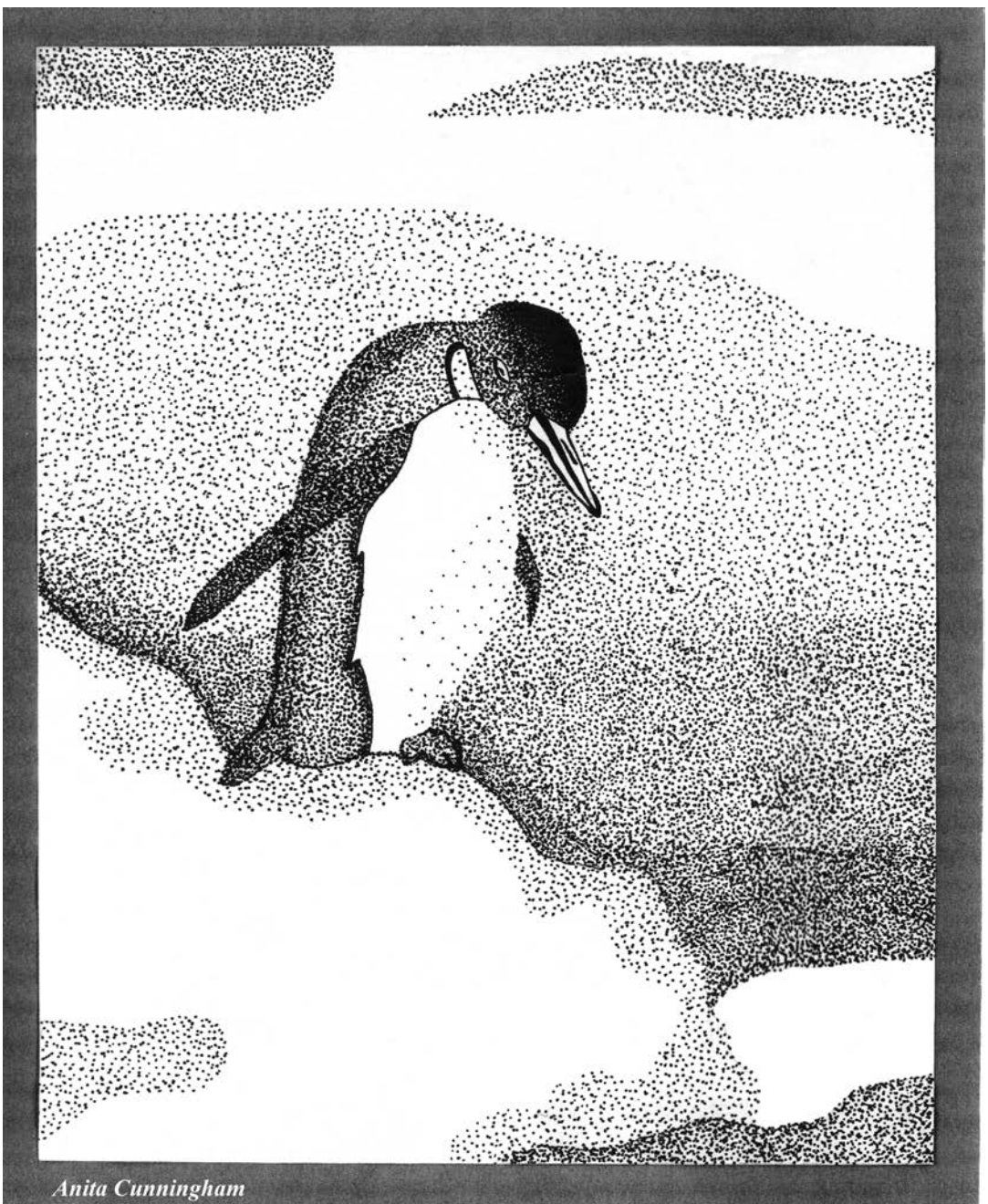
Transferring equipment purchased with commissary funds to an office or department within the sheriff's office that does not operate or use the equipment for the benefit of county jail inmates would go beyond the permitted use of commissary funds established by section 351.0415 of the Local Government Code.

Equipment purchased with commissary funds that no longer has any use or benefit for county jail inmates may be sold pursuant to section 263.152 of the Local Government Code. The proceeds from the sale may only be used in accordance with section 351.0415, and should be deposited into the commissary account from which the equipment was originally purchased.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201406151
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: December 17, 2014

♦ ♦ ♦



Anita Cunningham

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER G. STAR+PLUS

1 TAC §353.608

The Texas Health and Human Services Commission (HHSC) proposes amendments to §353.608, concerning Minimum Payment Amounts to Qualified Nursing Facilities, to revise eligibility criteria and reconciliation procedures and to add language relating to the recoupment of payments in certain situations.

Background and Justification

In 2012, HHSC adopted Title 1 of the Texas Administrative Code (TAC) §355.314 (relating to Supplemental Payments to Non-State Government-Owned Nursing Facilities) to create a nursing facility (NF) upper payment limit (UPL) supplemental payment program. Eligible NFs could apply to participate in this program and, if approved, the NFs could receive supplemental payments based on the difference between the amount paid through fee-for service Medicaid and the amount Medicare would have paid for those same services. As with other supplemental payment programs operated by HHSC, the non-federal share of the supplemental Medicaid payment is funded through intergovernmental transfers (IGTs) provided by the Non-state Governmental Entities that own the participating NFs. Payments have been made under the NF UPL program since October 2013.

Beginning March 1, 2015, NF services will be "carved-in" to managed care. In other words, the capitated payment HHSC makes to Medicaid managed care organizations (MCOs) will include funds for NF services provided by NFs contracted with the MCOs. As a result of the carve-in, HHSC is prohibited from continuing the NF UPL program.

In an effort to continue a certain level of funding to the NF UPL participants, HHSC created a new minimum payment to eligible NFs to be made through the MCOs. This new minimum payment was established through the adoption of 1 TAC §353.608, effective November 1, 2014. HHSC now proposes amendments to §353.608 as follows:

Eligibility requirements for eligibility period two. Existing rules at subsection (e)(3)(C)(iii) require that the Non-state Governmental Entity that owns the nursing facility must certify that no payment made under the Minimum Payment Amount program will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of Minimum Payment Amount funds. To aid in the enforcement of this requirement, HHSC proposes to add a new subparagraph (D) under paragraph (3) requiring the Non-state Governmental Entity that owns the nursing facility must submit to HHSC copies of any contracts it has with third parties that reference the administration of, or payments from, the Minimum Payment Amount program.

Geographic proximity requirements. Existing rules at subsection (e)(4) require that any nursing facility with a change of ownership (CHOW) Application approved by the Department of Aging and Disability Services (DADS) with an effective date on or after October 1, 2014, must be located in the same Regional Healthcare Partnership (RHP) as the Non-state Governmental Entity taking ownership of the facility. In an effort to address the geographic realities of rural Texas while still ensuring that there is a true ownership relationship between the Non-state Governmental Entity and the nursing facility rather than a relationship that exists solely for the purposes of revenue maximization, HHSC is proposing to revise this requirement for eligibility period two to include nursing facilities located within 150 miles of the Non-state Governmental Entity taking ownership of the facility. HHSC intends to determine distances through the use of Google Maps or a similar internet application.

IGT Responsibility Reconciliation. Existing rules at subsection (g)(4) indicate that HHSC will conduct a single reconciliation of IGT responsibilities for each eligibility period based on a snapshot of actual member months for the eligibility period taken on the last day of the eligibility period. Since the adoption of this subsection, HHSC has determined that actual member months for a specific period of time are not finalized until 24 months after that specific period. In response to this determination, HHSC is proposing a two-part reconciliation with the first part to be conducted no later than 30 days after the end of the eligibility period and the second part to be conducted no later than 25 months after the end of the eligibility period. Member months will be the only data point updated during the reconciliation process.

Recoupments. Existing rules do not address possible recoupments of Minimum Payment Amount funds. In an effort to ensure that Minimum Payment Amount funds are expended as intended, HHSC is proposing new language to allow MCOs to recoup funds from nursing facilities in the following situations: 1) if payments under the section result in an overpayment to a nursing facility; 2) in the event of a disallowance by CMS of federal participation related to a nursing facility's receipt of or use of second payment amounts authorized under subsection (d); 3) to correct any payments made in error; 4) if HHSC determines that part of any payment made under the Minimum Payment Amount program was used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of Minimum Payment Amount funds; or 5) if HHSC determines that an ownership change to a Non-state Governmental Entity was based on

fraudulent or misleading statements on a nursing facility CHOW application or during the CHOW process.

Section-by-Section Summary

Proposed §353.608(e)(3)(D) adds a requirement to the second eligibility period eligibility requirements that the Non-state Governmental Entity that owns the nursing facility submit to HHSC copies of any contracts it has with third parties that reference the administration of, or payments from, the Minimum Payment Amount program.

Proposed §353.608(e)(4) modifies the geographic proximity requirements for eligibility period two to allow nursing facilities located in the same RHP as, or within 150 miles of, the facility's Non-state Governmental Entity to qualify for participation in the Minimum Payment Amount program.

Proposed §353.608(g)(4) modifies the reconciliation process to add a second reconciliation to occur no later than 25 months after the end of the eligibility period and to add details pertaining to the calculation and collection of reconciliation amounts.

Proposed §353.608(i) adds language describing when an MCO may recoup Minimum Payment Amount funds from a nursing facility.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that, for each year of the first five years the proposed rule will be in effect, there will be no fiscal impact to the state as the non-federal share of the increase in capitation payments due to the amendments will be funded with IGTs from non-state governmental entities.

Ms. Rymal has also determined that there is no anticipated impact to a local economy or local employment for the first five years the proposed rule will be in effect. It is not anticipated that the required IGTs from local governments or the Medicaid payments to NFs owned by these local governments will change significantly under the proposed rule from the current program IGTs and Medicaid payments.

Ms. Rymal anticipates that, for each year of the first five years the rule will be in effect, there will be no economic cost to persons required to comply with the rule.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rule will be in effect, the public benefits expected as a result of enforcing the amendments will be to ensure the proper functioning of the Minimum Payment Amounts program.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there is no adverse economic impact on small businesses or micro-businesses as a result of enforcing or administering the amendments. The implementation of the proposed amendments does not require any changes in practice or any additional cost to the contracted provider, because participation in the minimum payment is voluntary.

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 Pam McDonald, Director of Rate Analysis, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by e-mail to pam.mcdonald@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendments are 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 (Medicaid) payments under Texas Human Resources Code Chapter 32. The amendments implement Texas Government Code, Chapter 531 and Texas Human Resources Code Chapter 32.

No other statutes, articles, or codes are affected by this proposal.

§353.608. Minimum Payment Amounts to Qualified Nursing Facilities.

(a) Introduction. This section establishes minimum payment amounts for certain non-state government-owned nursing facility providers participating in the STAR+PLUS Program, or other Medicaid managed care programs offering nursing facility services, and the conditions for receipt of these amounts.

(b) Definitions.

(1) Calculation Period--A month used to calculate the Minimum Payment Amount. There are six calculation periods in Eligibility Period One and twelve calculation periods in Eligibility Period Two.

(2) CHOW Application--An application filed with the Department of Aging and Disability Services for a nursing facility change of ownership.

(3) Clean Claim--A claim submitted by a provider for health care services rendered to an enrollee with the data necessary for the managed care organization to adjudicate and accurately report the claim. Claims for Nursing Facility Unit Rate services that meet the Department of Aging and Disability Services' criteria for clean claims submission are considered Clean Claims. Additional information regarding Department of Aging and Disability Services' criteria for clean claims submission is included in HHSC's Uniform Managed Care Manual, which is available on HHSC's website.

(4) DADS--The Texas Department of Aging and Disability Services.

(5) Eligibility Period--A period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section.

(6) Eligibility Period One--The first period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section, covering dates of service from the later of March 1, 2015, or the date on which nursing facility services become managed care services, to August 31, 2015.

(7) Eligibility Period Two--The second period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section, covering dates of service from September 1, 2015, to August 31, 2016.

(8) First Payment--The payment made in the ordinary course of business by MCOs to Qualified Nursing Facilities for the provision of covered services to Medicaid recipients.

(9) HHSC--The Texas Health and Human Services Commission or its designee.

(10) Intergovernmental transfer (IGT)--A transfer of public funds from a non-state governmental entity to HHSC.

(11) IGT Responsibility--The IGT owed by a non-state governmental entity, as determined by HHSC, for funding the non-federal share of the increase in the payments to the MCOs due to the Minimum Payment Amount program.

(12) MCO--A Medicaid managed care organization contracted with HHSC to provide nursing facility services to Medicaid recipients.

(13) Minimum Payment Amount--The minimum payment amount for a Qualified Nursing Facility, as calculated under subsection (d) of this section.

(14) Network Nursing Facility--A nursing facility that has a contract with an MCO for the delivery of Medicaid covered benefits to the MCO's enrollees.

(15) Non-state Governmental Entity--A hospital authority, hospital district, health district, city or county.

(16) Non-state Government-owned Nursing Facility--A network nursing facility where a non-state governmental entity holds the license and is a party to the nursing facility's Medicaid provider enrollment agreement with the state.

(17) Nursing Facility Add-on Services--The types of services that are provided in the nursing facility setting by a provider, but are not included in the Nursing Facility Unit Rate, including but not limited to emergency dental services, physician-ordered rehabilitative services, customized power wheel chairs, and augmentative communication devices.

(18) Nursing Facility Unit Rate--The types of services included in the DADS daily rate for nursing facility providers, such as room and board, medical supplies and equipment, personal needs items, social services, and over-the-counter drugs. The Nursing Facility Unit Rate also includes applicable nursing facility rate enhancements as described in §355.308 of this title (relating to Direct Care Staff Rate Component), and professional and general liability insurance. Nursing Facility Unit Rates exclude Nursing Facility Add-on Services.

(19) Qualified Nursing Facility--A Non-state Government-Owned Network Nursing Facility that meets the eligibility requirements described in subsection (e) of this section.

(20) Public Funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a non-state governmental entity that holds the license and is party to the Medicaid provider enrollment agreement with the state. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(21) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform as defined and established under Chapter 354, Subchapter D of this title (relating to Texas Healthcare Transformation and Quality Improvement Program).

(22) RUG--For the purpose of calculations described in subsection (d)(1) of this section, a resource utilization group under Medicare Part A as established by the Centers for Medicare & Medicaid Services (CMS). For the purpose of calculations described in subsection (d)(2) of this section, a resource utilization group under the RUG-III 34 group classification system, Version 5.20, index maximizing, as established by the state and CMS.

(23) Second Payment--The amount a Qualified Nursing Facility can receive that is equal to the Minimum Payment Amount less adjustments to that amount, as described in subsection (d) of this section.

(c) Payment of Minimum Payment Amount to Qualified Nursing Facilities.

(1) An MCO must pay a Qualified Nursing Facility at or above the Minimum Payment Amount in two installment payments for a Calculation Period, using the calculation methodology described in subsection (d) of this section.

(A) The MCO must make the First Payment no later than ten calendar days after a Qualified Nursing Facility or its agent submits a Clean Claim for a Nursing Facility Unit Rate to the HHSC-designated portal or the MCO's portal, whichever occurs first. The MCO will make the First Payment for the Nursing Facility Unit Rate at or above the prevailing rate established by HHSC for the date of service. HHSC's website includes information concerning HHSC's prevailing rates. The MCO must make the Second Payment no later than 10 calendar days after being notified of the Second Payment amount by HHSC. The Second Payment will be the difference between the Minimum Payment Amount and the adjustment to the Minimum Payment Amount, as calculated by HHSC and described in subsection (d) of this section.

(B) For purposes of illustration only, if a Qualified Nursing Facility provider files a Clean Claim for a Nursing Facility Unit Rate on March 6, 2015, the MCO must make the First Payment no later than March 16, 2015, and the Second Payment no later than 10 calendar days after being notified of the Second Payment amount by HHSC.

(2) HHSC will provide each MCO with a list of its Qualified Nursing Facilities for each Calculation Period as well as the Second Payment amount, as calculated by HHSC and described in subsection (d) of this section, associated with the MCO's members for each of its Qualified Nursing Facilities.

(d) Calculation of the Second Payment. HHSC will calculate the Second Payment for each Qualified Nursing Facility using the methodology detailed in this subsection. If a Qualified Nursing Facility is contracted with more than one MCO, HHSC will calculate a separate Second Payment for each MCO with which the Qualified Nursing Facility is contracted.

(1) Calculate the Minimum Payment Amount. The Minimum Payment Amount is made up of multiple subsidiary amounts. There is a subsidiary amount for each RUG.

(A) To determine the subsidiary amount for a particular RUG, use the formula: Subsidiary Amount = Days of Service x Medicare Rate, where:

(i) "Days of Service" is the total Medicaid days of service for a particular RUG for clean claims for services that were provided during the Calculation Period; and

(ii) "Medicare Rate" is the Medicare skilled nursing facility payment rate for the RUG in effect on the date of service.

(B) The Minimum Payment Amount is equal to the sum of all subsidiary amounts calculated in accordance with subparagraph (A) of this paragraph.

(2) Calculate the Adjustment to the Minimum Payment Amount. The adjustment to the Minimum Payment Amount is equal to the sum of all adjustments for each RUG. The adjustment to the Minimum Payment Amount is determined as follows:

(A) First, determine the amount of the First Payment to the nursing facility using the formula: First Payment = Days of Service x MCO Rate, where:

(i) "Days of Service" is the total Medicaid days of service for a particular RUG for clean claims for services that were provided during the Calculation Period; and

(ii) "MCO Rate" is the rate paid by the MCO for the particular RUG.

(B) Second, sum the result in subparagraph (A) of this paragraph for each RUG.

(C) Third, add or subtract, as necessary, the amount of payment adjustments to Nursing Facility Unit Rate claims for services that were provided during the Calculation Period from the result in subparagraph (B) of this paragraph.

(D) Fourth, determine the amount related to the Nursing Facility Add-on Services using the formula: Nursing Facility Add-on Amount = Days of Service x Per Diem, where:

(i) "Days of Service" equals the number used in subparagraph [~~clause (2)~~](A)(i) of this paragraph [~~subparagraph~~]; and

(ii) "Per Diem" is an estimate, as determined by HHSC, of the weighted average per diem payment amount for Nursing Facility Add-on Services provided to Medicaid recipients in Qualified Nursing Facilities.

(I) For Eligibility Period One, the per diem will equal $3.48.

(II) For Eligibility Period Two, the per diem will equal $3.48 plus medical inflation between the mid-point of Eligibility Period One and the mid-point of Eligibility Period Two, as determined by HHSC.

(E) Fifth, sum the result in subparagraph (D) of this paragraph for each RUG.

(F) Sixth, determine the adjustment to the Minimum Payment Amount by subtracting the result from subparagraph (E) of this paragraph from the result from subparagraph (C) of this paragraph.

(3) Calculate the Second Payment. To determine the Second Payment, subtract the adjustment to the Minimum Payment Amount described in paragraph (2)(F) of this subsection from the Minimum Payment Amount described in paragraph (1) of this subsection.

(e) Eligibility for Receipt of Minimum Payment Amounts.

(1) A nursing facility is eligible to receive the Minimum Payment Amounts described in this section if it complies with the requirements described in this subsection [~~subpart~~] for each Eligibility Period.

(2) Eligibility Period One. A nursing facility is eligible to receive Minimum Payment Amounts for Eligibility Period One if it meets the following requirements:

(A) The nursing facility must be a Non-state Government-owned Nursing Facility with a Medicaid contract effective date of October 1, 2014, or earlier. HHSC will finalize its list of eligible facilities on November 1, 2014. A facility may only be eligible if its contract is assigned by DADS to a non-state government entity by October 31, 2014, with an effective date of October 1, 2014, or earlier.

(B) The Non-state Governmental Entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by November 3, 2014. The IGT Responsibility agreement will cover the estimated IGT Responsibility for the nursing facility for the Eligibility Period.

(C) The Non-state Governmental Entity that owns the nursing facility must certify the following facts on a form prescribed by HHSC and the form must be received by HHSC by November 3, 2014.

(i) That it is a Non-state Government-owned Nursing Facility where a Non-state Governmental Entity holds the license and is party to the facility's Medicaid contract.

(ii) That all funds transferred to HHSC via IGT for use as the state share of payments are Public Funds.

(iii) That no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.

(3) Eligibility Period Two. A nursing facility is eligible to receive the Minimum Payment Amounts for Eligibility Period Two if it has met the following requirements:

(A) The nursing facility must be a Non-state Government-owned Nursing Facility with a Medicaid contract effective date of March 1, 2015, or earlier. HHSC will finalize its list of eligible facilities on March 1, 2015. A facility may only be eligible if its contract is assigned by DADS to a non-state government entity by February 28, 2015, with an effective date of March 1, 2015, or earlier.

(B) The Non-state Governmental Entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by February 28, 2015. The IGT Responsibility agreement will cover the estimated IGT Responsibility for the nursing facility for the Eligibility Period.

(C) The Non-state Governmental Entity that owns the nursing facility must certify the following facts on a form prescribed by HHSC and the form must be received by HHSC by February 28, 2014.

(i) That it is a Non-state Government-owned Nursing Facility where a Non-state Governmental Entity holds the license and is party to the facility's Medicaid contract.

(ii) That all funds transferred to HHSC via IGT for use as the state share of payments are Public Funds.

(iii) That no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.

(D) The Non-state Governmental Entity that owns the nursing facility must submit to HHSC copies of any contracts it has with third parties that reference the administration of, or payments from, the Minimum Payment Amount program.

(4) Geographic Proximity to Nursing Facility.

(A) For eligibility period one, any [~~Any~~] nursing facility with a CHOW Application approved by DADS with an effective date on or after October 1, 2014, must be located in the same Regional Healthcare Partnership (RHP) as the Non-state Governmental Entity taking ownership of the nursing facility.

(B) For eligibility period two, any nursing facility with a CHOW Application approved by DADS with an effective date on or after October 1, 2014, must be located in the same RHP as, or within 150 miles of, the Non-state Governmental Entity taking ownership of the nursing facility.

(f) Claims Filing Deadline. A Qualified Nursing Facility must file a Clean Claim for a Nursing Facility Unit Rate no later than 60 calendar days after the end of the Calculation Period within which the service is provided for the claim to qualify for the Minimum Payment Amount described in this section. The MCO must pay a Clean Claim that is filed after this deadline but within 365 calendar days of the date of service, at the standard rate established in the network provider agreement for Nursing Facility Unit Services; however, claims filed after the 60 deadline will not be incorporated in the calculation of the Minimum Payment Amount.

(g) IGT Responsibility.

(1) Timing. HHSC will determine IGT responsibilities prior to the first day of the Eligibility Period.

(2) Aggregate IGT Responsibility. The aggregate IGT responsibility for all Qualified Nursing Facilities for an Eligibility Period will be equal to the non-federal share of the increase in the MCOs' capitation rates due to the Minimum Payment Amount program multiplied by the estimated number of member months for which the MCOs will receive the capitation rate during the eligibility period multiplied by 1.1.

(3) Allocation of Aggregate IGT Responsibility to Individual Nursing Facilities. HHSC will allocate the aggregate IGT responsibility to each qualified nursing facility based on the percentage of the total increase in the MCOs' capitation rates due to the Minimum Payment Amount program associated with the nursing facility in the base period data used to develop the capitation rates.

(4) Reconciliation. HHSC will complete the reconciliation in two parts. [~~conduct a single reconciliation of IGT responsibilities for each eligibility period and will base the reconciliation on a snapshot of actual member months for the eligibility period taken on the last day of the eligibility period. The percentage of the total increase in the MCOs' capitation rates due to the Minimum Payment Amount program associated with each nursing facility will not be subject to reconciliation.~~]

(A) The first reconciliation will occur no later than 30 days after the end of the eligibility period.

(i) HHSC will compare the amount transferred by the Non-state Governmental Entity to HHSC for the eligibility period to the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity.

(ii) The calculation of the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity will be the same as the calculation of allocated aggregate IGT responsibility to all Qualified Nursing Facilities owned by the Non-state Governmental Entity as described in paragraphs (2) and (3) of this subsection with two exceptions:

(I) "Member months" will be revised to reflect actual known member months for the eligibility period. The revision will be conducted no sooner than the day after the last day of the eligibility period and no later than 30 days after the end of the eligibility period.

(II) The "Aggregate IGT Responsibility" described in paragraph (2) of this subsection will be equal to the non-federal share of the increase in the MCO's capitation rates due to the Minimum Payment Amount program multiplied by the revised member months. The calculation will not include the additional ten percent included in the calculation of the original aggregate IGT responsibility.

(III) No other changes will be made to the calculation of the allocated aggregate IGT responsibility and no other data points included in the calculation will be updated for purposes of this reconciliation.

(iii) If the amount transferred by the Non-state Governmental Entity exceeds the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity, HHSC will refund the excess amount to the Non-state Governmental Entity, less two percent of the amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity.

(iv) If the amount transferred by the Non-state Governmental Entity is less than the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity, HHSC will notify the Non-state Governmental Entity of the amount of the shortfall and of a deadline for the Non-state Governmental Entity to transfer the shortfall plus two percent of the amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity.

(B) The second reconciliation will occur no later than 25 months after the end of the eligibility period.

(i) HHSC will compare the amount transferred by the Non-state Governmental Entity to HHSC for the eligibility period to the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity.

(ii) The calculation of the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity will be the same as the calculation of allocated aggregate IGT responsibility to all Qualified Nursing Facilities owned by the Non-state Governmental Entity as described in subparagraph (A) of this paragraph except that member months will be revised to reflect updated actual known member months for the eligibility period. The revision will be conducted sometime during the 25th month after the end of the eligibility period.

(iii) If the amount transferred by the Non-state Governmental Entity exceeds the non-federal amount expended during the

eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity, HHSC will refund the excess amount to the Non-state Governmental Entity.

(iv) If the amount transferred by the Non-state Governmental Entity is less than the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity, HHSC will notify the Non-state Governmental Entity of the amount of the shortfall and of a deadline for the Non-state Governmental Entity to transfer the shortfall.

(C) If the Non-state Governmental Entity does not timely complete the transfer described in subparagraph (A) or (B) of this paragraph, HHSC will withhold any or all future Medicaid payments from the Non-state Governmental Entity until HHSC has recovered an amount equal to the amount of the shortfall and nursing facilities owned by the Non-state Governmental Entity will be ineligible for future Minimum Payment Amount eligibility periods.

(5) All IGT calculations are solely at the discretion of HHSC and are not open to desk review or appeal.

(h) Changes of Ownership. If a Qualified Nursing Facility changes ownership to another non-state government entity during either of the eligibility periods described in subsection (e) of this section, then the data used for the calculations described in subsection (d) of this section will include data from the facility for the entire Calculation Period, including data relating to payments for days of service provided under the prior owner.

(i) Recoupment.

(1) If payments under this section result in an overpayment to a nursing facility, or in the event of a disallowance by CMS of federal participation related to a nursing facility's receipt of or use of payment amounts authorized under subsection (d) of this section, the MCO(s) may recoup an amount equivalent to the amount of the second payment amount that was overpaid or disallowed.

(2) Second payment amount payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations and state and federal statutes. The MCO(s) may recoup an amount equivalent to any such adjustment from the nursing facility in question.

(3) If HHSC determines that part of any payment made under the Minimum Payment Amount program was used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds, the MCO(s) may recoup an amount equal to the second payment amount from the nursing facility in question.

(4) If HHSC determines that an ownership change to a Non-state Governmental Entity was based on fraudulent or misleading statements on a nursing facility CHOW application or during the CHOW process, the MCO(s) may recoup an amount equal to the second payment amount from the nursing facility in question for any eligibility period affected by the fraudulent or misleading statement.

(j) [~~(i)~~] Dates the Minimum Payment Amount is available. The minimum payment requirements described in this section will only cover dates of service from the later of March 1, 2015, or the date on which nursing facility services become managed care services, to August 31, 2016.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405976
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER B. LIVESTOCK FACILITIES

4 TAC §17.31

The Texas Department of Agriculture (department) proposes amendments to Subchapter B, §17.31, relating to the department's livestock facilities. The amendments to §17.31 will reconcile differences in the department's export-import facilities rules with the provisions of Chapter 146 of the Texas Agriculture Code.

The amendments to §17.31 are proposed to align the process for collection of fees set forth in §17.31 to that in the Texas Agriculture Code, §146.023. Current rules allow fees for yardage, maintenance, feed, medical care, facility use and other necessary expenses to be collected from exporters by the export-import facilities, on a weekly basis. The Texas Agriculture Code provides that fees must be collected at the end of each transaction. This amendment makes §17.31 consistent with current law. No new fees are being created; this amendment will cause fees to be collected at the time of service.

Bryan Daniel, Chief Administrator for Trade and Business Development, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for state government as a result of administering or enforcing the section. Fees are currently being collected and there will be no additional costs to the department to implement the new collection process. There will be no fiscal implications for local government.

Mr. Daniel has also determined that for each year of the first five years the proposed amended section is in effect, the public benefit will be that services will continue to be provided in a professional and timely manner. There will be no increased costs to individuals, microbusinesses or small businesses as a result of the amended section as set out in this proposal.

Comments on the proposal may be submitted to Bryan Daniel, Chief Administrator for Trade and Business Development, 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 to §17.31 is proposed pursuant to the Texas Agriculture Code, §146.021, which provides the department with authority to establish and collect reasonable fees for yardage, maintenance, feed, medical care, facility use, and other neces-

sary expenses incurred in the course of processing those animals.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§17.31. Operation of Livestock Facilities.

(a) - (j) (No change.)

(k) Fees are due and payable prior to the removal of the animals from the department's facilities [~~at the conclusion of each permitted transaction~~]. Payment by certified check or money order may be required of any user whose previous payment by check has been returned due to insufficient funds. Users who are in default of payment to the facilities may be denied use of the facilities until such time as all outstanding fees have been paid in full. [~~For purposes of this section, a permitted transaction may include the importation or exportation of one or more loads of livestock through the department's facilities by one or more consignors during a one-week period.~~]

(l) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406100
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 463-4075

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PART 12. TEXAS A&M FOREST SERVICE

CHAPTER 215. FOREST ZONE DETERMINATION PROCEDURE

4 TAC §§215.1, 215.5, 215.9, 215.13, 215.17, 215.21, 215.35

Texas A&M Forest Service (the agency) proposes to amend 4 TAC §§215.1, 215.5, 215.9, 215.13, 215.17, 215.21, and 215.35, concerning the Forest Zone Determination Procedure. This amendment complies with Senate Bill 977 that was passed during the 76th legislative session. The bill requires the agency director to designate timberland as an "aesthetic management zone", which is special or unique because of the area's natural beauty, topography or historical significance for appraisals of restricted-use timberland.

Robby DeWitt, Associate Director for Finance and Administration has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules.

Mr. DeWitt also has determined that there will be no adverse economic effect on small businesses or micro-businesses as result of amending these rules, as well as, there are no anticipated economic costs to individuals who comply with the amended rule.

Comments on the proposal may be submitted to Burl Carraway, Office of the Associate Director, Forest Resource Development Division, Texas A&M Forest Service, 200 Technology Way, Suite 1282, College Station, Texas 77845-3424, (979) 458-6630. Comments must be received no later than thirty days from the date of publication of this proposal.

The amendments to §§215.1, 215.5, 215.9, 215.13, 215.17, and 215.35 are proposed pursuant to Texas Tax Code, §23.9806(e), which authorizes the agency director by rule to adopt procedures to administer that section.

Senate Bill 977, 76th Legislature is affected by this proposal. Texas Tax Code, Title 1, Subtitle D, Chapter 23, §23.9801 and §23.9806 and Texas Tax Code, Title 1, Subtitle F, Chapter 41, §41.03 are affected by this proposal.

§215.1. Definitions.

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

(1) AMZ--Aesthetic management zone, a timber land on which timber harvesting is restricted for aesthetic or conservation purposes, including:

(A) maintaining standing timber adjacent to public rights-of-way, including highways, roads and public use areas such as public park, school, lake, cemetery, church, also referred to as "AMZ-public rights-of-way"; and

(B) preserving an area in a forest, as defined by Natural Resources Code, §152.003, that is designated by the director of the Texas A&M Forest Service [~~Texas Forest Service~~] as special or unique because of the area's natural beauty, topography, or historical significance, also referred to as "AMZ-special or unique area".

(2) CWHZ--Critical wildlife habitat zone, a timber land on which the landowner restricts timber harvesting so as to provide at least three of the following benefits for the protection of an animal or plant that is listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.) and its subsequent amendments or as endangered under Parks and Wildlife Code, §68.002:

(A) habitat control;

(B) erosion control;

(C) predator control;

(D) providing supplemental supplies of water;

(E) providing supplemental supplies of food;

(F) providing shelters; and

(G) making of census counts to determine population.

(3) SMZ--Streamside management zone, a timber land on which timber harvesting is restricted in accordance with a management plan to:

(A) protect water quality; or

(B) preserve a waterway, including intermittent and perennial streams, river, lake, slough, pond, creek, reservoir, watershed, or wetland (ephemeral streams are excluded).

(4) Ephemeral stream--A stream or drain that flows only during and for short periods following precipitation and flows in low areas that may or may not have a well-defined channel.

(5) Intermittent stream--A stream that flows only during wet periods of the year (or 30-90% of the time) and flows in a continuous, well-defined channel.

(6) Perennial stream--A stream that flows throughout a majority of the year (or greater than 90% of the time) and flows in a well-defined channel.

(7) Forest zone--An AMZ, CWHZ, or SMZ, also referred to as "zone".

(8) Management plan--A written plan or a collection of written directives governing management of an applicant's timberland that the landowner has developed, written, and implemented, with or without professional assistance. The plan must use the forestry best management practice consistent with the agricultural and silvicultural nonpoint source pollution management program administered by the State Soil and Water Conservation Board under Agriculture Code, §201.026 [~~§201.126~~], identifying specific management practice, including restrictions on harvest, for each of the types of zones included in the plan.

(9) Director--The director of the Texas A&M Forest Service [~~Texas Forest Service~~].

(10) Public right-of-way--A United States or state highway, a county road, a farm-to-market road, other public maintained roads, and public use areas such as public park, school, lake, cemetery, and church.

(11) Basal area--The cross-sectional area of a tree, in square feet, measured at 4 1/2 feet above the ground.

§215.5. The Criteria for Determining Aesthetic Management Zone upon Request from a Chief Appraiser or Taxing Unit.

(a) The criteria that Texas A&M Forest Service [~~Texas Forest Service~~] uses in determining AMZ-public rights-of-way upon request from a chief appraiser or taxing unit is set out as follows.

(1) AMZ must be a band of standing trees at least 10 years old or 35 feet tall.

(2) The width of the AMZ must be at least 100 feet but within 200 feet in width from the edge of the public rights-of-way.

(3) A management plan must be provided that addresses harvest restriction to ensure the continued aesthetic value of the zone. The landowner must comply with the parts of the management plan that relates to the zone in order to qualify the land as AMZ-public rights-of-way.

(4) Harvesting is restricted to the extent that an average 50 square feet per acre of residual basal area must be retained in trees evenly distributed within AMZ.

(b) The criteria that Texas A&M Forest Service [~~Texas Forest Service~~] uses in determining whether an application qualifies as a designation of AMZ-special or unique area due to the area's natural beauty, topography, or historical significance is set out as follows.

(1) Qualified area possesses special or unique traits such as:

(A) archeological sites, including historic and pre-historic sites (e.g., Native American site, early settlement sites);

(B) rare geological formation (e.g., waterfall or overlooks);

(C) unique scenic beauty;

(D) unique plants or animals communities (e.g., old growth forests, pitcher plant bog);

(E) other traits that suggest a special importance to society.

(2) The historical/archeological area must be recorded with the Texas Archeological Research Laboratory [~~Lab~~], the University of Texas at Austin, state official depository for archeological site records, with a site number assigned.

(3) The area is recommended by a specialist whose findings prove the area has features that are unique or special and worthy of preservation. The specialist must be qualified because of their area of expertise to identify area in need of preservation or conservation. Minimum qualification of the specialist include an advanced degree in the area of claimed expertise, experiences in identifying and preserving sites in the area of expertise, and/or current employment by an organization engaged in identifying and preserving such sites. A letter stating the specialists' qualifications and experience must be submitted with the application.

(4) Compliance with the following harvest restriction provisions is required:

(A) Harvesting may be totally restricted if necessary to protect the special features that make this site unique.

(B) A management plan developed with inputs from the appropriate specialists must be provided addressing restricted timber harvesting as to the extent and frequency; the landowner must comply with the parts of the management plan that relates to the zone in order to qualify the land as a AMZ-special or unique area.

(C) If harvesting is permitted, an average 50 square feet per acre of residual basal area must be retained in trees evenly distributed within the AMZ.

(D) Special or unique area may be regenerated using different methods; however, the specialist assisting with the management plan must address how the special features will not be adversely affected.

(5) The timberland is under timber-use appraisal (or productivity appraisal), as defined in Tax Code, Title 1 Property Tax, Subchapter E, §23.72. Land qualifies for timber-use appraisal if it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area with intent to produce income and has been devoted principally to production of timber or forest products or to agricultural use that would qualify the land for agricultural use appraisal under Tax Code, Title 1 Property Tax, Subchapter C, or open-space land appraisal under Tax Code, Title 1 Property Tax, Subchapter D, for five of the preceding seven years.

§215.9. The Criteria for Determining Critical Wildlife Habitat Zone upon Request from a Chief Appraiser or Taxing Unit.

The criteria that the Texas A&M Forest Service [~~Texas Forest Service~~] uses in determining CWHZ upon request from a chief appraiser or taxing unit is set out as follows.

(1) The presence of qualified endangered or threatened animal or plant, as defined in paragraph (2) of this section, in the zone and the existence of a plan to protect it must be evidenced by a memorandum of understanding, conservation agreements, or other documentation pertaining to the protection of such animal or plant life with a federal, state, or private organization with recognized responsibility for protecting this species.

(2) The animal or plant is listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.) and its subsequent amendments, or as endangered under Parks and Wildlife Code, §68.002, including:

(A) bald eagle--Haliaeetus leucocephalus

(B) red-cockaded woodpecker--Picoides borealis

(C) Houston toad--Bufo houstonensis

(D) Texas trailing phlox--Phlox nivalis ssp. Texensis

(E) white bladderpod--Lesquerella pallida

(F) Navasota ladies'-tresses--Spiranthes parksii

(3) This list is subject to change. A current listing is available from the Texas Parks and Wildlife Department.

(4) A management plan developed with inputs from an endangered species specialist that addresses federal and state critical habitat requirement by species must be provided. The plan must address harvesting restrictions and state how the landowner provides at least three of the following benefits:

(A) habitat control;

(B) erosion control;

(C) predator control;

(D) providing supplemental supplies of water;

(E) providing supplemental supplies of food;

(F) providing shelters; and

(G) [~~(H)~~] making of census counts to determine population.

(5) The landowner must comply with the parts of the management plan that relates to the zone in order to qualify the land as a CWHZ.

§215.13. The Criteria for Determining Streamside Management Zones upon Request from a Chief Appraiser or Taxing Unit.

The criteria that the Texas A&M Forest Service [~~Texas Forest Service~~] uses in determining SMZ upon request from a chief appraiser or taxing unit is set out as follows.

(1) SMZ includes forested buffers adjacent to streams or bodies of water, including intermittent and perennial streams, river, lake, slough, pond, creek, reservoir, watershed, or wetland (ephemeral streams are excluded).

(2) The minimum width of an SMZ on each side and above the head of streams or adjacent to bodies of water should be 50 feet from each bank (however, with sufficient evidence shown, the width can be extended to no more than 200 feet depending on the slope, soil, cover type, and proximity to municipal water supply).

(3) Total SMZ width includes average stream channel width plus buffer width.

(4) If the SMZ's boundaries are not self-evident (e.g., clearcut and young plantation may indicate a self-evident boundary) and not at a uniform width, the boundaries must be marked with paint or signs. Boundary marks can be no further than 100 feet apart.

(5) Newly established SMZ's must have trees average 10 years of age or more with a minimum of 300 well-spaced trees per acre, or an average 50 square feet per acre of basal area in trees evenly distributed within the zone.

(6) A management plan must be provided addressing best management practices for the SMZ consistent with the management plan for the silvicultural nonpoint source pollution management program developed by the Texas State Soil and Water Conservation Board. These guidelines are available from the Texas A&M Forest Service [~~Texas Forest Service~~] or Texas Forestry Association. The plan must address harvest restrictions, as prescribed in paragraph (7) of this subsection. The landowner must comply with the parts of the management plan that relates to the zone in order to qualify the land as a SMZ.

(7) Harvesting is restricted to the extent that a minimum of 50 square feet per acre, on average, of residual basal area should be retained in trees evenly distributed within SMZ.

§215.17. Request for Zone Determination by a Chief Appraiser or Taxing Unit.

(a) Request for zone determination by a chief appraiser.

(1) Prior to denial of an application based on zone location, a chief appraiser must request a determination letter from the director as to the type, size, and location of the zone, if any, in which the applicant's land is located, pursuant to Tax Code, §23.9806(a). Such request must be made no later than 30 days after the date of receipt of the application for restricted-use timberland appraisal from the landowner if prior to April 1 or 15 days after the date of receipt of the application if after April 1. The chief appraiser shall accept the director's determination letter as conclusive proof of the type, size, and location of the zone, if any, pursuant to Tax Code, §23.9806(c) and §23.9806(d).

(2) To request a zone determination, the chief appraiser must complete and deliver the request form to the Texas A&M Forest Service [~~Texas Forest Service~~], including the following information: Figure: 4 TAC §215.17(a)(2)

(A) a copy of application for restricted-use timberland appraisal based on zone claimed, showing the applicant's name, address, and telephone number and the date of the application;

(B) a statement certifying:

(i) the date the chief appraiser received the application;

(ii) that the chief appraiser has delivered a copy of the request to the applicant; and

(iii) the date on which such notice was given;

(C) a list of the taxing units in which the subject land is located;

(D) the type of zone for which restricted-use timberland appraisal is sought;

(E) the number of acres included in the zone;

(F) the location of the claimed zone;

(G) a statement of the grounds upon which the chief appraiser seeks to deny the application;

(H) a map showing tract location and a map of tract showing the zone location if location or acreage is contested;

(I) information to document the case if the minimum 50 square feet per acre of residual basal area is contested;

(J) any other information or evidence required according to the instructions for submitting information or evidence, as prescribed in paragraph (3)(B) of this subsection, to support the chief appraiser's position; and

(K) any other information or evidence the chief appraiser believes should be considered by the director in making a determination.

(3) The chief appraiser shall deliver to the applicant and each taxing unit in which the land is located:

(A) a notice to notify the applicant and each taxing unit in which the land is located that a determination has been requested.

Figure: 4 TAC §215.17(a)(3)(A)

(B) appropriate instructions to the applicant and each taxing unit in which the land is located specifying:
Figure: 4 TAC §215.17(a)(3)(B)

(i) that the applicant or each taxing unit in which the land is located has the right to present information and evidence to the director;

(ii) the deadline by which the applicant and each taxing unit must submit such information and evidence, as defined in subsection (b)(2) and (b)(5) of this section;

(iii) the information or evidence required by the director for each type of zone to support each party's position; and

(iv) the mailing address and telephone number of the director or the director's representatives.

(C) a copy of the request and all information submitted to the director by the chief appraiser.

(4) If a request is not filed within the period required by paragraph (1) of this subsection, omits information required by paragraph (2) of this subsection, or fails to provide the notices required by paragraph (3) of this subsection, the director may not consider the request.

(b) Presentation of information or evidence by the applicant and the taxing units to the director in response to request by a chief appraiser.

(1) If a chief appraiser requests a determination letter from the director prior to denial of an application based on claimed zone under Tax Code, Section 23.9806(a), the applicant and a representative of each taxing unit in which the land is located may present information or evidence to the director before the director issues the determination letter, pursuant to Tax Code, §23.9806(e).

(2) Such information or evidence must be submitted by the applicant or each taxing unit in which the land is located in writing no later than 30 days after the date of receipt of the notice of the zone determination request from the chief appraiser if prior to April 1 or 15 days after the date of receipt of the request if after April 1.

(3) The information or evidence that must be provided by the applicant or the taxing unit to the director is prescribed in subsection (a)(3)(B) of this section. Failure to provide the required information or evidence may result in an adverse determination for that party.

(4) If a taxing unit submits any information or evidence to the director that was not provided to the applicant by the chief appraiser, the taxing unit must deliver a copy of the information or evidence to the applicant.

(5) The applicant may respond to the additional information or evidence submitted by a taxing unit. Such response must be submitted in writing to the director not later than 15 days after the date of receipt from the taxing unit.

(c) Request for zone determination by a taxing unit.

(1) If a taxing unit challenges a determination that a timber land qualifies for restricted-use timberland appraisal on the ground that the land is not located in a zone, the taxing unit must first seek a determination letter from the director, pursuant to Tax Code, §41.03(b), within 15 days after the date the appraisal records are submitted to the appraisal review board. The appraisal review board shall accept the director's determination letter as conclusive proof of the type, size, and location of the zone, if any, pursuant to Tax Code, §41.03(b).

(2) To request a zone determination, the taxing unit must complete and deliver a request form, as prescribed in subsection (a)(2) of this section, to the Texas Texas A&M Forest Service [~~Texas Forest Service~~], including the following:

(A) a copy of the application for restricted-use timberland appraisal based on forest zone, showing the applicant's name, address, and telephone number and the date of the application;

(B) a statement certifying:

(i) the date the appraisal record was submitted to the appraisal review board;

(ii) that the taxing unit has delivered a copy of the request to the applicant; and

(iii) the date on which such notice was given;

(C) the type of zone for which restricted-use appraisal is sought;

(D) the number of acres included in the zone claimed;

(E) the location of the claimed zone;

(F) a statement of the grounds upon which the taxing unit seeks to challenge the application;

(G) a map showing tract location and a map of tract showing the zone location if location or acreage is contested;

(H) information to document the case if the minimum 50 square feet per acre of basal area is contested;

(I) any other information or evidence required by the Texas A&M Forest Service [~~Texas Forest Service~~] according to the instructions for submitting information or evidence, as prescribed in subsection (a)(3)(B) of this section, to support the taxing unit's position; and

(J) any other information or evidence the taxing unit believes should be considered by the director in making a determination.

(3) The taxing unit shall deliver to the applicant and the chief appraiser:

(A) a notice to notify the applicant and the chief appraiser that a determination has been requested.
Figure: 4 TAC §215.17(c)(3)(A)

(B) appropriate instructions to the applicant and the chief appraiser, as prescribed in subsection (a)(3)(B) of this section, specifying:

(i) that the applicant and the chief appraiser has the right to present information and evidence to the director;

(ii) the deadline by which the applicant and the chief appraiser must submit such information and evidence, as defined in paragraph (4) of this subsection;

(iii) the information or evidence required by the director to support each party's position; and

(iv) the mailing address and telephone number of the director or the director's representatives.

(C) a copy of the request and all information submitted to the director from the taxing unit.

(4) The applicant and the chief appraiser may respond to the request by submitting information or evidence to the director. Such information or evidence must be submitted in writing within 15 days of receipt from the taxing unit.

(5) If a request is not filed within the period required by paragraph (1) of this subsection, omits information required by paragraph (2) of this subsection, or fails to provide the notice required by paragraph (4) of this subsection, the director may not consider the request.

§215.21. Director's Action.

(a) Director's action on request from the chief appraiser.

(1) The director shall make the determination based on the written information or evidence submitted by the chief appraiser, the applicant, and taxing unit(s). The determination letter, as prescribed in Figure: 4 TAC §215.21(a)(1), shall include the following information: Figure: 4 TAC §215.21(a)(1)

(A) whether the land is located in a zone;

(B) the type of zone in which the land is located, if any;

(C) the number of acres included in the zone, if any; and

(D) the location of the zone.

(2) The director shall deliver a determination letter to the chief appraiser no later than June 30 or as soon thereafter as practicable.

(3) The director shall deliver a copy of the determination letter to the applicant and any taxing unit that submitted information to the director at the same time when the letter is sent to the chief appraiser.

(b) Director's action on request from a taxing unit.

(1) The director shall make the determination based on the written information and evidence submitted by the chief appraiser, the taxing unit, and the applicant. The determination letter, as prescribed in subsection (a)(1) of this section, shall include the following information:

(A) whether the land is located in a zone;

(B) the type of zone in which the land is located, if any;

(C) the number of acres included in the zone, if any; and

(D) the location of the zone.

(2) The director shall issue a determination letter to the taxing unit no later than June 30 or as soon thereafter as practicable.

(3) The director shall deliver a copy of the determination letter to the applicant, the chief appraiser, and the appraisal review board at the same time when the letter is sent to the taxing unit.

§215.35. Application for Designation of Timberland as AMZ-Special or Unique Area.

(a) Pursuant to Tax Code, §23.9801(B), to qualify as AMZ-special or unique area, timberland must be designated by the Texas A&M Forest Service [~~Texas Forest Service~~] based on the area's natural beauty, topography, or historical significance.

(b) To apply for such a designation, the applicant must complete and deliver the application form to the Texas A&M Forest Service [~~Texas Forest Service~~]. The application must contain adequate information to determine eligibility. Such information includes [~~include~~]: Figure: 4 TAC §215.35(b)

(1) the applicant's information, including name, address, and phone number;

(2) size of proposed designated area;

(3) location of proposed designated site;

(4) historical/archeological site recording with the Texas Archeological Research Laboratory [~~Lab~~], the University of Texas at Austin;

(5) a description of the significance of features that warrant a designation;

(6) a management plan that meet harvesting restriction requirement as defined in Section 215.5(b)(4) of this title (relating to the Criteria for Determining AMZ upon Request from a Chief Appraiser or Taxing Unit); and

(7) any other information or evidence necessary to support the application.

(c) The Texas A&M Forest Service [~~Texas Forest Service~~] shall use the criteria, as set forth in §215.5(b) of this title to determine whether an application qualifies as designated AMZ-special or unique area.

(d) If a timberland qualifies for designation, the director shall issue a letter to the applicant designating the land as special or unique. The letter shall specify the location of the zone, the number of acres located in the zone, and the special or unique natural, topographical, or historical features of the land.
Figure: 4 TAC §215.35(d)

(e) The designation letter shall be issued within 60 days after the date the application is received by the director or by April 15, whichever is later.

(f) The director may revoke a designation issued under this section at any time if the timberland no longer qualifies for such designation. Before revoking a designation, the director must deliver notice of intent to revoke to the landowner, stating in detail the reasons for the proposed revocation, and provide the landowner with at least 15 days to respond with evidence showing continued qualification for the designation.

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

Filed with the Office of the Secretary of State on December 9, 2014.

TRD-201405917
Robby DeWitt
Associate Director for Finance and Administration
Texas A&M Forest Service
Earliest possible date of adoption: January 25, 2015
For further information, please call: (979) 458-6630

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS APPLYING FOR LICENSURE WITH THE OFFICE OF CONSUMER CREDIT COMMISSIONER UNDER

THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT
SUBCHAPTER A. APPLICATION PROCEDURES FOR OFFICE OF CONSUMER CREDIT COMMISSIONER APPLICANTS

7 TAC §2.104

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §2.104, concerning Application and Renewal Fees for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC) under the Secure and Fair Enforcement for Mortgage Licensing Act.

In general, the purpose of the amendments to §2.104 is to implement changes resulting from the commission's review of Chapter 2 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Part 1, Chapter 2 was published in the November 7, 2014, issue of the *Texas Register* (39 TexReg 8745). The agency did not receive any comments on the notice of intention to review.

The proposed amendments to §2.104 provide clarification regarding the refunding of application and renewal fees for OCCC applicants under Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators (RMLOs), the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

Section 2.104 sets out the required application and renewal fees for OCCC applicants and licensees. These fees must be submitted to the Nationwide Mortgage Licensing System and Registry (NMLS). The proposed amendments are contained in subsection (a), which currently states that all fees may not be refunded or transferred.

The NMLS does not provide refunds of NMLS system fees, but defers to individual states whether the state in question wishes to refund the state portion of the application or renewal fee. The OCCC has frequently encountered extenuating circumstances that would warrant the refunding of state RMLO fees. The proposed amendments would allow the OCCC to refund state RMLO fees in appropriate situations.

Accordingly, the proposed amendments would revise §2.104(a) by adding a new sentence after the existing last sentence, resulting in the last two sentences to read as follows: "All fees are nonrefundable and nontransferable. However, upon review of individual circumstances, the OCCC may refund or transfer the state fees."

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the amendments.

Commissioner Pettijohn 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 the proposed amendments will be a more flexible licensing process permitting the OCCC to refund state RMLO fees when extenuating circumstances arise.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register.* At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

These amendments are proposed under Texas Finance Code, §180.004, which authorizes the commission to implement rules necessary to comply with Chapter 180 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Additionally, the proposed amendments are also proposed under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements as necessary for payment of fees to apply for or renew licenses through the NMLS, and under Texas Finance Code, §14.107, which authorizes the commission by rule to set the fees for licensing and examination under Chapter 342, 347, 348, or 351 at amounts or rates necessary to recover the costs of administering those and other chapters.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, and Texas Finance Code, Chapters 342, 347, 348, and 351.

§2.104. Application and Renewal Fees.

(a) Required submission to NMLS. To become an RMLO, an OCCC applicant must submit the required fees to NMLS. A fee is required to be submitted at the time of application and at the time of renewal. All fees are nonrefundable and nontransferable. However, upon review of individual circumstances, the OCCC may refund or transfer the state fees.

(b) Fingerprint processing fees. Fingerprint processing fees must also be paid in the amount necessary to recover the costs of investigating the OCCC applicant's fingerprint record (amount required by third party).

(c) OCCC application and renewal fees. The Finance Commission of Texas sets the RMLO application fee at an amount not to exceed $300 and the RMLO annual renewal fee not to exceed $300 for applications filed with the OCCC. Annual renewal fees are due to NMLS by December 31 of each year. A third party operates NMLS and that third-party operator sets the amount of the required system fees. Applicants and RMLOs must pay all required application and renewal fees, fingerprint processing fees, and any additional amounts required by the third-party operator.

(d) OCCC reinstatement period and fee. The Finance Commission of Texas sets the RMLO reinstatement fee at $50 for applications filed with the OCCC. The reinstatement period for OCCC applicants runs from January 1 through the last day of February each year.

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406003

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-7621

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CHAPTER 3. STATE BANK REGULATION
SUBCHAPTER E. BANKING HOUSE AND OTHER FACILITIES

7 TAC §3.92

The Finance Commission of Texas (the commission) proposes to amend §3.92(e), concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs. The amended rule is proposed to reduce regulatory burden by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) are proposed to be updated to mention online fraud and other relatively new cyber threats and other ATM risks.

Subsection (e) currently requires a bank to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM at the time the initial disclosure of terms and conditions is provided to the customer, and subsequently furnish the same notice at least annually. This requirement has not been altered since 1996, despite significant public experience gained in almost 20 years of ATM usage and the proliferation of electronic communications between consenting parties.

As proposed to be amended, §3.92(e) will require a bank to provide notice of basic ATM safety precautions to its customer whenever an access device (e.g., an ATM card or debit or credit card) is issued, renewed or replaced, and an annual notice will no longer be required. Further, the amendment will permit the notice to be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and will further clarify that only one notice is required in the event the bank furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in current §3.92(e)(3) (proposed to be renumbered as §3.92(e)(2)) is proposed to be updated to mention online fraud and other relatively new cyber threats and other ATM risks.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined on behalf of the commission that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the amended rule is the elimination of unnecessary regulatory burden and the corresponding reduction in costs that will result.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on January 26, 2015. Comments to the commission should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@banking.state.tx.us.

Amendments to §3.92 are proposed under Finance Code, §59.310, which provides that the commission shall adopt rules to implement Subchapter D of Finance Code, Chapter 59 (§§59.301 - 59.310).

Finance Code, §59.309, is affected by the proposed amendments.

§3.92. User Safety at Unmanned Teller Machines.

(a) - (d) (No change.)

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued, renewed or replaced. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers [~~New access devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to the customer~~].

(2) [~~Annual notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.~~]

[~~(3)~~] Content of notice. The notice of basic safety precautions required by this subsection [~~must be provided in written form which can be retained by the customer and~~] may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) [~~security at drive-up unmanned teller machines;~~]

[~~(C)~~] protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number [~~numbers~~];

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime [~~devices~~];

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts [~~, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine~~];

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) [~~safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;~~]

[~~(I)~~] protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the [~~customer's monthly~~] statement; [~~and~~]

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) - (h) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405995
Catherine Reyer
General Counsel
Finance Commission of Texas
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 475-1300

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PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §67.17

The Finance Commission of Texas (the commission) proposes to amend §67.17, concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs. The amended rule is proposed to reduce regulatory burden by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) are proposed to be updated to mention online fraud and other relatively new cyber threats and other ATM risks.

Subsection (e) currently requires a state savings and loan association to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM at the time the initial disclosure of terms and conditions is provided to the customer, and subsequently furnish the same notice at least annually. This requirement has not been altered since 1996, despite significant public experience gained in almost 20 years of ATM usage and the proliferation of electronic communications between consenting parties.

As proposed to be amended, §67.17(e) will require a state savings and loan association to provide notice of basic ATM safety precautions to its customer whenever an access device (e.g., an ATM card or debit or credit card) is issued, renewed or replaced, and an annual notice will no longer be required. Further, the amendment will permit the notice to be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and will further clarify that only one notice is required in the event the state savings and loan association furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in current §67.17(e)(3) (proposed to be renumbered as §67.17(e)(2)) is proposed to be updated to mention online fraud and other relatively new cyber threats and other ATM risks.

Caroline C. Jones, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the amended rule is the elimination of unnecessary regulatory burden and the corresponding reduction in costs that will result.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

Amendments to §67.17 are proposed under Finance Code, §11.302, which provides that the Finance Commission of Texas may adopt rules applicable to state savings associations or to savings banks, and under Finance Code §59.310, which provides that the Finance Commission of Texas shall adopt

rules to implement Subchapter D, Safety at Unmanned Teller Machines, of the Finance Code, Chapter 59 (§§59.301-59.310).

Finance Code, §59.309, is affected by the proposed amendments.

§67.17. User Safety at Unmanned Teller Machines.

(a) - (d) (No change.)

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued, renewed or replaced. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers. [~~New access devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to such customer.~~]

[~~(2) Annual notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.~~]

(2) [~~(3)~~] Content of notice. The notice of basic safety precautions required by this subsection [~~must be provided in written form which can be retained by the customer and~~] may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:[~~;~~]

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

[~~(B) security at drive-up unmanned teller machines;~~]

(B) [~~(C)~~] protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number [~~numbers~~];

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime [~~devices~~];

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts[~~, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine~~];

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

[~~(H) safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;~~]

(H) [~~(I)~~] protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the [~~customer's monthly~~] statement; [~~and~~]

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) - (h) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406002
Ernest Garcia
General Counsel
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 475-2249

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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.115

The Finance Commission of Texas (the commission) proposes to amend §77.115, concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs. The amended rule is proposed to reduce regulatory burden by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) are proposed to be updated to mention online fraud and other relatively new cyber threats and other ATM risks.

Subsection (e) currently requires state savings banks to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM at the time

the initial disclosure of terms and conditions is provided to the customer, and subsequently furnish the same notice at least annually. This requirement has not been altered since 1996, despite significant public experience gained in almost 20 years of ATM usage and the proliferation of electronic communications between consenting parties.

As proposed to be amended, §77.115(e) will require a state savings banks to provide notice of basic ATM safety precautions to its customer whenever an access device (e.g., an ATM card or debit or credit card) is issued, renewed or replaced, and an annual notice will no longer be required. Further, the amendment will permit the notice to be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and will further clarify that only one notice is required in the event the state savings banks furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in current §77.115(e)(3) (proposed to be renumbered as §77.115(e)(2)) is proposed to be updated to mention online fraud and other relatively new cyber threats and other ATM risks.

Caroline C. Jones, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the amended rule is the elimination of unnecessary regulatory burden and the corresponding reduction in costs that will result.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

Amendments to §77.115 are proposed under Finance Code, §11.302, which provides that the Finance Commission of Texas may adopt rules applicable to state savings associations or to savings banks and §96.002, which provides that the commission may adopt rules necessary to protect public investment in savings banks and under Finance Code §59.310, which provides that the Finance Commission of Texas shall adopt rules to implement Subchapter D, Safety at Unmanned Teller Machines, of the Finance Code, Chapter 59 (§§59.301-59.310).

Finance Code, §59.309, is affected by the proposed amendments.

§77.115. User Safety at Unmanned Teller Machines.

(a) - (d) (No change.)

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued, renewed or replaced. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers. [~~New access devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to such customer.~~]

[~~(2) Annual notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.~~]

(2) [~~(3)~~] Content of notice. The notice of basic safety precautions required by this subsection [~~must be provided in written form which can be retained by the customer and~~] may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:[;]

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

[~~(B) security at drive-up unmanned teller machines;~~]

(B) [~~(C)~~] protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number [~~numbers~~];

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime [~~devices~~];

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts[~~, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine~~];

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

[(H) safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;]

(H) [(I)] protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the [customer's monthly] statement; [and]

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) - (h) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406004
Ernest Garcia
General Counsel
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 475-2249

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER A. REGISTRATION OF RETAIL CREDITORS

7 TAC §86.102

The Finance Commission of Texas (commission) proposes amendments to §86.102, concerning Annual Registration Fees for retail creditors.

In general, the purpose of the amendments to §86.102 is to implement changes resulting from the commission's review of Chapter 86 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 5, Chapter 86 was published in the November 7, 2014, issue of the *Texas Register* (39 TexReg 8745). The agency did not receive any comments on the notice of intention to review.

Overall, the proposed changes provide streamlined procedures, improved grammar and punctuation, and technical corrections. Revisions concerning the evidence of registration and related fees have been updated to conform the rule with the agency's current use of an online licensing and self-service portal. The individual purposes of the amendments to each subsection are provided in the following paragraphs.

In subsection (b) concerning annual fee, the verb "shall" is proposed for replacement by "will" or "must" as appropriate, since the latter language is reflective of a more modern and plain language approach in regulations. The date reference in subsection (b)(3) is proposed as "October 31," in place of the current "October 31st," in accordance with updated grammatical guidelines. Additionally, a comma is proposed after "e.g." in the parenthetical at the end of subsection (b)(5) to provide more accurate punctuation.

Subsection (c) will experience several changes in order to incorporate the agency's implementation of an online licensing and self-service portal, along with technical corrections. First, the agency's acronym "(OCCC)" is proposed for addition to the first sentence to allow appropriate use later in the rule. Due to the new online system, the agency has discontinued the issuance of renewal decals to registered retail creditors. As a result, the second change to this subsection proposes to replace the word "decal" with the word "certificate." Third, to complete the removal of references to the decals no longer issued, everything after the word "section" is proposed for deletion, including current paragraphs (1) and (2). And fourth, the following sentence is proposed as the new final sentence to subsection (c): "A registrant may print a copy of its registration certificate through the OCCC's online licensing portal."

Proposed new subsection (d) provides that the OCCC will mail a registration certificate for a fee of $10 if a registrant does not print its certificate through the online portal. This fee is the same amount that the agency charges to mail duplicate licenses for its other regulated entities.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to §86.102 are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to §86.102 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more easily understood and will reflect the agency's current procedures.

Additional economic costs may be incurred by a person required to comply with this proposal. For registrants that elect to print their registration certificates through the online licensing and self-service portal, there will be no costs incurred. For registrants that do not print their certificates online, the fee of $10 (per certificate mailed) to mail a registration duplicate in proposed §86.102(d) constitutes the potential anticipated costs to those registrants. The agency believes that this registration duplicate fee is reasonable and has proposed it at an amount equal to that charged by the agency to mail duplicate licenses to its other regulated entities.

Thus, aside from the $10 registration duplicate fee discussed in the preceding paragraph, the agency does not anticipate any other costs to or effects on persons who are required to comply with the amendments as proposed. The agency is not aware of any adverse economic effect on small or micro-businesses resulting from the proposed amendments.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register.* At the conclusion of the 31st day after the proposed

amendments are published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §345.352(b), which authorizes the commission to establish by rule procedures to facilitate the registration and collection of fees for retail creditors. Additionally, the amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 345.

§86.102. Annual Registration Fees.

(a) Locations requiring registration. An annual registration fee is required for each location operated by a retail seller, creditor, holder or assignee.

(b) Annual fee. An annual fee is required under the provisions of Texas Finance Code, §345.351 or §347.451 and will [~~shall~~] be payable as follows:

(1) A retail seller, creditor, holder, or assignee must [~~shall~~] pay a registration fee for every chapter under which business is conducted.

(2) A retail seller, holder, creditor, or assignee who begins business under Texas Finance Code, Chapter 345 or 347 must [~~shall~~] pay the annual fee within 60 days after the first day of commencing regulated operations.

(3) The annual fee for each subsequent calendar year will [~~shall~~] be due and payable by October 31 [~~31st~~] of each year.

(4) The registration is not transferable between locations. Each new location must comply with the provisions in paragraph (2) of this subsection.

(5) No annual fee is required for a location operated by a retail seller, creditor, holder, or assignee operating under the provisions of Texas Finance Code, Chapter 345 or 347, provided the personnel at the location are not conducting regulated business with the consumer (e.g., storage, web-hosting, or data processing facility).

(c) Evidence of registration. The Office of Consumer Credit Commissioner (OCCC) will issue a certificate [~~decal~~] evidencing registration under the provisions of Texas Finance Code, Chapter 345 or 347, and this section. A registrant may print a copy of its registration certificate through the OCCC's online licensing portal. [~~This decal shall be:~~]

[~~(1) affixed to a door or window of the principal entrance; or~~]

[~~(2) displayed in a prominent location readily visible to the consumer.~~]

(d) Registration duplicates sent by mail. If a registrant does not print its registration certificate online, the registrant may request that the OCCC mail a registration duplicate for a fee of $10 per certificate mailed.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406006
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-7621

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CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) re-proposes amendments to §§89.102, 89.207, 89.504, 89.601, and 89.802, concerning Property Tax Lenders, on behalf of the Office of Consumer Credit Commissioner.

Elsewhere in this issue, the commission withdraws proposed amendments to §§89.102, 89.207, 89.504, 89.601, and 89.802 published in the October 31, 2014, issue of the *Texas Register.*

In general, the purpose of the re-proposed amendments is to provide updated guidelines on the costs allowed for property tax loans. The major areas of amendment involve the replacement of tiers with a general fee cap for reasonable closing costs, the disclosure of affiliated businesses used by property tax lenders, and guidelines for the use of legitimate discount points.

Following the closure of the comment period on the original proposal of these amendments, the agency received comments from interested stakeholders. A review of the comments led the agency to the determination that the re-publication of a revised proposal would be beneficial to the industry, consumers, and the agency.

This re-proposal will address the comments received during the original comment period, but also provides for acceptance of comments for an additional 31-day period.

The commission re-proposes the amendments to §§89.102, 89.504, and 89.802 without changes to the text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484). The commission re-proposes the amendments to §89.207 and §89.601 with changes to the text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484).

The commission received six written comments on the original proposal from the following organizations and entities: Harrison Duncan, PLLC; Propel Financial Services, LLC; Protect My Texas Property; Sombrero Capital, LLC; the Texas Family Council, and the Texas Property Tax Lienholders Association. Five of the six comments include positive statements providing general support for the amendments. One commenter states that the amendments are "a big step in the right direction," with another stating that the "amendments make excellent headway toward balancing the interests of Texas property owners with those of tax lien transferees." Furthermore, a third commenter offers this support for the amendments: "They enhance property owner protections without compromising access to a competitive marketplace for tax lien transfers." The remaining commenter is generally not in favor of the amendments, indicating that the changes do not provide enough restrictions on the industry.

The following is a summary of the issues raised by the commenters during the original comment period, as well as the number of comments received on each particular issue: (1) clarification on recordkeeping requirements (two comments), (2) reconsideration of a lower cap for the general maximum fee limit

on closing costs allowed (two comments) or consideration of a fixed percentage cap (one comment), (3) clarification for additional parcels to reflect actual costs incurred "up to" $100 (two comments), (4) request for enhancement of affiliated business disclosure requirements (one comment), (5) request for additional disclosure related to title defects (one comment), and (6) request for additional guidance related to the use of legitimate discount points (six comments).

The commenters offer certain suggestions related to these six issues intended to improve the clarity and effectiveness of the rules.

Additionally, the issue of legitimate discount points was most commented upon and includes several sub-issues. A more detailed analysis related to discount points is included after the purpose discussion regarding §89.601(d).

The rule provisions regarding reasonable closing costs were initially adopted in 2008, with maximum amounts categorized into five tiers based on the size of the loan. Since that time, the property tax loan industry has seen growth and increased competition, resulting in changing costs over the last five years. The agency believed it to be an appropriate time to revisit the structure and amounts of costs outlined in §89.601, Fees for Closing Costs, as well as explore guidelines for post-closing costs.

The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced rule action for the commission on the costs allowed for property tax loans. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and held a stakeholders meeting where several stakeholders provided verbal testimony regarding the issues presented in the ANPR. Subsequently, several stakeholders provided written comments, elaborating on their testimony from the stakeholders meeting.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a rule draft to the stakeholders for specific early or pre-comment prior to the presentation of the rules to commission. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting amendments.

The agency carefully evaluated the stakeholders' comments and incorporated numerous recommendations offered by the stakeholders into the rules as proposed. As a result of the feedback provided from stakeholders prior to the original proposal, provisions concerning definitions, recordkeeping, and disclosures were in need of related amendments to fully incorporate the updated cost provisions. Thus, in addition to §89.601, the amendments also include changes to §89.102, Definitions; §89.207, Files and Records Required; §89.504, Requirements for Disclosure Statement to Property Owner; and §89.802, Payoff Statements. Also, certain technical corrections have been made in order to better align these rules with prior changes made to other sections within the chapter. The following paragraphs outline the purposes of each rule amendment.

The amendments to §89.102, concerning Definitions, contain a few technical corrections, as well as the addition of the definition of "Affiliated business."

The first technical correction deletes the title of Texas Finance Code, Chapter 351 ("Property Tax Lenders"), along with the deletion of the short title and citation in two instances in the rule. When Chapter 89 was first adopted, this language was needed in order to distinguish the chapter regarding property tax lenders from another chapter with an identical number. The legislature has since corrected the duplicate numbering and hence made this language unnecessary.

The second technical change replaces the verb "shall" with "will" in the introductory paragraph. Similar changes have been made to numerous rules in Chapter 89 in the past, as well as other chapters under the agency's authority. The agency believes that the latter language is reflective of a more modern and plain language approach in regulations.

The definition of "Affiliated business" has been added as new (renumbered) §89.102(1). The purpose of this definition is to implement recordkeeping requirements in §89.207 and disclosure requirements in §89.504, which will be discussed further under the purpose paragraphs for those sections.

New paragraph (1) provides that an "Affiliated business" is a person that shares common management with a property tax lender, shares more than 10% common ownership with a property tax lender, or is controlled by a property tax lender through a controlling interest greater than 10%. The common ownership or controlling interest may occur either directly or indirectly. The 10% threshold has been selected to maintain consistency with the ownership disclosure requirements found in the following property tax lender licensing regulations: §89.302, concerning Filing of New Application; §89.303, concerning Transfer of License; and §89.304, concerning Change in Form or Proportionate Ownership. The disclosure of a 10% ownership or controlling interest is also well established in similar regulations for industries under the agency's authority. With the addition of new paragraph (1), the remaining definitions existing in §89.102 have been renumbered accordingly.

In §89.207, concerning Files and Records Required, the amendments provide clarification regarding records that must be retained relating to legitimate discount points, payments made to attorneys, and records regarding affiliated businesses. New provisions are contained in §89.207(3)(A)(ix) concerning receipts or invoices along with proof of payment for recording costs or attorney's fees necessary to address a defect in title, and in §89.207(3)(A)(x) concerning legitimate discount points. The purpose of §89.207(3)(A)(x) will be outlined under §89.601(d), a new subsection that provides guidelines for the use of legitimate discount points in connection with property tax loans.

The purpose of §89.207(3)(A)(ix) is to implement another new provision that has been added in §89.601(c)(5) regarding additional costs for preparing documents necessary to address a defect in title to real property. Section §89.601(c)(5) allows a property tax lender to charge a reasonable fee for costs directly incurred in preparing, executing, and recording documents necessary to address a title defect, in addition to the general maximum fee limit described in §89.601(c)(5) (discussed later in this adoption). The purpose of §89.601(c)(5) is to ensure that property tax lenders can be compensated for costs incurred to address title defects. As a result, the recordkeeping provision in §89.207(3)(A)(ix) has been added to clarify what records must be maintained to establish compliance.

A clarifying phrase has been added to §89.207(3)(I)(ii) requiring the maintenance of "specific descriptions of services performed by the attorney." On the issue of affiliated businesses, new §89.207(3)(I)(iii) requires that amounts paid to affiliated businesses must be maintained as well. Additionally, this re-proposal includes new paragraph (7) concerning general records

that must be retained by the property tax lender regarding any relationship the lender may have with one or more affiliated businesses.

The purpose of the amendments in §89.207(3)(I)(iii) and (7) is to enable the agency to verify that a property tax lender has complied with Texas Finance Code, §351.0021(d), which provides that certain post-closing costs "must be for services performed by a person that is not an employee of the property tax lender." Certain property tax lenders impose post-closing costs that are paid to companies affiliated with the property tax lender through common management, ownership, or control. By requiring property tax lenders to maintain records of their business relationships with affiliated businesses, as well as records of all amounts paid to affiliated businesses, the amended provisions ensure that property tax lenders can substantiate their relationship with affiliated businesses and the fact that costs are not paid to employees of the property tax lender.

During the original comment period, two commenters requested clarification regarding some of the recordkeeping requirements proposed in §89.207(3). While the need for reasonable and practical recordkeeping requirements is understandable, the agency must have access to the records required to establish compliance with the law. In examinations, property tax lenders have at times produced global or "mass" invoices from vendors to show work performed and proof of payment on individual accounts. The agency has been amenable to receiving these mass invoices, under two conditions: (1) the mass invoices are clearly itemized so that a charge on the monthly invoice can be tied to an entry in a particular property tax loan transaction file; and (2) the itemized invoices can be readily produced within a reasonable amount of time upon request by the agency.

Under the re-proposal, the recordkeeping procedures outlined in the preceding paragraph would be acceptable for the following records: "receipts or invoices along with proof of payment for recording costs or attorney's fees necessary to address a defect in title" under §89.207(3)(A)(ix); "receipt or invoices along with proof of payment for attorney's fees assessed, charged, and collected" for post-closing costs under §89.207(3)(I)(ii); and "records identifying all amounts paid to an affiliated business . . . including a designation that an amount was paid to an affiliated business and a statement of which affiliated business was paid" under §89.207(3)(I)(iii). Accordingly, with respect to these three recordkeeping provisions included under §89.207(3), the following clarifying phrase has been added for this re-proposal, requiring that the records be kept at the transaction level "unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file."

In contrast, the records required under §89.207(3)(A)(x) to establish the legitimate use of discount points are so highly specific to the borrower as to be inextricably intertwined with the individual property tax loan transaction file. It is necessary that records concerning the legitimate use of discount points be maintained at the transaction level.

Additionally, please refer to the discussion following §89.601(c)(5) regarding documentation related to attorney's fees to address title defects. A corresponding change has been made to §89.207(3)(A)(ix).

In §89.207(3)(L)(i), concerning notices sent by attorneys involving judicial foreclosures under Texas Tax Code, §32.06, the changes provide language that better tracks the statute. For this re-proposal, the phrase "a non-salaried attorney of the licensee" has been replaced by the phrase "an attorney who is not an employee of the licensee."

Throughout §89.207, minor technical changes have been made to accommodate the new and revised provisions, including the renumbering of the last two paragraphs. In addition, the agency's acronym "OCCC," as defined in §89.102(8) (as renumbered), replaces the use of "Office of Consumer Credit Commissioner" and "commissioner" in §89.207(9) (as renumbered). The first instance is simply for abbreviation purposes. In the second instance, the agency believes that the use of "OCCC" will provide better clarity as the context calls for action by the agency, as opposed to the commissioner specifically.

In §89.504, concerning Requirements for Disclosure Statement to Property Owner, the re-proposal adds subsection (f) relating to the disclosure of affiliated businesses. New subsection (f) requires property tax lenders that impose post-closing costs paid to affiliated businesses to include additional information in the disclosure form that the property tax lender must provide to the borrower before closing. In particular, the subsection requires the disclosure to include the name of the affiliated business, a statement that it is affiliated with the property tax lender, and a statement that costs paid to the affiliated business cannot be for services performed by employees of the property tax lender. The purpose of this amendment is to provide the borrower with additional information regarding the property tax lender's use of affiliated businesses, and to ensure that a property tax lender has complied with Texas Finance Code, §351.0021(d), which provides that certain post-closing costs "must be for services performed by a person that is not an employee of the property tax lender." As discussed earlier, certain property tax lenders impose post-closing costs that are paid to companies affiliated with the property tax lender through common management, ownership, or control. By requiring property tax lenders to disclose the identities of affiliated businesses, the amended provision ensures transparency and enables the borrower to make an informed decision before closing.

On the original proposal, one commenter requested that affiliated business disclosure requirements be enhanced. The commenter states: "To ensure that property owners are fully able to choose between different vendors, we would ask that the required disclosures inform property owners that they are free to choose other nonaffiliated providers and provide information on how to locate other providers."

The re-proposal does not include the suggested language. First, for vendors used at the time of origination, it could increase the costs to the property tax lender to review all of the providers to ensure compliance with the lender's standards. As a result, the lender might pass on those increasing costs to the consumer. Further, a review of vendors could also increase the time required to close property tax loans. Second, certain vendors used after closing inherently do not allow the property owner to choose a provider (e.g., unable to select an attorney to foreclose on the property). And third, the Texas Finance Code and the Texas Tax Code do not require the property tax lender to provide the property owner with options regarding who will perform services. Further, it is questionable whether the commission may require the property tax lender to accept and use a provider selected by a property owner.

The agency welcomes further comments on this issue during the additional 31-day comment period accompanying this re-proposal.

The majority of the amendments are contained in §89.601, concerning Fees for Closing Costs. During the early stages of rule development, most stakeholders agreed that the rule's former five-tier system based on the total tax lien payment amount did not correlate to the costs incurred by a property tax lender to obtain a transfer of a residential property tax lien. Thus, all the language relating to the five tiers has been deleted from §89.601. Specifically, the deletions are as follows: the introductory sentence in subsection (c), the last sentence of subsection (c)(2), and subparagraphs (A) - (E) of subsection (c)(2).

In place of the five tiers, this re-proposal adds paragraphs (3) - (5) to subsection (c), which provide a general maximum fee limit, as well as two areas of exception to that general maximum fee limit for loans involving multiple parcels and costs for preparing documents to address title defects.

Data collected in annual reports from property tax lenders indicates a downward trend in closing costs for residential property tax loans between 2008 and 2013. In particular, a 2012 study by the commission indicated a decrease in average residential closing costs from $1,259 in 2008 to $866 in 2011. Finance Commission of Texas, *Legislative Report: Property Tax Lending Study* at 21 fig. 3 (2012). The average closing costs for residential property tax loans in 2013 was $707. Furthermore, many property tax lender stakeholders provided oral and written testimony stating that they charge well below the former maximums in the rule. Consequently, new §89.601(3) sets the general maximum fee limit for closing costs at $900.

From the original comment period, two commenters urged the commission to reconsider a lower cap for the general maximum fee limit on closing costs allowed. Both commenters believe that the $900 proposed cap in §89.601(c)(3) is too high. One commenter states: "The average closing costs for residential property tax loans in 2013 was $707, and from comments submitted in this rulemaking process, it appears that at least five leading tax lien lenders typically charge closing costs at or less than $500."

This commenter quotes the agency's average closing costs amount of $707 for 2013, as cited in the original proposal and earlier in this re-proposal. It is important to note that $707 is an average amount, whereas the $900 cap in §89.601(c)(3) is a maximum amount. An average by definition reflects numbers both below *and above* that number. In contrast to certain "lenders typically charg[ing] closing costs at or less than $500," the agency received several informal comments prior to the original proposal indicating that an $800 cap would be too low. Furthermore, as has occurred over the past few years, property tax lenders are welcome to charge below the general maximum fee cap to continue to foster a competitive marketplace.

Another commenter requests consideration of a fixed percentage cap, stating: "The Texas Legislature has faced limiting closing costs before and did not find a fixed dollar amount to be appropriate; instead it chose a fixed percentage." The commenter continues by stating that "the proposed fixed fee cap of $900 . . . is high as compared to other lenders who are capped at a far lower percent in most cases . . . ."

As established by the early comments received during and after the stakeholders meeting, almost all commenters agreed that the rule's former five-tier system based on the total tax lien payment amount was not appropriate. With respect to a property tax loan on residential property, several commenters stated that the costs incurred do not have a correlation to the total amount of money paid by a property tax lender to the taxing units to obtain a transfer of the tax lien. Thus, the re-proposal does not employ a fixed percentage cap for property tax loan closing costs.

The commenter also cites the 3% cap required by the Texas Constitution for home equity loans. The 3% home equity cap, however, is not an analogous limitation, as the average amount of a home equity loan is substantially higher than the average amount of a residential property tax loan. Based on 2012 annual report information, the average first-lien home equity loan was $231,915.19 and the average second-lien home equity loan was $42,630.94. In contrast, the average residential property tax loan in 2012 was only $11,856.93. Consequently, the dollar amount of a 3% closing cost limitation on home equity loans is significantly higher than the $900 cap proposed for residential property tax loans.

The proposed language sets a $900 cap to provide an appropriate balance between consumer protection and industry cost recovery, and represents a reasonable amount of closing costs.

For property tax loans including the payment of taxes for more than one parcel of real property, new §89.601(c)(4) states that a property tax lender may charge up to $100 for each additional parcel, in addition to the general maximum fee limit in paragraph (3).

During the original comment period, two commenters requested that the clarifying phrase "up to" be added to §89.601(c)(4). One commenter best summarizes this issue: "We would also ask for a clarifying amendment permitting closing costs for additional parcels 'up to' $100 - not automatically $100. This is consistent with the notion that closing costs are supposed to cover *actual* costs incurred - not be a profit center for tax lien lenders." This clarification has been added with the phrase "up to" being included before "$100" in §89.601(c)(4) for this re-proposal.

A new provision is also contained in §89.601(c)(5) regarding additional costs for preparing documents necessary to address a defect in title to real property. The provision allows a property tax lender to charge a reasonable fee for costs directly incurred in preparing, executing, and recording documents necessary to address a title defect, in addition to the general maximum fee limit described in paragraph (3). The fee for these documents is limited to recording costs paid to a governmental entity and reasonable attorney's fees paid to a person who is not an employee of the property tax lender. The purpose of this provision is to ensure that property tax lenders can be compensated for costs incurred to address title defects. Several precommenters identified situations where title defects required different types of documents to be prepared, executed, and recorded, such as deeds and affidavits of heirship. The fee is limited to recording costs and attorney's fees in order to ensure that property tax lenders do not violate Texas Government Code, §83.001(a), which generally prohibits a person other than an attorney from "charg[ing] or receiv[ing], either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien."

As a result of new §89.601(c)(3) - (5), the remaining paragraph has been renumbered and includes corresponding technical corrections.

Regarding title defects, one commenter offers the following on the original proposal: "The proposed rule change to 7 TAC

§89.601(c)(5) needs a little tightening to ensure the intent of the rule is realized. First, the rule should require a description of the title defect be documented, signed by the attorney and given to the borrower, and maintained with the other loan records for review. . . . Second, the rule should provide that the attorney responsive for correcting a defect in title is providing this service at arms length and there is no incentive for defects to be invented or overstated where none exist in reality."

The re-proposal employs the commenter's first suggestion with the addition of the following as the next-to-last sentence of §89.601(c)(5) for this re-proposal: "For attorney's fees, the attorney must provide a signed statement to the property owner describing the nature of the title defect and the work performed by the attorney." To fully incorporate this concept, similar language has been added to §89.207(3)(A)(ix) to reflect the records that must be maintained to demonstrate compliance.

The rule as proposed already requires that the attorney's fees be reasonable and necessary to address a defect in title. Should an issue arise concerning the validity of these attorney's fees, the agency will address such concerns through the examination and enforcement processes.

New §89.601(d) addresses the charging of legitimate discount points in connection with a property tax loan. Subsection (d) states that legitimate discount points are not subject to the general maximum fee. Paragraph (1) explains that in order for discount points to be legitimate, they must truly correspond to a reduced interest rate, they cannot be necessary to originate the loan, and the borrower must be provided with a written proposal that includes a contract rate without discount points and a lower contract rate based on discount points. The purpose of the provision is to describe the circumstances in which discount points are subject to the 18% maximum effective interest rate described in Texas Tax Code, §32.06(e), as opposed to the maximum closing cost limitation described in §89.601(c). This provision is intended to ensure transparency in connection with discount points and to enable the borrower to make an informed decision before closing.

New §89.601(d)(2) states that any discount point or other origination fee that does not meet the definition in paragraph (1) will be subject to the general maximum fee limit. New §89.601(d)(3) specifies that legitimate discount points must be included in the calculation of the effective rate and upon prepayment in full, must be spread as per Texas Finance Code, §302.101. New §89.601(d)(4) specifies that discount points must be paid by the borrower at or before closing of the loan, and that discount points may not be included in the funds advanced or principal balance. New §89.601(d)(5) specifies that a lender may not finance discount points through a promissory note or contract payable to the property tax lender or an affiliated business.

Amended §89.802, concerning Payoff Statements, adds subparagraph (C) to paragraph (9) concerning the itemization of the total payoff amount. The amendments to §89.802 further clarify that any refunds resulting from unearned legitimate discount points must be itemized on the payoff statement.

All six comments received during the original comment period discussed the proposed provisions on legitimate discount points. Three commenters argued that discount points should be prohibited for property tax loans. Prohibiting discount points altogether seems inconsistent with Texas Tax Code, §32.06(e). Texas courts have generally held discount points to be a form of prepaid interest. *See, e.g., Fin. Comm'n of Tex. v. Norwood,* 418 S.W.3d 566, 596 (Tex. 2013) (holding that legitimate discount points are interest and are not subject to the Texas Constitution's 3% cap on fees necessary to originate a home equity loan); *Tarver v. Sebring Capital Credit Corp.,* 69 S.W.3d 708, 713 (Tex. App.--Waco 2002, no pet.) (holding the same). Like other forms of prepaid interest, discount points must be spread over the term of the loan in order to determine whether the loan is usurious. *See* Tex. Fin. Code §302.101; *Tanner Dev. Co. v. Ferguson,* 561 S.W.2d 777, 786-87 (Tex. 1977). However, in order to be legitimate, discount points must be an option available to the borrower, rather than a fee necessary to originate the loan. *See Norwood,* 418 S.W.3d at 596 (explaining that "true discount points are not fees 'necessary to originate, evaluate, maintain, record, insure, or service' but are an option available to the borrower"). Under this case law, legitimate discount points are a form of prepaid interest subject to the 18% maximum effective interest rate described in Texas Tax Code, §32.06(e).

During the original comment period, two commenters suggested that the rule prohibit property tax lenders from including discount points in the principal balance of the loan. One of these commenters suggested that discount points should be "paid out-of-pocket at closing by borrower," while the other suggested that discount points should be "kept separate from interest bearing principal to avoid charging property owners interest on prepaid interest." The re-proposal adds paragraphs (4) and (5) to subsection (d), specifying that any discount points must be paid by the borrower at or before closing of the loan, and that the property tax lender is prohibited from financing discount points or including them in the principal balance. Paragraph (4) also specifies that discount points may not be included in the funds advanced under Texas Tax Code, §32.06(e), which provides: "A transferee holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs." This provision distinguishes between interest that the property tax lender may charge and funds that the property tax lender may advance to the borrower. Funds advanced are expressly limited to the six items listed in the second sentence of §32.06(e). Although this sentence allows the funds advanced to include "interest," this refers to interest that is charged by the taxing authority under Texas Tax Code, §33.01(c) and shown on the tax receipt. Texas Government Code, §311.011(a) states: "Words and phrases shall be read in context and construed according to the rules of grammar and common usage." Also, as the United States Supreme Court has stated, the fact "[t]hat several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well." *Beecham v. United States,* 511 U.S. 368, 371 (1994). The interest that the property tax lender can charge is described in the first sentence of §32.06(e), and is not part of the funds advanced. There is no indication in §32.06(e) that a property tax lender may charge interest on its own interest. For this reason, discount points (as a form of prepaid interest) are not part of the funds advanced under Texas Tax Code, §32.06(e), and should not be included in the principal balance of the loan, as specified in paragraph (4). In addition, paragraph (5) specifies that a lender may not circumvent this requirement by entering a promissory note or contract for the payment of discount points.

In response to the original proposal, one commenter stated that discount points cannot be legitimate for property tax loans, because they are not consistent with the Home Ownership and Eq-

uity Protection Act (HOEPA), regulations adopted by the U.S. Department of Housing and Urban Development, and Fannie Mae guidelines. The commenter stated: "Loans that fall within HOEPA regulations because of high interest rates are not allowed discount points." Regulation Z, which implements HOEPA, provides: "A creditor that extends credit under a high-cost mortgage may not finance charges that are required to be included in the calculation of points and fees, as that term is defined in §1026.32(b)(1) and (2)." 12 C.F.R. §1026.34(a)(10). In other words, HOEPA and its implementing regulation do not prohibit discount points; they prohibit the financing of discount points for high-cost mortgage loans. The official commentary to Regulation Z states that "points or fees are financed if, for example, they are added to the loan balance or financed through a separate note, if the note is payable to the creditor or to an affiliate of the creditor." 12 C.F.R. pt. 1026 supp. I para. 34(a)(10)2. As specified in current subsection (a), the fee limitations of §89.601 apply to residential property tax loans. This means that residential property tax loans are subject to the requirements for legitimate discount points described in new subsection (d). To the extent that HOEPA applies to residential property tax loans, it appears that the commenter's concern that the discount points would violate HOEPA is addressed by the amended language in paragraphs (4) and (5) prohibiting property tax lenders from financing discount points or including them in the funds advanced or principal balance. The commenter cited a HUD regulation stating: "As discount points on the loan increase, the interest rate can be expected to decrease in a fairly consistent manner." 24 C.F.R. §201.2. The commenter also cited a Fannie Mae Selling Guide stating that discount points "result in a meaningful reduction of the interest rate, provided that, prior to discount, the rate was consistent with current market rates based on the credit characteristics of the mortgage." These comments are addressed by subsection (d)(1)(A), which provides that in order to be legitimate, discount points must "truly correspond to a reduced interest rate." The same commenter explained that the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood* "does not permit capitalizing interest for tax lien financing," and that "[t]he permissibility of capitalizing interest was not an issue in *Norwood."* This issue was not addressed in *Norwood,* and this concern is addressed by the amended language in paragraphs (4) and (5) prohibiting property tax lenders from financing discount points or including them in the funds advanced or principal balance. Finally, the same commenter explained that discount points are not reasonable for property tax loans, and that they should be limited under the commission's authority to limit reasonable closing costs. The commenter argued that discount points are a gamble for borrowers because delinquent taxpayers do not have the ability to project when a payoff will occur, and therefore determine whether paying for discount points will save them money. As discussed above, legitimate discount points are prepaid interest and are not subject to the general maximum fee limit described by §89.601(c).

During the original comment period, three commenters suggested that the rule provide additional disclosures to property owners. One of these commenters suggested that the rule include a form that discloses "various options so a borrower can choose the most comfortable plan for himself." Another commenter suggested additional disclosures to property owners, including an explanation on payoff statements. Finally, a third commenter suggested: "If discount points are to be allowed and a part of the transaction, the homeowner should receive the disclosure at least three days in advance of the closing of the loan (or consent to transfer), and the delivery method must be documented and maintained with the other loan documents." In response to these comments, subsection (d)(1)(C)(vi) specifies that the written proposal provided to the property owner must specify that discount points are voluntary and not required to be paid in order to obtain the loan. The proposal includes subsection (d)(1)(C), which provides property owners with appropriate guidance about their options for discount points. The agency will continue to monitor this issue and may consider drafting a model form for future use. The amendment to §89.802(c)(9)(C) appropriately addresses the issue of disclosing refunds of discount points on payoff statements. Regarding the three-day waiting period, it seems sufficient for the proposal to be provided before closing, so that the property owner can review the disclosure together with the other information provided in the disclosure statement under §89.504 and Texas Tax Code, §32.06(a-4).

In response to the original proposal, one commenter suggested that the rule require disclosures of discount points on solicitations. The rule regarding advertising and solicitation by property tax lenders is codified at §89.208. Section 89.208 is outside the subject matter included in this re-proposal. The agency will monitor this issue for possible inclusion in a future rule action.

One commenter suggested that the rule provide "detailed standards to define when discount points are bona fide." The proposed requirements for legitimate discount points in subsection (d) should be sufficient to provide guidance on which discount points will be considered legitimate. In addition, this comment is addressed by the new language in paragraphs (4) and (5) prohibiting property tax lenders from including discount points in the funds advanced or principal balance.

One commenter suggested that the rule provide a cap on the amount of discount points, suggesting a maximum of five discount points. Discount points are subject to the 18% limitation on interest described in Texas Tax Code, §32.06(e). A five-discount-point maximum in addition to the 18% limitation appears to be inconsistent with §32.06(e).

One commenter suggested that the rule prohibit property tax lenders "who simply originate loans for larger companies" from retaining any discount points. This prohibition seems to be outside the scope of §32.06(e), which does not address circumstances under which prepaid interest must be retained by an originating lender.

In addition, regarding the affiliated business disclosure statement required by §89.504(f) and the itemization of unearned legitimate discount points in §89.802(9)(C), the agency believes that these revisions are appropriately contained in the rule text as opposed to the corresponding forms in each rule. Only certain property tax lenders use affiliated businesses or offer discount points. Thus, to avoid potential confusion, the changes focus these voluntary practices in the rule text, without placing optional language in the forms used by the entire industry.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has determined that for each year of the first five years the amended rules are in effect the public benefit anticipated will be that the commission's rules will provide updated guidelines regarding the costs allowed for property tax loans based on current market conditions, and will provide more consistency in the transfer of tax liens. Additional benefits of the re-proposal include enhanced transparency concerning the dis-

closure of affiliated businesses and more detailed recordkeeping procedures that increase both the agency's ability to enforce and licensees' ability to comply with the rules. It is the agency's belief that the re-proposed rule changes will benefit consumers as well as property tax lenders.

With respect to the use of affiliated businesses or discount points in connection with a property tax loan, additional economic costs may be incurred by a person required to comply with this re-proposal. Licensees will have the option of not using affiliated businesses and not offering discount points, in which case there will be no fiscal implications for those licensees. For licensees who opt to use affiliated businesses or who decide to offer discount points in relation to their property tax loans, there may be certain costs involved to provide proper disclosures to consumers and to maintain documents in accordance with the re-proposed amendments.

Regarding the disclosure of affiliated businesses, there may be some nominal costs to licensees in order to comply with the rule changes, such as expenses related to modifying disclosure forms to include a substantially similar statement to the one provided in re-proposed §89.504(f) and employee time and training to implement the changes. It is anticipated that revising a licensee's internal form to include the affiliated business disclosure would not exceed one hour of employee time per licensee.

Concerning both the use of affiliated businesses and discount points, additional economic costs may be incurred by licensees in order to maintain the documents required by the amendments re-proposed in §89.207. These costs are anticipated to be minimal, as sound business practice would dictate the maintenance of the receipts, invoices, and other documents required by the rule.

Regarding the proper use of legitimate discount points outlined in §89.601(d), present law already requires the itemization and spreading of legitimate discount points. In particular, §89.207(3)(A)(vi) requires that the refunding of unearned discount points be itemized on payoff statements. Texas Finance Code, §302.101 mandates the spreading of discount points over the loan. Hence, the re-proposed rule provisions relating to itemization and spreading provide clarification on these existing legal requirements on the use of legitimate discount points. In addition, Texas Tax Code, §32.06(e) currently provides: "Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs." As discussed earlier, this definition already excludes discount points from the funds advanced. With respect to these concepts as contained in the re-proposal, the agency does not anticipate any additional costs to persons who are required to comply with these amendments.

Additional economic costs may be incurred by a person required to comply with the amended fees for closing costs re-proposed in §89.601. The anticipated costs related to the fee limitations are not predictable, as the current practice in the property tax lender industry includes a wide range of fees. The variance for closing cost fees is both above and below the fee maximum re-proposed within this rule.

Based on annual report data collected from property tax lenders by the agency, for approximately 75% of all property tax loans conducted during calendar year 2013, the average closing costs were less than $900. Furthermore, 60% of property tax lender licensees originated these loans. These statistics represent strong majorities of the loan volume and licensee base having the ability to operate within the re-proposed fee limitations.

As supported by testimony provided by stakeholders during and after the meeting, it is the agency's understanding that higher cost property tax loans usually involve troubled properties with extensive title work. The agency believes that the fee cap exceptions built into the re-proposed rule for loans involving multiple parcels and for costs to prepare documents to address title defects should largely accommodate the loans where closing costs had exceeded $900.

Although it is anticipated that some lenders will have to reduce their fees in order to comply, it is the agency's expectation that most lenders will be able to continue charging the same amount, as their fees are less than the fees permitted by the re-proposal. For the small percentage of lenders whose current fees are greater than the fees proposed, those lenders would incur the difference between the fees as proposed and their current fees as a cost to continue engaging in a property tax loan that is secured by real property designed for single-family use.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this re-proposal. But in order to obtain more complete information concerning the economic effect of the re-proposed amendments, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these re-proposed amendments should that effect be adverse to small businesses.

Comments on the re-proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the re-proposal is published in the *Texas Register.* At the conclusion of the 31st day after the re-proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §89.102

The amendments are re-proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are re-proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §§89.102, 89.207, and 89.504 are re-proposed under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The Texas Tax Code also contains specific authority for the amendments to certain rules. In particular, the amendments to §89.504 are re-proposed under §32.06(a-4)(1) of the Tax Code, which authorizes the commission to prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer. The amendments to §89.601 are re-proposed under §32.06(a-4)(2) of the Tax Code, which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and

other charges permitted under §32.06. And the amendments to §89.802 are re-proposed under §32.06(a-4)(4) of the Tax Code, which authorizes the commission to prescribe the form and content of a request a lender with an existing recorded lien on the property must use to request a payoff statement and the transferee's response to the request.

The statutory provisions affected by the re-proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

The amendments are re-proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are re-proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §89.207 are re-proposed under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The statutory provisions affected by the re-proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351[~~, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220),~~] have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliated business--A person that:

(A) shares common management with a property tax lender;

(B) shares, directly or indirectly, more than 10% common ownership with a property tax lender; or

(C) is controlled, directly or indirectly, by a property tax lender through a controlling interest greater than 10%.

(2) [~~(1)~~] Borrower--The borrower in a property tax loan is the property owner.

(3) [~~(2)~~] Commissioner--The Consumer Credit Commissioner of the State of Texas.

(4) [~~(3)~~] Date of consummation--The date of closing or execution of a loan contract.

(5) [~~(4)~~] Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351[~~, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)~~].

(6) [~~(5)~~] Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, the act of funding the loan, or the act of advancing money on behalf of a borrower to a third party. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(7) [~~(6)~~] Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(8) [~~(7)~~] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(9) [~~(8)~~] Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents, and an advancement of money on behalf of a borrower by the lender to a third party. This also includes the act of arranging a loan.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406071
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-7621

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SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §89.207

The amendments are re-proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are re-proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §89.207 are re-proposed under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The statutory provisions affected by the re-proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

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

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same

information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) - (viii) (No change.)

(ix) receipts or invoices, signed attorney statements describing the nature of the title defect and the work performed by the attorney, along with proof of payment for recording costs or attorney's fees necessary to address a defect in title, as described by §89.601(c)(5) of this title (relating to Fees for Closing Costs, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file;

(x) written documentation of any legitimate discount points offered to the borrower, as described by §89.601(d) of this title, including the written proposal described by §89.601(d)(1)(C);

(B) - (H) (No change.)

(I) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the licensee acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052; [~~and~~]

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and (a)(5), including specific descriptions of services performed by the attorney, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file; and[~~;~~]

(iii) records identifying all amounts paid to an affiliated business described by paragraph (7) of this section, including a designation that an amount was paid to an affiliated business and a statement of which affiliated business was paid, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file;

(J) - (K) (No change.)

(L) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures under Texas Tax Code, §32.06(c):

(I) (No change.)

(II) if sent by an [~~a non-salaried~~] attorney who is not an employee of the licensee, any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) if sent by an [~~a non-salaried~~] attorney who is not an employee of the licensee, any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;

(IV) if sent by an [~~a non-salaried~~] attorney who is not an employee of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;

(V) - (VIII) (No change.)

(ii) (No change.)

(M) (No change.)

(4) - (6) (No change.)

(7) Records of affiliated businesses. A property tax lender must maintain records describing its relationship with any affiliated business with which the property tax lender regularly contracts for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender. The records must include any agreements between the property tax lender and the affiliated business, as well as any filings with the Texas Secretary of State that show the relationship between the property tax lender and the affiliated business.

(8) [~~(7)~~] Disaster recovery plan. A property tax lender must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(9) [~~(8)~~] Retention and availability of records. All books and records required by this section must be available for inspection at any time by OCCC [~~Office of Consumer Credit Commissioner~~] staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this section must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the OCCC [~~commissioner~~] access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406073
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-7621

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SUBCHAPTER E. DISCLOSURES

7 TAC §89.504

The amendments are re-proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are re-proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §89.504 are re-proposed under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The Texas Tax Code also contains specific authority for the amendments to certain rules. In particular, the amendments to §89.504 are re-proposed under §32.06(a-4)(1) of the Tax Code, which authorizes the commission to prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer.

The statutory provisions affected by the re-proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) - (e) (No change.)

(f) Disclosure of affiliated businesses. If a property tax lender regularly contracts with one or more affiliated businesses for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender, then the disclosure statement must include a statement substantially similar to the following: "The property tax lender can impose certain additional charges after closing. Some of these charges may be paid to (INSERT NAME OF AFFILIATED BUSINESS OR BUSINESSES), which is affiliated with the property tax lender. The costs paid to the affiliated business cannot be for services performed by employees of the property tax lender."

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406075
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-7621

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SUBCHAPTER F. COSTS AND FEES

7 TAC §89.601

The amendments are re-proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are re-proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The Texas Tax Code also contains specific authority for the amendments to certain rules. The amendments to §89.601 are re-proposed under §32.06(a-4)(2) of the Tax Code, which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under §32.06.

The statutory provisions affected by the re-proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.601. Fees for Closing Costs.

(a) - (b) (No change.)

(c) Total maximum fees for closing costs. [~~For purposes of this section, the "total amount of money paid by a property tax lender to the taxing unit(s) to obtain transfer of the tax lien" will be referred to as the "total tax lien payment amount."~~]

(1) Maximum fees include funds received by third parties or retained by property tax lender. The maximum fees provided for by this section encompass fees related to closing costs, whether the charge is paid by a property owner directly to a third party, paid to a third party through a property tax lender, or paid by a property owner directly to and retained by a property tax lender. A property tax lender may absorb any closing costs and may pay third parties out of the total compensation paid to it by a property owner.

(2) Maximum fee limits for closing costs. A property owner may not be charged, directly or indirectly, by a property tax lender an amount related to closing costs in excess of the amounts authorized by this section. A property tax lender may not directly or indirectly charge, contract for, or receive any amount related to closing costs from a property owner in excess of the amounts authorized by this section. [~~The following subparagraphs contained in this paragraph outline the total maximum fees for closing costs that may be charged, contracted for, or received by a property tax lender in connection with a property tax loan, based on the total tax lien payment amount.~~]

[~~(A) For a total tax lien payment amount that is less than $2,500, the maximum fee for closing costs is $1,000.~~]

[~~(B) For a total tax lien payment amount that is equal to or greater than $2,500 but less than $5,000, the maximum fee for closing costs is $1,250.~~]

[~~(C) For a total tax lien payment amount that is equal to or greater than $5,000 but less than $7,500, the maximum fee for closing costs is $1,500.~~]

[~~(D) For a total tax lien payment amount that is equal to or greater than $7,500 but less than $10,000, the maximum fee for closing costs is $1,750.~~]

[~~(E) For a total tax lien payment amount that is equal to or greater than $10,000, the maximum fee for closing costs is $2,000, or 10% of the total tax lien payment amount, whichever is greater.~~]

(3) General maximum fee limit. The general maximum fee for closing costs is $900.

(4) Cost for additional parcels of real property. If a property tax loan includes the payment of taxes for more than one parcel of real property, then the property tax lender may charge up to $100 for each additional parcel, in addition to the general maximum fee limit described in paragraph (3) of this subsection.

(5) Cost for preparing documents to address title defect. If one or more documents must be prepared in order to address a defect in title on the real property subject to the property tax loan, then the property tax lender may charge a reasonable fee for costs directly incurred

in preparing, executing, and recording any necessary documents, in addition to the general maximum fee limit described in paragraph (3) of this subsection. The fee for preparing documents is limited to recording costs paid to a governmental entity and reasonable attorney's fees paid to a person who is not an employee of the property tax lender. In order for the fee for these documents to be authorized, any documents must comply with all applicable laws, including recording requirements. In particular, any affidavit of heirship must comply with the substantive and procedural requirements of Texas Estates Code, Chapter 203, and must be recorded in the deed records of a county as provided in Texas Estates Code, §203.001(a)(2). For attorney's fees, the attorney must provide a signed statement to the property owner describing the nature of the title defect and the work performed by the attorney. The fee for preparing documents is not authorized under this paragraph if the fee includes any of the following:

(A) recording costs that are not paid to a governmental entity;

(B) attorney's fees that are not reasonable;

(C) costs that are not necessary in order to address a defect in title on the real property; or

(D) costs that are not substantiated by receipts or invoices that are maintained under §89.207(3)(A)(ix) of this title (relating to Files and Records Required).

(6) [~~(3)~~] Reasonable closing costs. The maximum fees contained in paragraphs (3), (4), and (5) [~~paragraph (2)~~] of this subsection constitute "reasonable closing costs" under Texas Tax Code, §32.06.

(d) Discount points. Legitimate discount points are prepaid interest and are not subject to the general maximum fee limit described by subsection (c) of this section.

(1) Discount points are legitimate if:

(A) the discount points truly correspond to a reduced interest rate;

(B) the discount points are not necessary to originate the loan; and

(C) before closing, the property tax lender provides the property owner with a written proposal describing the options offered to the property owner, including all of the following:

(i) an offer of a property tax loan that includes a contract rate without discount points;

(ii) an offer of a property tax loan that includes a lower contract rate based on discount points;

(iii) the difference between the contract rate without discount points and the lower contract rate, expressed as a percentage or as a number of points;

(iv) the cost of the discount points expressed as a dollar amount; and

(v) the percentage amount equal to the cost of the discount points divided by the principal balance of the loan; and

(vi) a statement that discount points are voluntary and not required to be paid in order to obtain the loan.

(2) If a property tax lender directly or indirectly charges, contracts for, or receives a discount point or other origination fee at closing that is not a legitimate discount point under paragraph (1) of this subsection, then the point or fee is subject to the maximum fee limit described by subsection (c) of this section. A property tax lender may not use the term "discount point" to describe a fee other than a legitimate discount point.

(3) To determine whether a property tax loan exceeds the 18% maximum effective rate of interest described in Texas Tax Code, §32.06(e), legitimate discount points must be included in the calculation of the effective rate. Upon prepayment in full, a property tax lender must spread legitimate discount points in accordance with Texas Finance Code, §302.101.

(4) All legitimate discount points must be paid by the property owner by cash, check, or electronic funds transfer before or at closing of a property tax loan. Discount points may not be included in the funds advanced described by Texas Tax Code, §32.06(e), or in the principal balance upon which interest is calculated.

(5) A property tax lender may not finance any discount points through a separate promissory note or contract, if the note or contract is payable to the property tax lender or to an affiliated business of the property tax lender.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406077
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-7621

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SUBCHAPTER H. PAYOFF STATEMENTS

7 TAC §89.802

The amendments are re-proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are re-proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The Texas Tax Code also contains specific authority for the amendments to certain rules. The amendments to §89.802 are re-proposed under §32.06(a-4)(4) of the Tax Code, which authorizes the commission to prescribe the form and content of a request a lender with an existing recorded lien on the property must use to request a payoff statement and the transferee's response to the request.

The statutory provisions affected by the re-proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.802. Payoff Statements.

(a) - (b) (No change.)

(c) Required elements. A payoff statement under this section must include:

(1) - (8) (No change.)

(9) an itemization of the total payoff amount, which must include:

(A) the unpaid principal balance on the property tax loan;

(B) the accrued interest as of the balance date; [~~and~~]

(C) any refundable amount resulting from unearned legitimate discount points described by §89.601(d) of this title (relating to Fees for Closing Costs); and

(D) [~~(C)~~] any other fees that are part of the total amount due under the property tax loan, with a specific description for each fee;

(10) - (13) (No change.)

(d) - (l) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406078
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-7621

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER A. PROCUREMENT

16 TAC §401.101

The Texas Lottery Commission (Commission) proposes an amendment to 16 Texas Administrative Code §401.101, Lottery Procurement Procedures. Specifically, the Commission proposes to amend subsection 401.101(c)(6) concerning proprietary purchases and the minimum threshold dollar amount for a purchase of services that must be posted on the Electronic State Business Daily (ESBD). The proposed amendment will remove a reference to a dollar amount threshold for proprietary services that is different, and higher, than the threshold amount required by statute for posting purchases of proprietary goods. The statutory requirement for posting any solicitation on the ESBD is $25,000, irrespective of whether the purchase is for goods or services. The proposed amendment will bring the language into conformity with current agency practice, and statutory requirements.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no significant fiscal impact to the state as a result of the proposed amendment. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendment as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2). Michael Fernandez, Director of Administration, has determined that for each year of the first five years the proposed amendment will be in effect, the anticipated public benefit will be improved clarity and transparency regarding procurement procedures of the Commission.

The Commission requests comments on the proposed amendment from any interested person. Comments on the proposed amendment may be submitted to Lea Burnett, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery; and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466, specifically §466.101.

§401.101. Lottery Procurement Procedures.

(a) - (b) (No change.)

(c) Procurement method.

(1) For the purchase or lease of goods and services not expected to exceed $5,000, or for the purchase or lease of goods and services available under a state contract, a competitive solicitation, whether formal or informal, may be conducted, but is not required.

(2) For the purchase or lease of goods and services not expected to exceed $25,000, the agency, at a minimum, will conduct an informal competitive solicitation in an attempt to obtain at least three competitive bids.

(3) For the purchase or lease of goods and services expected to exceed $25,000, the agency will conduct a formal competitive solicitation in an attempt to obtain at least three competitive bids or proposals.

(4) Printing services. For the purchase of printing services over $1,000, the agency will submit print job specifications and bid requests to the State Print Shops. If no responsive bids are received from a State Print Shop or, after the results of the bid evaluation, the agency determines that best value would be achieved through a private sector vendor, the agency may perform a competitive solicitation outlined in paragraph (2) or (3) of this subsection.

(5) Emergency procurement. Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make an emergency purchase or lease of goods or services. Prior to making an emergency purchase or lease of goods or services, the existence of an emergency should be documented. For emergency purchases in excess of $5,000, the agency may conduct an informal competitive solicitation in an attempt to obtain at least three competitive bids, whenever possible. For emergency purchases in excess of $25,000, the procurement will be posted on the Electronic State Business Daily; however, the minimum posting requirements do not apply. Posting of the advertisement and/or the award notice satisfies this requirement. In response to an emergency, the agency may procure goods or services in the most expedi-

tious manner deemed appropriate, including from a sole source. Whenever possible, contacts will be made with multiple sources in order to receive as much competition as possible.

(6) Proprietary purchase. When the agency believes that a purchase of goods or services over $5,000 is proprietary to one vendor or one manufacturer, a written proprietary purchase justification will be included in the procurement file. If the estimated purchase price exceeds $25,000 [~~for commodities or $100,000 for services~~], the procurement will be posted on the Electronic State Business Daily prior to a purchase order or contract being issued.

(7) Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make a purchase or lease of goods or services under any other procedure not otherwise prohibited by law.

(d) - (i) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405970
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 344-5012

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SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.317

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.317 "Powerball®" On-Line Game Rule. The purpose of the proposed amendments is to make changes to the base Powerball game, including matrix, prize amounts and prize structure changes, to incorporate and enhance the Power Play feature as part of the $2.00 cost per Play of the base Powerball game, to offer a new optional add-on feature, referred to in these proposed amendments as "Power PLUS", and to incorporate additional conforming language needed as a result of the Texas Lottery's membership in the Multi-State Lottery Association ("MUSL"). The first drawing under these amendments is anticipated to occur on or around April 15, 2015 (subject to change by the executive director and/or MUSL). The Texas Lottery offers Powerball under the MUSL Powerball Group Rules.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit is anticipated to be the potential for larger jackpots and slightly improved overall odds for players. Additionally, the Power Play feature, which is currently offered at an additional cost to players, will be included with the Powerball base game play at no additional cost. Players will also have the opportunity to participate in a new add-on draw, offering players the opportunity to win prizes based on a second set of numbers selected.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Deanne Rienstra, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal on January 14, 2015 at 11:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

These amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.317. "Powerball®" On-Line Game Rule.

(a) Powerball. Powerball is a Multi-State Lottery Association (MUSL) on-line game offered by all Lotteries that have agreed to MUSL's Powerball Group Rules.[~~, which has been opened to the participation of the twelve states now conducting the Mega Millions on-line games, and with which the Texas Lottery Commission has elected to participate under an Agreement with MUSL (hereinafter called the Reciprocal Game Agreement.)~~] "Powerball" is authorized to be conducted by the executive director under the conditions of the [~~Reciprocal Game Agreement,~~] MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary to conform the conduct and play of Powerball to the requirements of the MUSL rules [~~Reciprocal Game Agreement,~~] if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with state law. If a conflict arises between this section and §401.304 of this chapter (relating to On-Line Game Rules (General)), this section shall have precedence. The purpose of the Powerball game is the generation of revenue for MUSL Party Lottery members [~~and Mega Millions Party Lotteries participating under the Reciprocal Game Agreement,~~] through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. In addition to other applicable rules contained in Chapter 401, this section and definitions apply unless the context requires a different meaning or is otherwise inconsistent with the intention of the rules adopted by the MUSL or the MUSL Powerball Group. To be clear, the authority to participate in the MUSL Powerball game is provided to the Texas Lottery by MUSL. The conduct and Play of Powerball must conform to the MUSL Powerball game.

(b) Definitions.

(1) "Agent" or "retailer" means a person or entity authorized by the Texas Lottery Commission (TLC) to sell lottery tickets.

(2) A "Drawing" refers collectively to [means] the formal draw event for randomly [process of] selecting the winning numbers which determine the number of winners for each prize level of the Powerball game, the number of winners for each prize level of the Power PLUS add-on option, the winning Power Play multiplier letters, and the winner determination process of any other related promotions offered by the Product Group. [game.]

(3) "Game board", "board", "panel", or "playboard" means that area of the playslip which contains [two] sets of numbered squares to be marked by the player.[, the first set containing fifty-nine (59) squares, number one (1) through fifty-nine (59), and the second set containing thirty-five (35) squares, number one (1) through thirty-five (35).]

(4) "Game ticket" or "ticket" means an acceptable evidence of play, which is a ticket produced in a manner that [by a terminal and] meets the specifications defined in the MUSL rules or the rules of each member or participating Party Lottery (Ticket Validation).

(5) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the MUSL Party Member Lotteries.

(6) "MUSL Board" means the governing body of the MUSL which is comprised of the chief executive officer of each Party Lottery member of MUSL. It does not include participating non-members.

(7) "On-Line Lottery Game" means a lottery game which utilizes a computer system to administer Plays, [plays,] the type of game, and amount of Play [play] for a specified Drawing [drawing] date, and in which a player either selects a combination of numbers or allows number selection by a random number generator operated by the terminal, referred to as Quick Pick. MUSL will conduct a Drawing [drawing] to determine the winning combination(s) in accordance with the Powerball rules and the Powerball Drawing [drawing] procedures.

(8) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that has joined MUSL and is authorized to sell the Powerball game. "Selling Lottery" shall mean a lottery authorized by the Product Group to sell Powerball tickets, including Party Lotteries and Licensee Lotteries. [jurisdiction or entity which is a member of MUSL, or is a participating lottery, participating in Powerball pursuant to the Reciprocal Game Agreement between the Mega Millions Party Lotteries and MUSL, and, in the context of these rules and the MUSL Powerball Group Rules, that has joined in selling the Powerball game or games.]

(9) "Play" or "bet" means the six (6) numbers, the first five (5) from a field of sixty-six (66) [fifty-nine (59)] numbers and the last one (1) from a field of thirty-two (32) [thirty-five (35)] numbers, that appear on a ticket as a single lettered selection and are to be played by a player in the Powerball game and, if elected by the player, also the Power PLUS add-on game option. [game.]

(10) "Playslip" or "bet slip" means an optically readable card issued by the Commission used by players of Powerball to select Plays [plays] and to elect all features. There shall be five playboards on each playslip. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(11) "Powerball Group" or "Product Group" means the MUSL member group of lotteries which have joined together to offer the Powerball product pursuant to the terms of the Multi-State Lottery Agreement and the Powerball Group's rules, including the MUSL Powerball Drawing Procedures. In this rule, [these rules,] wherever either term [the term "Powerball Group"] is used it is referring to the MUSL Powerball Group.

(12) "Prize" means an amount paid to a person or entity holding a winning ticket. "Grand Prize" shall refer to either the top prize in the Powerball game or the top prize in the Power PLUS add-on option, or both. As "Grand Prize" is referred to in subsections (d) - (f) of this section it shall refer to a Powerball Grand Prize; and as "Grand Prize" is referred to in subsection (k) of this section it shall refer to a Power PLUS Grand Prize; and as "Grand Prize" is referred to in other sections of this rule, if not stated otherwise, it shall apply to both Powerball and Power PLUS Grand Prizes. The Powerball Grand Prize and the Power PLUS Grand Prize are two distinctly different Grand Prizes as set out in this rule. ["No advertised Grand Prize in a Powerball game is a guaranteed amount, and all advertised prizes, even Set Prizes, are estimated amounts."]

(13) "Set Prize" or "low-tier prize" means all other prizes except the Grand Prizes [Prize] that are [advertised to be] paid by a single cash payment and, except in instances outlined in this section, will be equal to the prize amount established by the MUSL Board for the prize level. "Set Prize" or "low-tier prize" shall refer to either the Set Prizes in the Powerball game or the Set Prizes in the Power PLUS add-on option, or both: "Set Prize" or "low-tier prize", as referred to in subsections (d) - (f) of this section, shall refer to Powerball Set Prizes; as "Set Prize" or "low-tier prize" is referred to in subsection (k) of this section it shall refer to Power PLUS Set Prizes; and as "Set Prize is referred to in other subsections of this rule, if not stated otherwise, it shall apply to both Powerball and Power PLUS Set Prizes. The Powerball Set Prizes and the Power PLUS Set Prizes are two distinctly different Set Prizes as set out in this rule.

(14) "Terminal" means a device authorized by a Party Lottery to function in an on-line, interactive mode with the [lottery's] computer gaming system for the purpose of issuing lottery tickets and entering, receiving, and processing lottery transactions, including purchases, validating tickets, and transmitting reports.

(15) "Powerball Winning Numbers" means the numbers randomly selected during a Drawing event ["Winning numbers" means the six (6) numbers, the first five (5) from a field of fifty-nine (59) numbers and the last one (1) from a field of thirty-five (35) numbers, randomly selected at each drawing,] which shall be used to determine winning Plays for the Powerball game [plays] contained on a game ticket. Powerball Winning Numbers shall not be used to determine Power PLUS prizes.

(16) "Power PLUS Winning Numbers" means the numbers randomly selected during a Drawing event which shall be used to determine winning Plays for the Power PLUS add-on option contained on a game ticket. Power PLUS Winning Numbers shall not be used to determine Powerball prizes.

(c) Game Description.

(1) Powerball is a five (5) out of sixty-six (66) [fifty-nine (59)] plus one (1) out of thirty-two (32) numbers [thirty-five (35) on-line] lottery game, drawn every Wednesday and Saturday, as part of the Powerball Drawing event, which pays the Powerball Grand Prize, at the election of the player made in accordance with this rule, or by a default election made in accordance with this rule, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a set cash basis. Powerball Winning Numbers applicable to determine Powerball prizes will be determined in the Powerball Drawing event. The Power PLUS optional add-on game to Powerball is described in subsection (k) of this section. To play Powerball, a player shall select five (5) different numbers, from one (1) through sixty-six (66), [fifty-nine (59),] and one (1) additional number from one (1) through thirty-two (32), [thirty-five

(35).] for input into a terminal. The additional number may be the same as one of the first five numbers selected by the player. Tickets can be purchased for two dollars (U.S. $2.00), including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, either from a terminal operated by an agent (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated terminal). If purchased from an agent, the player may select a set of five numbers and one additional number by communicating the six (6) numbers to the agent, or by marking six (6) numbered squares in any one game board on a playslip and submitting the playslip to the agent or by requesting Quick Picks from the agent. The agent will then issue a ticket, via the terminal, containing the selected, or terminal-generated, set or sets of numbers, each of which constitutes a game Play. [Play.] Tickets can be purchased from a player-activated terminal by using the Quick Pick buttons or by inserting a playslip into the machine. In addition to the player's Play numbers, the terminal will assign a Power Play multiplier number under each of the letters "P", "O", "W", "E" and "R" printed on the ticket or otherwise communicated to the player as described in this rule. During the Drawing event, a single letter will be drawn and those players winning a prize will have their winning prize level multiplied by the multiplier displayed on the ticket associated with the selected letter (multiplier does not apply to Powerball Grand Prize or Match 5+0). The Power Play multiplier numbers will be applicable for each Play purchased on a ticket, including multi-draws. The MUSL Drawing Procedures shall include the procedures for randomly selecting the Powerball game Winning Numbers, the winning Power Play multiplier letter, and the Power PLUS add-on option Winning Numbers.

(2) Claims. A ticket (subject to the validation requirements set forth in subsection (g) of this section (Ticket Validation)) shall be the only proof of a game Play or Plays [play or plays] and the submission of a winning ticket to the issuing Party Lottery or its authorized agent shall be the sole method of claiming a prize or prizes. A playslip has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected.

(3) Cancellations Prohibited. A ticket may not be voided or canceled by returning the ticket to the selling agent or to the lottery, including tickets that are printed in error. No ticket that is eligible for a prize can [which can be used to claim a prize shall] be returned to the lottery for credit. Tickets accepted by retailers as returned tickets and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays [play or plays] and other data printed on the ticket. The placing of Plays [plays] is done at the player's own risk through the on-line agent who is acting on behalf of the player in entering the Play or Plays. [play or plays.]

(5) Entry of Plays. Plays may only be entered manually using the lottery retailer terminal touch screen or by means of a playslip provided by the Party Lottery and hand-marked by the player or by such other means approved by the Party Lottery. Retailers shall not permit the use of facsimiles of playslips, copies of playslips, or other materials that are inserted into the terminal's playslip reader that are not printed or approved by the Party Lottery. Retailers shall not permit any device to be connected to a lottery terminal to enter Plays, except as approved by the Party Lottery.

(6) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(d) Powerball Prize Pool.

(1) Powerball Prize Pool.

(A) The [For the MUSL Powerball Group Lotteries, the] prize pool for all prize categories shall consist of fifty percent of each Drawing [drawing] period's sales, inclusive of [including] any specific statutorily-mandated tax of a Selling [Party] Lottery to be included in the price of a lottery ticket, after the prize pool accounts and prize reserve accounts are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of this game shall be returned to all lotteries participating in the prize pool at the end of all claim periods of all Selling [Party] Lotteries, carried forward to a replacement game, or expended in a manner as directed by the Members of the Powerball Group in accordance with jurisdiction statute.

(B) Powerball Prize Pool Accounts and Prize Reserve Accounts. An amount up to five [For the Party Lotteries which are not a member of the MUSL Powerball Group, the prize pool for all prize categories shall consist of fifty] percent of a Party Lottery's sales, [each drawing period's sales,] including any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery ticket, shall be deducted from a Party Lottery's Powerball Grand Prize Pool contribution and placed in trust in one or more Powerball prize pool accounts and prize reserve accounts held by the Product Group at any time that the prize pool accounts and Party Lottery's share of the prize reserve account(s) is below the amounts designated by the Product Group. [Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Powerball Group in accordance with state law.]

(i) The Product Group has established the following prize reserve accounts for the Powerball game: the Powerball Prize Reserve Account (PRA), which is used to guarantee the payment of valid, but unanticipated, Powerball Grand Prize claims that may result from a system error or other reason; and the Powerball Set Prize Reserve Account (SPRA), which is used to fund deficiencies in low-tier prize payments (subject to the limitations of these and the MUSL Product Group rules).

(ii) The Product Group has established the following prize pool accounts for the Powerball game: the Powerball Grand Prize pool, which is used to fund the immediate Powerball Grand Prize; the Powerball Set Prize Pool, which is used to fund the Powerball Set Prize payments as multiplied by the Power Play multiplier for the immediate draw; and the Powerball Set-Aside Account, which is used to guarantee payment of the minimum or starting Powerball Grand Prize. The Power PLUS Grand Prize Pool Account and Power PLUS Set Prize Pool Accounts are described in subsection (k)(4) of this section. The Set Prize Pool holds the temporary balances that may result from having fewer than expected winners in the Powerball Set Prize (aka low-tier prize) categories and the source of the Set Prize Pool is the Party Lottery's weekly prize contributions less actual Powerball Set Prize liability. The source of the Set-Aside Account funding is the difference between the amount in the Grand Prize Pool and the amount needed to fund Powerball Grand Prize payments as determined by the Powerball lotteries.

(iii) Once the Powerball prize pool accounts and the Party Lottery's share of the Powerball prize reserve accounts exceed the designated amounts, the excess shall become part of the Powerball Grand Prize pool. The Product Group, with approval of the Finance and Audit Committee, may establish a maximum balance for the Powerball prize pool accounts and prize reserve accounts. The Product Group may determine to expend all or a portion of the funds in the Powerball prize pool accounts (except the Powerball Grand Prize pool account) and the prize reserve accounts, (1) for the purpose of indemnifying the Party Lotteries and Licensee Lotteries in the payment of prizes to be made by the Selling Lotteries, subject to the approval of the Board; and (2) for the payment of prizes or special prizes in the game, limited to

prize pool and prize reserve contributions from lotteries participating in the special prize promotion following review and comment of the Finance and Audit Committee. The prize reserve shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries. A Party Lottery may contribute to its share of prize reserve accounts over time, but in the event of a draw down from the reserve account, a Party Lottery is responsible for its full percentage share of the account, whether or not it has been paid in full.

(iv) Any amount remaining in the Powerball prize pool accounts or prize reserve accounts when the Product Group declares the end of this game shall be returned to the lotteries participating in the accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(2) Expected Powerball Prize Payout Percentages.

(A) Grand Prize. The Grand Prize shall be determined on a pari-mutuel basis. Except as otherwise provided in this section, all other prizes awarded shall be paid as set cash prizes with the following expected prize payout percentages.[:]
[~~Figure: 16 TAC §401.317(d)(2)~~]

[~~(A)~~)] The prize money allocated to the Powerball Grand Prize category shall be divided equally by the number of Plays [~~plays~~] winning the Powerball Grand Prize. If sales proceeds are not sufficient to pay a Grand Prize, the Commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.
Figure: 16 TAC §401.317(d)(2)(A)

(B) Powerball Power Play Multiplier.

(i) The Power Play multiplier applies to the seven (7) lowest Set Prizes (the prizes normally paying two dollars ($2.00) - ten thousand dollars ($10,000.00) won in a Drawing.

(ii) The letters "P", "O", "W", "E" and "R" will appear on every Powerball ticket, whether a single Play or multi-draw. A multiplier number shall be assigned to each letter and will appear on the ticket. The multiplier numbers are weighted and will be randomly assigned to each Play by the Selling Lottery's gaming system under those letters using the percentages of occurrence set out in Figure: 16 TAC §401.317(d)(2)(B)(ii). The Powerball Group may modify the multiplier feature for special promotions from time to time which will be publicly announced prior to a Drawing.
Figure: 16 TAC §401.317(d)(2)(B)(ii)

(iii) For each Powerball Draw event a winning Power Play letter will be randomly selected ("P", "O", "W", "E" or "R").

(iv) If a Play wins a Powerball Set Prize of ten thousand dollars ($10,000) or less, the Set Prize amount indicated in Figure: 16 TAC §401.317(d)(2)(A) will be multiplied by the multiplier number reflected on the Play associated with the winning Power Play letter for that Drawing. The Powerball Grand Prize and Match 5+0 prize levels are not multiplied. Except in certain rare circumstances as described in this rule, a winning Powerball Play shall pay the Set Prize multiplied by the Power Play multiplier as indicated in Figure: 16 TAC §401.317(d)(2)(B)(iv). In certain rare instances, the Powerball Set Prize amount may be less than the amount shown. In such case, the seven (7) lowest Power Play Set Prizes will be changed to an amount announced after the draw. For example, if the Match 4+1 Powerball Set Prize amount of $10,000.00 becomes $5,000.00 under the rules of the Powerball game and a 5x Power Play multiplier appears under the winning Power Play letter selected, then a Powerball player winning a Match 4+1 prize would win $25,000.00.
Figure: 16 TAC §401.317(d)(2)(B)(iv)

[~~(B) For the MUSL Powerball Group Lotteries, the Set Prize Pool (for cash prizes of $1,000,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw. If the total of the Set Prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the Set Prizes, then the amount needed to fund the Set Prizes, including the Power Play prizes, awarded shall be drawn first from the amount allocated to the Set Prizes, and carried forward from previous draws, if any, and second from the Powerball Group's Set Prizes Reserve Account, if available, not to exceed forty million dollars ($40,000,000.00) per drawing.~~]

(C) Powerball Set Prize Pool Carried Forward. The Powerball Set Prize Pool (for [~~For the Party Lotteries which are not a member of the MUSL Powerball Group, the prize pool percentage allocated to the Set Prizes (the~~] cash prizes of $1,000,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Powerball Set Prizes awarded in the current draw. [~~Set Prizes awarded in the current draw. If the total of the Set Prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the Set Prizes, then the amount needed to fund the Set Prizes awarded shall be drawn from the amount allocated to the Set Prizes and carried forward from previous draws, if any.~~]

(D) Pari-Mutuel Powerball Prize Determinations. If the total of the Powerball Set Prizes (as multiplied by the Power Play multiplier, if applicable) awarded in a Drawing exceeds the percentage of the prize pool allocated to the Powerball Set Prizes, then the amount needed to fund the Powerball Set Prizes awarded shall be drawn first from the amount allocated to the Powerball Set Prizes, and carried forward from previous draws, if any, and second from the Powerball Set Prizes Reserve Account, if available, not to exceed the maximum amount set by the Product Group per drawing, and from other amounts as agreed to by the Product Group in their sole discretion. If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded, (as multiplied by the Power Play multiplier, if applicable), [~~If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded, including Power Play Prizes,~~] then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize (as multiplied by the Power Play multiplier, if applicable) shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning Plays in proportion to their respective prize percentages.

[~~(E) The Party Lotteries which are not a member of the MUSL Powerball Group shall independently calculate their set pari-mutuel prize amounts. Both groups, the non-member Party Lotteries and the MUSL Powerball Group, shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.~~]

(e) Probability of Powerball Winning Plays. The following table sets forth the probability of winning Plays [~~plays~~] and the probable distribution of winning Plays [~~plays~~] in and among each prize category, based upon the total number of possible combinations in Powerball. The Set Prize Amount shall be the prizes set for all Selling Lotteries

unless prohibited or limited by a jurisdiction's statute or judicial requirements.
Figure: 16 TAC §401.317(e)

(f) Powerball Prize Payment.

(1) Powerball Grand Prizes. The advertised Grand Prize in a Powerball game is not a guaranteed amount; it is an estimated amount, and all advertised prizes, even advertised Set Prizes, are estimated amounts. At the time of ticket purchase, a person may select the option for payment of the cash value or annuitized payments of a share of the Powerball Grand Prize if the Play [~~play~~] is a winning Play. [~~play.~~] If no selection is made, payment option will be as described in the chart in Figure: 16 TAC §401.317(f)(1).

[~~(A) If no payment option is selected--With the exception of a ticket purchase using the GT Mini terminal, which has no default, the default payment option, where an option is not chosen by the player, will be the cash value option.~~]

[~~(B)~~] Selection of the option for payment of the cash value or annuitized payments of a share of the Powerball Grand Prize if the Play [~~play~~] is a winning Play [~~play~~] is a selection made at the time of purchase and is final and cannot be revoked, withdrawn, or otherwise changed. Shares of the Powerball Grand Prize shall be determined by dividing the cash available in the Powerball Grand Prize Pool equally among all winning Plays of the Powerball Grand Prize. A player(s) who elects a cash payment shall be paid his/her share(s) in a single cash payment. The annuitized option prize shall be determined by multiplying the winning Play's share of the Powerball Grand Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts. The annuity factor is determined by the best total securities price obtained through a competitive bid of qualified, pre-approved brokers made after it is determined that the prize is to be paid as an annuity prize. Neither MUSL nor any Party Lottery shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Powerball Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to paragraph (6) of this subsection. If individual shares of the cash held to fund an annuity is less than $250,000, the Powerball Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Powerball Grand Prize Pool. All annuitized prizes shall be paid annually in thirty (30) payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity. All annuitized prizes shall be paid annually in thirty (30) graduated payments, as provided by the MUSL rules, (increasing each year) at a rate as determined by the MUSL Product Group. Prize payments may be rounded down to the nearest one thousand dollars ($1,000). Annual payments after the initial payment shall be made by the lottery on the anniversary date or if such date falls on a non-business day, then the first business day following the anniversary date of the selection of the Powerball Winning Numbers. [~~jackpot winning numbers.~~] Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Party Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the Drawing. [~~drawing.~~] If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the party lotteries. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the State of Texas. If the State of Texas purchases the securities, or holds the prize payment annuity for a Powerball prize won in this state, the prize winner will have no recourse on the MUSL or any other Party Lottery for payment of that prize.
Figure: 16 TAC §401.317(f)(1)

(2) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner), otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(3) Powerball Low-Tier Cash Prize Payments. All low-tier cash prizes (all prizes except the Powerball Grand Prize) shall be paid in cash or warrants through the Selling [~~Party~~] Lottery which sold the winning ticket(s). A Selling [~~Party~~] Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(4) Powerball Prizes Rounded. Annuitized payments of the Powerball Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners. Prizes other than the Grand Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing. [~~drawing.~~]

(5) Powerball Prize Rollover. If the Grand Prize is not won in a Drawing, [~~drawing,~~] the prize money allocated for the Grand Prize shall roll over and be added to the Powerball Grand Prize Pool for the following Drawing. [~~drawing.~~]

(6) Funding of Guaranteed Powerball Prizes. The Powerball Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between Drawings [~~drawings~~] or make other changes in the allocation of prize money where the Powerball Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between Drawings [~~drawings~~] is offered by the Powerball Group, then the Grand Prize shares shall be determined as follows. If there are multiple Grand Prize winning Plays [~~plays~~] during a single Drawing, [~~drawing,~~] each selecting the annuitized option prize, then a winning Play's [~~play's~~] share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winning Plays. [~~plays.~~] If there are multiple Grand Prize winning Plays [~~plays~~] during a single Drawing [~~drawing~~] and at least one of the Grand Prize ticket holders has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize. If no claimant of the Grand Prize during a single Drawing [~~drawing~~] has elected the annuitized option prize, then the amount of cash in the Powerball Grand Prize Pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes. In no case, shall quotes be used which are more than two weeks old, and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in the Powerball Group Rules. Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in subsection (d)(2)(D) [~~(d)(2)(B)~~] of this section becomes necessary.

(7) Limited to Highest Powerball Prize Won. The holder of a winning ticket may win only one prize per board in connection with

the Winning Numbers [~~winning numbers~~] drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(8) Powerball Prize Claim Period. Prizes must be claimed no later than 180 days after the draw date.

(g) Ticket Validation. To be a valid ticket and eligible to receive a prize, a ticket shall satisfy all the requirements established by the Commission for validation of winning tickets sold through its on-line system and any other validation requirements adopted by the Powerball Group and the MUSL Board. The MUSL and the Party Lotteries shall not be responsible for tickets which are altered in any manner.

(h) Ticket Responsibility.

(1) Signature. Until such time as a signature is placed upon a ticket in the area designated for signature, a ticket shall be owned by the bearer of the ticket. When a signature is placed on the ticket in the place designated, the person whose signature appears in such area shall be the owner of the ticket and shall be entitled (subject to the validation requirements in subsection (g) of this section (Ticket Validation) and state or district law) to any prize attributable thereto.

(2) Multiple Claimants. The issue of multiple claimants shall be handled in accordance with Texas Government Code Chapter 466 and §401.304 of this chapter.

(3) Stolen Tickets. The Powerball Group, the MUSL and the Party Lotteries shall not be responsible for lost or stolen tickets.

(4) Prize Claims. Prize claim procedures shall be governed by the rules of the Commission as set out in §401.304 of this subchapter and any internal procedures used by the Commission. The MUSL and the Party Lotteries shall not be responsible for prizes that are not claimed following the proper procedures as determined by the selling lottery.

(i) Ineligible Players.

(1) A ticket or share for a MUSL game issued by the MUSL or any of its Party Lotteries shall not be purchased by, and a prize won by any such ticket or share shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subparagraphs (A), (B), and (C) of this paragraph and residing in the same household.

(2) Those persons designated by a Party Lottery's law as ineligible to play its games shall also be ineligible to Play the MUSL game in that Party Lottery's jurisdiction.

(j) Applicable Law. In purchasing a ticket, the purchaser agrees to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the Party Lottery where the ticket was purchased.

(k) Power PLUS Add-On Option.

(1) Power PLUS Add-On Option. Power PLUS is an optional add-on game element for the Powerball game and is conducted in accordance with the Powerball game rules and other lottery rules applicable to the Powerball game except as may be amended herein. The option will offer to the purchaser of each Play a chance to win prizes in a selection of Power PLUS Winning Numbers.

(2) Power PLUS Qualifying Play. A qualifying Play is any single Powerball Play for which (i) the player pays an extra dollar for the Power PLUS add-on option and (ii) which the Powerball Play and the Power PLUS add-on option is recorded on the Commission's central gaming computer as a qualifying Play.

(3) Power PLUS Add-On Option Description.

(A) Power PLUS is a five (5) out of sixty-six (66) plus one (1) out of thirty-two (32) add-on option, drawn every Wednesday and Saturday as a part of the Powerball Drawing event, which pays all prizes, including the Grand Prize, as a single lump sum cash payment as defined in subsection (k)(5)(A) of this section. Power PLUS Winning Numbers applicable to determine Power PLUS prizes will be determined in the Powerball Drawing event. To play Power PLUS, a player must first purchase a qualifying Powerball Play, and then purchase a Power PLUS add-on option for an additional one dollar (U.S. $1.00), per Play. Powerball Play numbers selected by the player for a Play are also used as the Power PLUS Play numbers if the Power PLUS option has been selected. The Power Play multiplier numbers associated with the letters "P", "O", "W", "E" and "R" printed on the ticket are also applicable to Power PLUS Plays, if purchased, on that same ticket (multiplier does not apply to Grand Prize or Match 5+0 prize). The ticket will indicate whether the player has purchased a Power PLUS option, in addition to the Powerball Play.

(B) Claims. A ticket (subject to the validation requirements set forth in subsection (g) (Ticket Validation)) shall be the only proof of a game Play or Plays and the submission of a winning ticket to the issuing Party Lottery or its authorized agent shall be the sole method of claiming a prize or prizes. A playslip has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected.

(C) Cancellations Prohibited. A ticket may not be voided or canceled by returning the ticket to a selling agent or to the lottery, including tickets that are printed in error. No ticket that is eligible for a prize can be returned to the lottery for credit. Tickets accepted by retailers as returned tickets and which cannot be re-sold shall be deemed owned by the bearer thereof.

(D) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the agent that is acting on behalf of the player in entering the Play or Plays.

(4) Power PLUS Prize Pool.

(A) Power PLUS Prize Pool. The prize pool for all Power PLUS prize categories shall consist of up to fifty and four hundred thirty-three ten thousandths percent (50.0433%) of each Drawing period's sales, inclusive of any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery ticket, after the prize pool accounts are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of the Power PLUS add-on option shall be returned to all lotteries participating in the prize pool after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or expended in a manner as directed by the Members of the Product Group in accordance with jurisdiction statute.

(B) Power PLUS Prize Pool Accounts. The Product Group has established the following prize pool accounts for the Power PLUS add-on option: the Power PLUS Grand Prize Pool Account, which is used to fund the Power PLUS Grand Prize, and the Power PLUS Set Prize Pool Account, which is used to fund all Power PLUS Set Prizes awarded in the Power PLUS game and as multiplied by the Power Play multiplier. The Product Group, with approval of the Finance and Audit Committee, may establish a maximum balance for the prize pool accounts. The Product Group may determine to expend all or a portion of the funds in the prize pool accounts (except the Power PLUS Grand Prize pool accounts), (1) for the purpose of indemnifying the Selling Lotteries in the payment of prizes to be made by the Selling Lotteries, subject to the approval of the Board; and (2) for the payment of prizes or special prizes in the game, limited to prize pool contributions from lotteries participating in the special prize promotion following review and comment of the Finance and Audit Committee. Any amount remaining in the Power PLUS prize pool accounts when the Product Group declares the end of this game shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(C) Power PLUS Expected Prize Payout.

(i) The Power PLUS Grand Prize payout shall be determined on a pari-mutuel basis. Except as otherwise mandated by jurisdiction statute or judicial requirements, or provided for in these rules, all other prizes awarded shall be paid as set single payment prizes with the following expected prize payout percentages:
Figure: 16 TAC §401.317(k)(4)(C)(i)

(ii) The prize money allocated to the Power PLUS Grand Prize category shall be divided equally by the number of Plays winning the Power PLUS Grand Prize.

(D) Power PLUS Power Play Multiplier. The Power Play multiplier applies to the seven (7) lowest Set Prizes (the prizes normally paying three dollars ($3.00) - fifteen thousand dollars ($15,000.00)) won in a drawing. The Power Play letters and multiplier numbers associated with those letters printed on a Powerball ticket will be applicable to Power PLUS prizes. As a part of each Powerball Drawing a winning Power Play letter will be selected ("P", "O", "W", "E" or "R"). If a Play wins a Power PLUS Set Prize of fifteen thousand dollars ($15,000) or less, the Set Prize amount indicated in Figure: 16 TAC 401.317(k)(4)(D) will be multiplied by the winning Power Play letter for that Drawing. The Power PLUS Grand Prize and Match 5+0 prizes are not multiplied. Except in certain rare circumstances, a winning Power PLUS Play shall pay the Power PLUS Set Prize as multiplied by the Power Play multiplier and as indicated in Figure: 16 TAC §401.317(k)(4)(D). In certain rare instances, the Power PLUS Set Prize amount may be less than the amount shown. In such case, the seven (7) lowest Set Prizes will be changed to an amount announced after the draw. For example, if the Match 4+1 Set Prize amount of $15,000.00 becomes $7,500.00 under the rules of the Power PLUS game and a 5x Power Play multiplier appears under the winning Power Play letter selected, then a Power PLUS player winning a Match 4+1 prize would win $37,500.00.
Figure: 16 TAC §401.317(k)(4)(D)

(E) Power PLUS Prize Pools Carried Forward.

(i) Power PLUS Grand Prize Pool Carried Forward. For Party Lotteries, the Power PLUS Grand Prize pool (for Grand Prize payments) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Grand Prizes awarded in the current draw.

(ii) Power PLUS Set Prize Pool Carried Forward. For Party Lotteries, the Power PLUS Set Prize pool (for single payment prizes of five hundred thousand dollars ($500,000.00) or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw.

(F) Power PLUS Pari-Mutuel Powerball Prize Determinations.

(i) If the total of the Power PLUS Set Prizes (as multiplied by the Power Play multiplier, if applicable) awarded in a Drawing exceeds the percentage of the prize pool allocated to the Power PLUS Set Prizes, then the amount needed to fund the Power PLUS Set Prizes awarded shall be drawn first from the amount allocated to the Power PLUS Set Prizes, and carried forward from previous draws in the Power PLUS Set Prize Pool Account, if any, second from the Power PLUS Grand Prize Pool Account, if available, then from other amounts as agreed to by the Product Group in their sole discretion. Any Power PLUS Grand Prizes awarded in a Drawing must be fully paid before any monies may be withdrawn from the Power PLUS Grand Prize Pool Account to pay Power PLUS Set Prizes.

(ii) If, after these sources are depleted, there are not sufficient funds to pay the Power PLUS Set Prizes awarded (as multiplied by the Power Play multiplier, if applicable), then the highest Power PLUS Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, (as multiplied by the Power Play multiplier, if applicable) shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning Plays in proportion to their respective prize percentages.

(G) Probability of Power PLUS Winning Plays. The following table sets forth the probability of winning Plays and the probable distribution of winning Plays in and among each prize category, based upon the total number of possible combinations in Power PLUS.
Figure: 16 TAC §401.317(k)(4)(G)

(5) Power PLUS Prize Payment.

(A) Power PLUS Grand Prizes. Grand Prizes shall be paid with a single lump sum cash payment. The Product Group shall establish the guaranteed amount available to be won as a Power Plus Grand Prize. Shares of the Grand Prize shall be determined by dividing the guaranteed amount equally among all winning Plays of the Grand Prize in a Drawing. A paying lottery may elect to make a Grand Prize payment from its own funds after validation, with notice to MUSL.

(B) Power PLUS Prize Payments. All prizes (whether described as "cash" payment prizes or otherwise) shall be paid through the Selling Lottery that sold the winning ticket(s) and at the discretion of the Selling Lottery that sold the winning ticket(s) may be paid by cash, check, warrant or electronic transfer. A Selling Lottery may begin paying low-tier prizes after receiving authorization to pay from the MUSL central office. If a Selling Lottery, due to jurisdictional law requirements, separately determines its low-tier prize amounts, it shall be solely responsible for its low-tier prize liability, and may begin paying low-tier prizes after a Drawing when it determines appropriate to do so.

(C) Power PLUS Prizes Rounded. Prizes other than the Grand Prize, which, under these rules, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid

in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

(D) Funding of Guaranteed Power PLUS Prizes. In the event the Power PLUS Grand Prize Pool account is insufficient to pay the Power PLUS Grand Prize amount, then an amount sufficient to fund the Grand Prize liability shall be withdrawn from the Power PLUS Set Prize Pool Account, if available. Any Power PLUS Set Prizes awarded in a drawing must be fully paid before any monies may be withdrawn from the Power PLUS Set Prize Pool Account to pay Power PLUS Grand Prize payments. In the event there are insufficient funds in the Power PLUS Grand Prize Pool account and the Power PLUS Set Prize Pool account to pay a Grand Prize award, necessary additional funding shall be provided by the Selling Lotteries in proportion to their sales since the last Grand Prize was won.

(E) Limited to Highest Power PLUS Prize Won. The holder of a winning Power PLUS Play may win only one (1) prize per board in connection with the winning Power PLUS numbers drawn and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(F) Power PLUS Prize Claim Period. Prizes must be claimed no later than 180 days after the draw date.

~~[(k) Powerball Special Game Rules: Powerball Power Play.]~~

~~[(1) Power Play Description. The Powerball Power Play is a limited extension of the Powerball game and is conducted in accordance with the Powerball game rules and other lottery rules applicable to the Powerball game except as may be amended herein. Power Play will begin at a time announced by the Party Lottery and will continue until discontinued by the lottery. Power Play will offer to the owners of a qualifying play a chance to increase the amount of any of the eight lump sum Set Prizes (the lump sum prizes normally paying $4 to $1,000,000) won in a drawing held during Power Play. The Grand Prize jackpot is not a Set Prize and will not be increased.]~~

~~[(2) Qualifying Play. A qualifying play is any single Powerball play for which the player pays an extra dollar for the Power Play option play and which is recorded at the Party Lottery's central computer as a qualifying play.]~~

~~[(3) Prizes to be Increased. Except as provided in these rules, a qualifying play which wins one of the seven lowest lump sum Set Prizes (excluding the Match 5 + 0) will be multiplied by the number drawn, either two, three, four, or five, in a separate random Power Play drawing announced during the official Powerball drawing show. The announced Match 5+0 prize, for players selecting the Power Play option, shall be paid two million dollars ($2,000,000.00) unless a higher limited promotional dollar amount is announced by the Powerball Group.]~~
~~[Figure: 16 TAC §401.317(k)(3)]~~

~~[(4) Prize Pool.]~~

~~[(A) Power Play Prize Pool. The prize pool for all prize categories shall consist of up to forty-nine and thirty-six one-hundredths percent (49.36%) of each drawing period's sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery ticket.]~~

~~*[(i)* For the MUSL Powerball Group Lotteries, the Power Play Prize Pool Shall continue to be carried forward to subsequent draws if all or a portion of it is not needed to pay the Power Play prizes awarded in the current draw and held in the Power Play Pool Account.]~~

~~*[(ii)* For the Party Lotteries which are not a member of the MUSL Powerball Group, any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Powerball Group in accordance with state law.]~~

~~[(B) Expected Prize Payout. Except as provided in this section, all prizes awarded shall be paid as lump sum Set Prizes. Instead of the Powerball Set Prize amounts, qualifying Power Play plays will pay the amounts shown in paragraph (3) of this subsection.]~~

~~[(C) In certain rare instances, the Powerball Set Prize amount may be less than the amount shown in Figure: 16 TAC §401.317(d)(2). In such case, the eight lowest Power Play prizes will be changed to an amount announced after the draw. For example, if the Match 4+1 Powerball Set Prize amount of $10,000 becomes $5,000 under the rules of the Powerball game, and a 5x Power Play Multiplier is drawn, then a Power Play winning play prize amount would win $25,000.]~~

~~[(D) Probability of Power Play Numbers Being Drawn. The following table sets forth the probability of the various Power Play numbers being drawn during a single Powerball Power Play drawing. The Powerball Group may elect to run limited promotions that may modify the multiplier features. Power Play does not apply to the Powerball Grand Prize. Except as provided in subparagraph (C) of this paragraph, a Power Play Match 5 + 0 prize is set at two million dollars ($2,000,000.00), regardless of the multiplier selected.]~~
~~[Figure: 16 TAC §401.317(k)(4)(D)]~~

~~[(5) Limitations on Payment of Power Play Prizes.]~~

~~[(A) Prize Pool Carried Forward. The prize pool percentage allocated to the Power Play Set Prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw.]~~

~~[(B) Pari-Mutuel Prizes--All Prize Amounts.]~~

~~*[(i)* For MUSL Powerball Group Lotteries, if the total of the original Powerball Set Prizes and the Power Play Prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the Set Prizes, then the amount needed to fund the Set Prizes (including the Power Play prize amounts) awarded shall first come from the amount allocated to the Set Prizes and carried forward from previous draws, if any, and second from the Powerball Group's Set Prizes Reserve Account, if available, not to exceed forty million dollars ($40,000,000.00) per drawing.]~~

~~*[(ii)* For the Party Lotteries which are not members of the MUSL Powerball Group, if the total of the original Powerball Set Prizes and the Power Play Prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the Set Prizes, then the amount needed to fund the Set Prizes (including the Power Play prize amounts) awarded shall be the amount allocated to the Set Prizes and carried forward from previous draws, if any.]~~

~~[(C) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded (including Power Play prize amounts), then the highest Set Prize (including the Power Play prize amounts) shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, including the Power Play prize amount, shall become a pari-mutuel prize. This procedure shall continue down through all Set Prizes levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning plays in proportion to their respective prize percentages. In rare instances, where the Powerball Set Prize amount may be funded but the money available to pay the~~

~~full Power Play prize amount may not be available due to an unanticipated number of winning plays, the Powerball Group may announce pari-mutuel shares of the available pool for the Power Play payment only.]~~

~~[(D) The Party Lotteries which are not members of the MUSL Powerball Group shall independently calculate the set pari-mutuel prize amounts, including the Power Play prize amounts. Both groups, the non-member Party Lotteries and the MUSL Powerball Group, shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently calculated prize amounts.]~~

~~[(6) Prize Payment.]~~

~~[(A) Prize Payments. All Power Play prizes shall be paid in one lump sum through the Party Lottery that sold the winning ticket(s). A Party Lottery may begin paying Power Play prizes after receiving authorization to pay from the MUSL central office.]~~

~~[(B) Prizes Rounded. Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.]~~

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405977
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 344-5012

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CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION
SUBCHAPTER A. ADMINISTRATION
16 TAC §402.104

The Texas Lottery Commission (Commission) proposes new rule 16 Texas Administrative Code §402.104, Delinquent Obligations. The purpose of the proposed new rule is to implement Texas Government Code §2107.002(b), which requires state agencies to "establish procedures by rule for collecting a delinquent obligation and a reasonable period for collection." The proposed new rule is based, in part, on the Office of the Attorney General's uniform guidelines for the collection of delinquent obligations, which are located at 1 Texas Administrative Code §59.2. The proposed new rule outlines the steps the Commission will take upon a determination that a charitable bingo related obligation is delinquent, including the utilization of the Comptroller of Public Accounts' warrant hold procedures and the referral of delinquent obligations to the Office of the Attorney General. The proposed new rule also states that the Commission will not issue a license to, renew a license for, or list on the bingo worker registry any person with a delinquent obligation owed to the Commission.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses or micro-businesses as defined in §2006.001 of the Texas Government Code.

Alfonso D. Royal, III, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the anticipated public benefit is the more efficient collection of delinquent obligations owed to the state.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to James Person, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, January 14, 2015, at 611 E. 6th Street, Austin, Texas 78701.

The new rule is proposed under: (1) §2107.002(b) of the Texas Government Code, which requires state agencies to adopt rules related to the collection of delinquent obligations; (2) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements §2107.002(b) of the Texas Government Code and Chapter 2001 of the Texas Occupations Code.

§402.104. Delinquent Obligations.

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

(1) Debtor--Any person or entity liable or potentially liable for a charitable bingo related obligation owed to the Commission or against whom a claim or demand for payment has been made.

(2) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(3) Demand letter--A writing mailed to a debtor setting forth the nature and amount of the obligation owed to the Commission and demanding payment of that obligation.

(4) Obligation--Any debt, judgment, claim, account, fee, fine, tax, penalty, or interest.

(5) OAG--Office of the Attorney General of Texas.

(b) Upon a determination by the Charitable Bingo Operations Director, or their designee, that a charitable bingo related obligation to the Commission is delinquent, the Charitable Bingo Operations Director or designee will:

(1) Attempt to determine the liability of each individual or entity responsible for the obligation and whether that liability can be established by statute or common law;

(2) Transmit demand letters to the debtor(s) in conformance with subsection (c) of this section;

(3) To the extent practicable, maintain individual collection histories of each obligation in order to document attempted contacts with the debtor, the substance of communications with the debtor, efforts to locate the debtor and its assets, and other information pertinent to collection of the delinquent obligation; and

(4) Utilize warrant hold procedures as provided in subsection (d) of this section.

(c) The Commission will generally transmit two demand letters to a debtor's verified address. The first demand letter will be sent no later than 30 days after the obligation becomes delinquent. If the obligation remains uncollected, a second demand letter should be sent no sooner than 30 days, but not more than 60 days, after the first demand letter. However, if the Charitable Bingo Operations Director or their designee determines that the amount of a delinquent obligation is minimal, the Director or designee may delay the transmission of the second demand letter. Demand letters will be mailed in an envelope bearing the notation "Return Service Requested" in conformity with applicable United States Postal Service regulations. If an address correction is provided by the United States Postal Service, the demand letter will be re-sent to the correct address prior to referral to the OAG. The second demand letter will include a statement that the obligation, if not paid, may be referred to the OAG for collection.

(d) As authorized in §403.055 of the Government Code, the Commission will utilize the Comptroller of Public Accounts' warrant hold procedures to ensure that no treasury warrants will be issued to a debtor until the delinquent obligation is paid.

(e) The Commission will refer uncollected and delinquent obligations to the OAG as provided by this subsection and the OAG's uniform guidelines, which are found at Title 1, §59.2, of the Administrative Code.

(1) If the debtor is an entity, the Commission will provide the OAG with the name of the entity's registered agent and any principal officers and/or directors of the entity. If the debtor is an individual, the Commission will provide the OAG with the name and last known business address and residence address of the individual.

(2) Prior to referral of the obligation to the OAG, the Commission will (except in the case where a jeopardy determination has been made under paragraph (5) of this subsection):

(A) verify the debtor's address and telephone number;

(B) transmit no more than two demand letters as provided in subsection (c) of this section; and

(C) verify that the obligation is not legally or practically uncollectible.

(3) After considering the relevant factors listed in the OAG's uniform guidelines, the Charitable Bingo Operations Director or designee shall determine whether an uncollected obligation will be referred to the OAG for collection. Generally, the Commission will not refer an uncollected obligation if the amount to be collected would be less than the total sum of expenses to the Commission and the OAG required for collection of the obligation. The Charitable Bingo Operations Director or designee may establish a minimum dollar amount for obligations to be referred to the OAG. However, the Commission may, for policy reasons or other good cause, refer an obligation to the OAG even if the amount to be collected is less than the minimum amount established by the Director or designee.

(4) Generally, an uncollected obligation should be referred to the OAG not later than the 90th day after the date the obligation becomes delinquent, but after the second demand letter is sent.

(5) If the Charitable Bingo Operations Director or designee reasonably believes that the collection of an obligation is jeopardized, the Director or Designee may issue a jeopardy determination to the debtor stating that the collection of the obligation is in jeopardy and that the amount due is immediately due and payable. In the case of a jeopardy determination, the obligation may be referred to the OAG after the expiration of 20 days after service by personal service or by mail.

(6) When referring an uncollected obligation to the OAG, and to the extent practicable, the Commission will provide the OAG with:

(A) copies of all correspondence between the Commission and the debtor;

(B) a log sheet documenting all attempted contacts with the debtor and the result of such attempts;

(C) a record of all payments made by the debtor and copies of all checks tendered as payment;

(D) any information pertaining to the debtor's residence and his assets; and

(E) copies of any license application, security, final orders, contracts, grants, or instrument giving rise to the obligation.

(7) Delinquent obligations that warrant referral to the OAG, and upon which an uncollected bond or other security is held, shall be referred to the OAG no later than 60 days after becoming delinquent. All such accounts where the principal has filed for relief under federal bankruptcy laws will be referred to the OAG immediately.

(f) The Commission will not issue a license to, renew a license for, or list on the bingo worker registry any debtor until the delinquent obligation is paid.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405971
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 344-5012

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400, 402.401, 402.404, 402.410 - 402.412

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.404 (License and Registry

Fees), 402.410 (Amendment of a License - General Provisions), 402.411 (License Renewal), and 402.412 (Signature Requirements). In 2013, the 83rd Legislature appropriated funds to the Commission for the development of a new information system for the Charitable Bingo Operations Division (CBOD), referred to as the Bingo Operating Service System, which will be used by the CBOD for the administration and regulation of charitable bingo. To ensure the proper development and implementation of this new information system, Commission staff conducted a review of all CBOD business processes and procedures to determine their efficiency and compliance with applicable laws, rules, and generally accepted accounting principles. Based on that review, the Commission now proposes amendments to the following Commission rules in order to align those rules and various CBOD business processes and procedures with applicable statutes and generally accepted accounting principles. The amendments address, among other things, the crediting and refunding of license fee payments, the use of escrow accounts, and the placement of licenses in administrative hold.

License and amendment fees paid to the Commission are generally deposited into the state treasury, and thus may only be refunded as provided by law. *See* Tex. Const. art. VIII, §6; General Appropriations Act, 83rd Leg., R.S., art. IX, §8.05(a); Tex. Att'y Gen. Op. No. MW-443 (1982). The Bingo Enabling Act (BEA) does not provide a mechanism for the refund of such fees, but §403.077 of the Government Code provides a mechanism for the refund of money collected or received by a state agency through a mistake of fact or law. Generally, under §403.077, any person seeking a refund must first request a refund from the state agency within four years from the latest date on which the amount collected or received by the state agency was due. The state agency must then review the refund request to determine whether the requested funds were collected or received by the agency through a mistake of fact or law, and whether the refund request was timely. Upon making the necessary determinations the agency would then forward the refund request to the Comptroller of Public Accounts, who would then decide to grant or deny the refund. The proposed amendments to §§402.401(f), 402.404(g) - (h), and 402.410(e) outline the process by which the Commission will handle requests for refunds of license and amendment fee overpayments, which are generally eligible for refund under §403.077. Those proposed amendments, along with the proposed amendments to §§402.400(i) and (n)(3), 402.401(d)(6), and 402.404(j), also clarify that license and amendment fees submitted to the Commission are not otherwise eligible for refund. The proposed amendments do not cover the refund of prize fees and rental taxes, which are generally governed by §111.104 of the Tax Code (made applicable to the Commission through §2001.512 of the Occupations Code).

Section 2001.104 and §2001.158 of the Occupations Code require the Commission to provide for credit to be given to certain licensees for any excess license fee amount paid by the licensee. The BEA does not expressly limit what such credit may be used for. Section 2001.104 also authorizes bingo conductors to establish an escrow account with the Commission. Unlike with the statutory credit provisions, however, the BEA only permits escrow funds to be used for amendment fees and temporary license fees. Therefore, the proposed amendments to §§402.401(f), 402.404(g) - (h) and (j), and 402.410(e) clearly distinguish credits from escrow account funds. Generally, under the proposed amendments, license and amendment fee overpayments will be credited to the licensee. Such credits must be used or claimed for refund (as explained above) within four years of the latest date the fees were due. Escrow accounts would be restricted to funds placed in the account to be used for future temporary license fees or amendment fees. However, escrow account funds are not eligible for refund and must be used by the end of the licensee's subsequent license period.

Though not expressly referenced in the BEA, the Commission has generally permitted licensed bingo conductors and commercial lessors to place their respective licenses in administrative hold at any time during a license period. Under the plain language of current Commission rules, a conductor or lessor with a license in administrative hold must cease *all* bingo activity until the license is removed from administrative hold. Despite this prohibition, some bingo conductors in administrative hold have conducted bingo using temporary licenses. The proposed amendments to §402.400(k) would clarify that a licensee in administrative hold must cease all bingo activity, including bingo conducted under temporary licenses, until their license is removed from administrative hold.

Administrative hold status was intended to be a temporary status for a licensee until the time the licensee could resume its bingo activity under a standard license classification. Despite the fact that the Commission did not intend for administrative hold to serve as a long term or semi-permanent status, some licensees have been in administrative hold for several years. To correct this unintended outcome, the proposed amendments §402.400(k) would prohibit a licensee from being in administrative hold for more than twelve consecutive quarters. This prohibition, however, would not apply to commercial lessors grandfathered under §2001.152(b) of the Occupations Code.

The fee for a license in administrative hold is a Class A license fee, which is the lowest regular license fee amount. However, the BEA mandates that regular license fees be based on the licensee's annual gross receipts (for a bingo conductor) or annual gross rentals (for a commercial lessor). Therefore, the proposed amendments to §402.400(k) and §402.404(d)(3) would clarify that while the initial fee for a license on administrative hold is a Class A license fee, a licensee must still pay a license fee amount based on the licensee's actual gross receipts or gross rentals for that license period, which could exceed the Class A fee if the license is removed from administrative hold during the license period and the licensee resumes its bingo activity. If a licensee remains in administrative hold for the entire license period, and conducts no bingo activity, then the licensee will only owe the Class A license fee for that license period.

Currently, a license may be placed in, or removed from, administrative hold at any time during the license period. Commission staff believes that this approach could result in internal accounting issues for the CBOD. Therefore, to limit this potential impact, the proposed amendments to §402.400(k) will clarify that a license may be placed in administrative hold only at the time of license renewal, but a license may be removed from administrative hold at any time during the license period.

The proposed amendments to §402.400(i) clarify that a license applicant may withdraw their application at any time *prior to* the Commission's approval or denial of that application, and that license fees submitted with an application that is subsequently withdrawn are not eligible for refund.

Section 2001.108 of the Occupations Code authorizes bingo conductors and commercial lessors to file a joint license amendment application to change the premises where bingo will be

conducted or to change the times of the bingo conductor's bingo occasions. Under current rule §402.401(d)(6), when a bingo conductor has filed a temporary license application and a license amendment application under §2001.108, if the license amendment application is approved by the Commission prior to the issuance of the bingo conductor's temporary license(s), the temporary license application will be discontinued and the corresponding temporary license fees will be credited to the bingo conductor. Under that rule, the Commission would not collect any fees for the temporary license(s) even if Commission staff worked on the temporary license application. To correct this discrepancy, the Commission proposes amendments to §402.401(d)(6) providing that in such a scenario, the temporary license fees will be retained by the Commission.

Under current rule §402.404(f)(6), if one or more quarterly reports in a license period is not available for a bingo conductor or commercial lessor, the Commission will estimate the gross receipts or gross rental income for the missing quarter(s) to determine the conductor's or lessor's license fee. The Commission proposes amendments to §402.404(f)(6) providing that if one or more quarterly reports are not available, the Commission will average the gross receipts or gross rental income of the available quarters in order to determine the conductor's or lessor's license fee.

The proposed amendments to §§402.404(l)(2) and 402.411(m) provide that the Commission will not process an application for license renewal or listing on the bingo worker registry that is submitted to the Commission more than 90 days prior to the current license or registry listing expiration date.

The proposed amendments to §402.412(j) also clarify that no other provision in that rule prohibits the use of electronic signatures that comply with the Texas Uniform Electronic Transactions Act, found at Chapter 322 of the Business and Commerce Code.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact to the state or local governments as a result of the proposed amendments. Furthermore, there will be no adverse effect on local or state employment. Ms. Pyka has also determined that there will be no adverse effect on small businesses or micro-businesses, and that there will be no significant economic cost to persons required to comply with the amendments as proposed. The Commission acknowledges that refunds could appear to be more readily available to licensees under the plain language of the current rules than under the proposed amendments. However, the proposed amendments are incorporating the standard for refunds set by the legislature in §403.077 of the Government Code. That legislatively imposed standard would control the issuance of refunds regardless of the plain language of the current rules. *See* Tex. Att'y Gen. Op. No. GA-649 (2008) ("an administrative agency may not adopt a rule that is inconsistent with the statute"). Therefore, the proposed amendments will not have an adverse effect on small businesses or micro-businesses, and there will be no significant economic cost to persons required to comply with the proposed amendments. Because the proposed amendments will not have an economic effect on small businesses or micro-businesses, as defined in §2006.001 of the Government Code, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

Alfonso D. Royal, III, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefits are increased compliance with statutory provisions and generally accepted accounting principles, a more efficient information system for the CBOD, and a sound regulatory framework for licensees and applicants to follow.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to James Person, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, January 14, 2015, at 611 E. 6th Street, Austin, Texas 78701.

The amendments are proposed under: (1) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Chapter 2001 of the Texas Occupations Code.

§402.400. License and Registry Fees.

(a) - (h) (No change.)

(i) A license applicant [~~An organization~~] may withdraw an application at any time prior to the approval or denial of the application. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. License fees submitted with an application that is subsequently withdrawn are not eligible for refund. If the organization wants to reapply for a license, a complete new application and new license fee are [~~is~~] required.

(j) (No change.)

(k) Administrative Hold. A licensed authorized organization or commercial lessor, other than an association of licensed authorized organizations, [~~licensee~~] may request to place its regular license in administrative hold, but only at the time of license renewal, as provided in §402.411 of this Chapter.

(1) The placement of a license in administrative hold shall be effective on the first day of the license period for which the administrative hold is requested [~~upon receipt by the Commission of a copy of the resolution, or other authoritative statement of the licensee, requesting administrative hold and citing a requested effective date~~].

(2) The licensee shall submit the license in administrative hold, or a certified statement that the license is not available, to the Commission no later than seven (7) calendar days after [~~on~~] the effective date of the placement of the license in administrative hold.

(3) Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee. A licensed authorized organization with its regular license in administrative hold may not conduct bingo under a temporary license.

(4) Notwithstanding placement of the license in administrative hold, the licensee must file with the Commission:

(A) all applicable reports, returns and remittances required by law; and[~~.~~]

(B) [~~The licensee must also file~~] a timely and complete application for renewal of the license each time the license is ripe for renewal.

(5) If at the time of license renewal a licensed authorized organization does not have a designated playing location, that license will be placed in administrative hold.

(6) Except for licensed commercial lessors subject to §2001.152(b) of the Occupation Code, a license may not be in administrative hold for more than twelve (12) consecutive quarters.

(7) The fee for a license in administrative hold is set in §402.404(d)(3) of this Chapter.

(8) A license may be removed from administrative hold at any time during a license period. To remove a license from administrative hold, the licensee must file a license amendment application as provided in §2001.306 of the Occupations Code and §402.410 of this Chapter.

(l) - (m) (No change.)

(n) Eligibility determination pending identification of playing location, days, times, and starting date.

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

(3) An organization requesting a determination of eligibility status must submit with its application a non-refundable processing fee in an amount equal to a Class A regular license fee, which will [~~$132 to~~] be applied towards the organization's license fee should the organization become licensed.

(4) - (6) (No change.)

(7) In order to receive a regular license to conduct bingo, an authorized organization that has received an eligibility determination and informed the Commission of its intended playing location, days, times, and starting date of the occasions must also submit the required bond or security, any remainder of the appropriate license fee, a Texas Request for Licensure for Eligible Organization form, certified meeting minutes stating that the organization voted to conduct bingo at the licensed location, and confirmation of the accuracy of information provided on the application to conduct bingo. The Commission will notify the applicant of the required license fee and bond amounts within 21 [~~14~~] calendar days of receipt of the organization's intended playing location, days, times, and starting date.

§402.401. Temporary License.

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

(1) Bingo liability--Includes, but is not limited to, license fee, late license renewal fee, prize fee, penalty, interest, or administrative penalty.

[~~(2) Fee credit--An overpayment of a license fee.~~]

[~~(3) Fee refund--A return of money to a person who has a fee credit.~~]

(2) [~~(4)~~] Regular license--A license to conduct bingo that is effective for a period of one year or two years unless revoked or suspended by the Commission. A regular license may be referred to as an annual license.

(3) [~~(5)~~] Temporary license--A license to conduct bingo that is in effect for a single bingo occasion.

(b) General.

(1) Requirements. The Commission may not issue a temporary license if the applicant has failed to file a required report, failed to pay a bingo liability, [~~prize fee, penalty or interest, or~~] has not distributed the proceeds calculated on the quarterly report for a charitable purpose, or has a regular license in administrative hold.

(2) - (4) (No change.)

(5) Voluntary surrender of regular license.

(A) An authorized organization that no longer holds a regular license to conduct bingo may conduct any remaining designated temporary occasions so long as the total number of occasions does not exceed six per calendar year. If over six previously specified occasions remain, the licensed authorized organization must provide to the Commission written notification of no more than six of the dates of the temporary licenses that will be utilized. This notification must be provided within ten days of surrender of the regular license. The Commission will automatically revoke all temporary licenses in excess of the six per year and the organization will forfeit any license fees paid.

(B) (No change.)

(6) (No change.)

(c) (No change.)

(d) Regular license holder.

(1) (No change.)

(2) A regular license holder may submit an application for a temporary license by fax only if the organization has sufficient credit or escrow funds [~~license fees in its license fee account~~] with the Commission to cover the total number of temporary occasions requested.

(3) (No change.)

(4) The Commission may issue a temporary license to a regular license holder without listing the specific date or time of a bingo occasion. The temporary bingo occasion must be conducted at the same location as shown on the organization's regular license.

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

(D) [~~Credit or refund.~~] The Commission will not credit or refund a temporary license fee when an organization fails to timely notify the Commission of the playing date and time prior to the expiration of the regular license that was in effect when the temporary license was issued.

(E) (No change.)

(5) In accordance with Occupations Code, §2001.108(e), the Commission may issue to a regular license holder additional temporary licenses in excess of the number of temporary licenses specified under Occupations Code, §2001.103(e) if the following conditions are met:

(A) The regular license holder submits a completed application on the form prescribed by the Commission; [~~and~~]

(B) The date and times stated on the application are consistent with the day and times licensed to the organization that has ceased or will cease to conduct bingo as provided in Occupations Code, §2001.108; and[~~.~~]

(C) (No change.)

(6) If the organization is issued the amendment license filed under Occupations Code, §2001.108 prior to being issued the temporary license, the temporary license application shall be discontinued, and any temporary license fees submitted will be retained by the Commission [~~credited to the organization's license fee account~~].

(e) Non-regular license holder. A non-regular license holder that wishes to conduct a bingo occasion must file a complete application for a temporary license on a form prescribed by the Commission at least 30 calendar [~~working~~] days prior to the bingo occasion.

(1) If an organization has never received a temporary license or 3 years have elapsed since the organization last held a temporary bingo occasion, the organization must submit a Texas Application for [~~a~~] Temporary Bingo Occasions for Non-Licensed Organization - Section 2 [~~License to Conduct Charitable Bingo/Non-Regular License Holder/Section 2~~].

(2) Organizations who have held a temporary license occasion in the past three years may submit [~~a~~] Texas Application for a Temporary Bingo Occasions for Non-Licensed Organization - Section 1 [~~License to Conduct Charitable Bingo/Non-Regular License Holder/Section 1~~] to apply for a temporary license.

(f) Credits and Refunds.

(1) Except as otherwise provided in this subsection, temporary license fees submitted to the Commission are not eligible for refund or credit.

(2) If an organization applies for one or more temporary licenses and mistakenly submits more money than is actually required for the temporary license(s), the overpayment will be credited to the organization. The Commission will determine whether an overpayment has occurred on a case by case basis. Overpayments credited to an organization may be used for the organization's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date the temporary license fees were due. Overpayments credited to an organization remain eligible for refund under paragraph (3) of this subsection until the credits are used or the four year refund period expires, whichever comes first.

(3) An overpayment of a temporary license fee may be eligible for refund. In order for an overpayment to be refunded to an organization, an authorized representative of the organization must submit a complete written request for a refund to the Commission within four years of the latest date the temporary license fees were due. Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. The Commission will not certify that a refund is warranted if the requesting organization has any outstanding bingo liabilities to the State or has failed to file all necessary quarterly reports. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.

(4) An overpayment of a temporary license fee must either be used as credit or claimed for refund within four years of the latest date on which the temporary license fees were due. If an organization fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.

§402.404. License and Registry Fees.

(a) Definitions.

(1) [~~Application~~] Escrow Account--An account established with the Commission by an authorized organization in which funds may be deposited for the advance payment of temporary licenses and license amendments [~~A formal record of the debits and credits for application fees~~].

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

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

(d) License Renewal Fee.

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

(3) Upon written request by an organization to renew its license to conduct bingo or license to lease bingo premises that is in or going in administrative hold, the organization shall pay [~~may submit~~] a Class A license renewal fee, plus any amount due under paragraph (2) of this subsection, [~~of $132~~] in lieu of the recalculated fee amount from the preceding license period.

(4) (No change.)

(5) If an organization requests its license be placed in administrative hold upon the renewal of the license and submits the requisite fee as set in paragraph (3) of this subsection [~~an estimated Class A license fee~~], the Commission may require an organization to submit an additional license fee when it files an application to amend a license to conduct charitable bingo if the organization amends its license to begin conducting bingo within the first six months of the license term.

(6) If a commercial lessor or a licensed authorized organization which leases bingo premises requests its license be placed in administrative hold upon the renewal of its lessor license and submits the requisite fee as set in paragraph (3) of this subsection [~~an estimated Class A license fee~~], the Commission may require the commercial lessor or licensed authorized organization to submit an additional license fee when it files the application to amend a commercial license to lease bingo premises if the commercial lessor or licensed authorized organization amends its license to begin leasing bingo premises within the first six months of the license term.

(e) Two-Year License Fee Payments.

(1) (No change.)

(2) Two-Year License to Conduct Bingo or to Lease Bingo Premises Issued Before September 1, 2013:

(A) (No change.)

(B) An organization that places its license on administrative hold during the first year of a two year license period and elected to pay the second year by the first anniversary of the license effective date may pay a Class A license fee, plus any amount due under subsection (d)(2) of this section, [~~an estimated license fee of $132~~] for the second year of the license period.

(C) (No change.)

(f) Regular License Fee Recalculation.

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

(6) If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, the Commission shall average [~~estimate~~] the quarterly gross receipts or gross rental income for the [~~missing~~] quarter(s) reported to determine [~~recalculate~~] the organization's license fee.

[~~(A) The estimated annual gross receipts are determined by calculating the average gross receipts per occasion reported on the returns filed for the license period and multiplying by the number of occasions licensed per week and then multiplying by 52.~~]

[~~(B) The estimated gross rental income per quarter is determined by adding the gross rental income reported on the returns filed in the license period and dividing this number by the number of returns filed. The resulting number would then be multiplied by four to calculate the organization's license fee and to estimate the second year license fee of a two year license.~~]

(7) - (9) (No change.)

(10) If an organization issued a license that is effective for two years ceases to be licensed prior to conducting bingo in a quarter used to calculate the second year fee, a Class A license [$100] fee will apply for the second year of the license for the purposes of recalculating the license fee.

(g) Overpayment of License Fee.

(1) An overpayment of a bingo conductor's or commercial lessor's annual license fee may occur either through a recalculation of the license fee pursuant to subsection (f) of this section, or if a licensee or accounting unit mistakenly submits more money than is actually required for the license fee(s). An overpayment of a manufacturer's or distributor's annual license fee occurs if a licensee mistakenly submits more money than is actually required for the license fee(s). The Commission will determine whether an overpayment has occurred on a case by case basis.

(2) Upon a determination that an overpayment of an annual license fee has occurred, the Charitable Bingo Operations Division shall credit the overpayment to the licensee. Overpayments credited to a licensee may be used for the licensee's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date on which the annual license fee was due. Overpayments credited to a licensee remain eligible for refund under subsection (h) of this section until the credits are used or the four year refund period expires, whichever comes first.

(3) Overpayments of annual license fees must either be used as credit or claimed for refund within four years of the latest date on which the annual license fees were due. If a licensee fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.

[(1) An overpayment of a regular license fee based on the previous license period's recalculation is a credit and shall be applied to the license renewal license fee for the next license period.]

[(2) An organization may submit a written request to have the overpayment of a regular license fee based on the previous license period's recalculation applied to:]

[(A) outstanding liabilities;]

[(B) regular license fee for another license issued to the organization under the Bingo Enabling Act; or]

[(C) remain in the application escrow account.]

[(3) An organization may submit additional license fees to be placed in the application escrow account and applied toward future license applications.]

[(4) An accounting unit may submit additional license fees to be placed in an application escrow account and applied toward future license application for its members. At the time of submission of the additional license fees, the accounting unit must designate in writing the member organization to which the additional license fee payment applies.]

[(5) The unit's designated agent, unit manager or officer of the trustee organization may submit a written request to move excess license fee payments previously submitted from one active unit member's application escrow account to another active unit member's application account.]

(4) [(6)] All regular license fee overpayments submitted by an accounting unit for a unit member [payments] are only eligible to be credited or refunded to that unit member. [considered the property of the licensed authorized organization regardless of whether the license fee is submitted prior to joining the accounting unit or payment is made by the accounting unit. Any overpayment of license fee existing when the licensed authorized organization leaves a unit is considered the property of the licensed authorized organization and will be credited to the licensed authorized organization. Any underpayment of license fee when the licensed authorized organization leaves a unit is considered the liability of the licensed authorized organization.]

(h) Refunds [Refund of Payments].

(1) Except as provided by this subsection, regular license fees submitted to the Commission are not eligible for refund.

(2) A current or former licensee that submits an overpayment of a regular license fee may be eligible to receive a refund of that overpayment, provided that the licensee or former licensee:

(A) submits a complete written request for a refund to the Commission within four years of the latest date the regular license fees were due;

(B) does not have any other outstanding bingo liabilities to the State; and

(C) if applicable, files all necessary quarterly reports.

(3) Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.

[(1) Once an organization is no longer licensed, and if any outstanding liabilities exist, the license fee payment will be applied to the outstanding liability. Any balance from the license fee payment, after liabilities are paid, shall be refunded to the organization provided no other outstanding liabilities under the Bingo Enabling Act to the State exist. A refund will not be issued until all liabilities to the State under the Bingo Enabling Act have been paid and all quarterly reports have been filed and processed by the Commission.]

[(2) If an application for a license is denied, the Director may refund the application fee less the cost incurred by the Charitable Bingo Operations Division to process the application.]

[(3) If an application for an original license is withdrawn, the applicant's license fee may be refunded upon written request less a $100 processing fee.]

[(4) If the Commission serves the applicant for an original license with a notice of application denial and the applicant later withdraws the application, the Commission will refund the applicant's license fee, less a $400 processing fee, upon the applicant's written request.]

[(5) The Commission will refund to the licensed authorized organization any overpayment of regular license fee for a licensed authorized organization who was a member of a unit.]

(i) Transfer of Commercial License to Lease Bingo Premises.

(1) (No change.)

(2) A license fee [recalculation] credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee [recalculation] balance due for a license to lease bingo premises that was transferred during the term of the license

shall be the liability of the current license holder at the time of license renewal.

(j) Escrow Accounts. [~~The license fee in connection with a license to manufacture bingo supplies, distribute bingo supplies, or system service provider is not refundable.~~]

(1) An authorized organization may submit funds to the Commission to be placed in an escrow account and used for future temporary license fees or license amendment fees. However, any funds placed in, or otherwise credited to, an escrow account are not eligible for refund and must be used by the end of the licensee's subsequent license period. If a licensed authorized organization fails to use escrow account funds within this time period, the funds will be retained by the Commission.

(2) An accounting unit may submit funds to be placed in a unit member's escrow account and used for that member's future temporary license fees or license amendment fees. At the time of submission of the funds, the accounting unit must designate in writing the unit member's escrow account in which the funds will be placed. Funds placed in a unit member's escrow account are not eligible for refund and may not be transferred to another unit member's escrow account or otherwise credited to another unit member.

(k) Temporary Authorization to Conduct Bingo.

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

(3) If an organization conducting bingo pursuant to a temporary authorization does not become licensed to conduct bingo, the fee for the temporary authorization will be determined by the fee schedule for a license to conduct bingo set out in subsection (a)(3)(A) of this section [~~Occupations Code, §2001.104(a)~~].

(l) Registry of Approved Bingo Workers.

(1) A fee of $25 must accompany each Texas Application for Registry of Approved Bingo Workers, and each application to renew listing on the registry, submitted to the Commission on or after September 1, 2013. The Commission will not consider or act upon an application until the requisite fee is paid.

(2) Except as authorized by the Charitable Bingo Operations Director, or their designee, an application to renew listing on the registry received by the Commission more than 90 days prior to the expiration date of the current registry listing will be returned unprocessed by the Commission to the sender.

§402.410. Amendment of a License - General Provisions.

(a) - (d) (No change.)

(e) The fee to amend any license issued under the Bingo Enabling Act shall be $10.

(1) Except as otherwise provided in this subsection, fees submitted to the Commission to amend a license are not eligible for refund or credit.

(2) If a licensee applies for one or more amendments and mistakenly submits more money than is actually required for the amendment(s), the overpayment will be credited to the licensee. The Commission will determine whether an overpayment has occurred on a case by case basis. Overpayments credited to a licensee may be used for the licensee's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date the amendment fees were due. Overpayments credited to a licensee remain eligible for refund under paragraph (3) of this subsection until the credits are used or the four year refund period expires, whichever comes first.

(3) An overpayment of a license amendment fee may be eligible for refund. In order for an overpayment to be refunded to a licensee, an authorized representative of the licensee must submit a complete written request for a refund to the Commission within four years of the latest date the license amendment fees were due. Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. The Commission will not certify that a refund is warranted if the requesting licensee has any outstanding bingo liabilities to the State or has failed to file all necessary quarterly reports, if applicable. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.

(4) An overpayment of an amendment fee must either be used as credit or claimed for refund within four years of the latest date on which the amendment fees were due. If a licensee fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.

§402.411. License Renewal.

(a) - (l) (No change.)

(m) Except as authorized by the Charitable Bingo Operations Director, or their designee, license renewal applications received by the Commission more than 90 days prior to the current license expiration date will be returned unprocessed by the Commission to the sender.

§402.412. Signature Requirements.

(a) - (i) (No change.)

(j) Nothing in this section is intended to prohibit the use of electronic signatures that comply with the Texas Uniform Electronic Transactions Act, Chapter 322 of the Texas Business & Commerce Code.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405972
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 344-5012

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.4

The Texas Medical Board (Board) proposes an amendment to §185.4, concerning Procedural Rules for Licensure Applicants.

The amendment to §185.4 adds new subsection (h) with language providing that a person who has been determined ineligible for a license by the Physician Assistant Licensure Committee

may not reapply for a license prior to the expiration of one year from the date of the Physician Assistant Board's ratification of the Licensure Committee's determination of ineligibility and denial of licensure.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to clarify criteria for reapplication by applicants who have been determined ineligible for licensure by the Physician Assistant Board.

Mr. Freshour has also determined that for the first five-year period the amended section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§185.4. Procedural Rules for Licensure Applicants.

(a) - (g) (No change.)

(h) Re-Application for Licensure Prohibited. A person who has been determined ineligible for a license by the Licensure Committee may not reapply for a license prior to the expiration of one year from the date of the Board's ratification of the Licensure Committee's determination of ineligibility and denial of licensure.

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406094
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-7016

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.8

The Texas State Board of Pharmacy proposes amendments to §281.8 concerning Grounds for Discipline for a Pharmacy License. The amendments, if adopted, add failure to reimburse the board for expenses relating to an inspection of a non-resident pharmacy as grounds for discipline of a pharmacy's license.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendment will ensure non-resident pharmacies shipping prescription orders to residents of Texas are appropriately licensed. The fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section is difficult to determine since the expenses associated with each inspection will differ depending on numerous factors including the location of the pharmacy, and time required to conduct the inspection.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 23, 2015.

The amendments are proposed under §§551.002, 554.051, and 556.0551 of the Texas Pharmacy Act (Chapters 551-569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §556.0551 as authorizing the agency to require non-resident pharmacies to reimburse the board for expenses relating to an inspection of the pharmacy.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551-569, Texas Occupations Code.

§281.8. Grounds for Discipline for a Pharmacy License.

(a) (No change.)

(b) For the purposes of §565.002(a)(3) of the Act, it is grounds for discipline for a pharmacy license when:

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

(3) the pharmacy possesses or engages in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drugs:

(A) sold for export use only;

(B) purchased by a public or private hospital or other health care entity; or

(C) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3), and possessed by a pharmacy other than one owned by the charitable organization;

(D) provided that subparagraphs (A) - (C) of this paragraph do not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in paragraph

(2)(C)(ii) of this subsection to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules;

(v) the dispensing of a prescription drug pursuant to a valid prescription drug order to the extent otherwise permitted by law; [~~or~~]

(4) the pharmacy engages in the sale, purchase, or trade or the offer to sell, purchase, or trade of:

(A) misbranded prescription drugs; or

(B) prescription drugs beyond the manufacturer's expiration date.

(5) the owner or managing officer has previously been disciplined by the board; or[~~,~~]

(6) a non-resident pharmacy fails to reimburse the board or its designee for all expenses, including travel, incurred by the board in inspecting the non-resident pharmacy as specified in §556.0551 of the Act.

(c) (No change.)

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406096
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-8073

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1, §291.3

The Texas State Board of Pharmacy proposes amendments to §291.1 concerning Pharmacy License Application and §291.3 concerning Required Notifications. The amendments to §291.1, if adopted, update the requirements for a pharmacy license application to include copies of the owners' or managing officers' driver's licenses; an approved credit application showing credit worthiness; the entities' business filing structure; and a current certificate of good standing from the state where the entity is located. The amendments, if adopted, also remove items no longer required for a pharmacy license application and eliminate the requirements for pharmacies owned by management companies. The amendments to §291.3, if adopted, update the notification for a pharmacy that changes managing officers to include copies of the managing officers' driver's licenses, state issued photo identification or passport; clarify the requirements for a change of ownership; eliminate the references to pharmacies owned by management companies; and add class A-S and C-S pharmacies to the change of pharmacist-in-charge notification requirements.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure pharmacies applying for a license have the appropriate credentials in order to receive a pharmacy license. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with these sections.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 23, 2015.

The amendments are proposed under §551.002 and §554.051, of the Texas Pharmacy Act (Chapters 551-569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551-569, Texas Occupations Code.

§291.1. Pharmacy License Application.

(a) To qualify for a pharmacy license, the applicant must submit an application including the following information:

(1) name and address of pharmacy;

(2) type of ownership;

(3) names, addresses, phone numbers, dates of birth, copies of [~~and~~] social security cards, and copies of current driver's licenses, state issued photo identification cards, or passports of all owners, or of all managing officers if the pharmacy is owned by a partnership or corporation. If [~~numbers; however, if~~] an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number[~~, of all owners; if a partnership or corporation, for all managing officers, the name, title, addresses, phone numbers, dates of birth, and social security numbers; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number~~];

(4) name and license number of the pharmacist-in-charge [~~and of other pharmacists employed by the pharmacy~~];

(5) name(s) and license number(s) of other pharmacists employed by the pharmacy;

(6) [~~(5)~~] anticipated date of opening and hours of operation;

(7) [~~(6)~~] copy of lease agreement or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;

(8) [~~(7)~~] the signature of the pharmacist-in-charge;

(9) [~~(8)~~] the notarized signature of the owner, or if the pharmacy is owned by a partnership or corporation, the notarized signature of an owner or managing officer;

(10) [~~(9)~~] federal tax ID number of the owner;

(11) [~~(10)~~] description of business services that will be offered;

(12) [~~(11)~~] name and address of malpractice insurance carrier or statement that the business will be self-insured;

(13) an approved credit application from a primary wholesaler or other documents showing credit worthiness as approved by the board;

(14) official copy of the business formation documents filed with the Secretary of State;

(15) a current certificate of Good Standing for the business structure from the state where the business structure is located; and

[~~(12) the certificate of authority, if applicant is an out-of-state corporation;~~]

[~~(13) the articles of incorporation, if the applicant is a corporation;~~]

[~~(14) a current Texas Franchise Tax Certificate of Good Standing; and~~]

(16) [~~(15)~~] any other information requested on the application.

[~~(b) Subsection (c) of this section applies to new pharmacy applications for Class A (Community), Class C (Institutional), or Class F (Freestanding Emergency Medical Care Center) pharmacies owned by a management company with the following exceptions.~~]

[~~(1) Subsection (c) of this section does not apply to a new pharmacy application submitted by an entity which already owns a pharmacy licensed in Texas.~~]

[~~(2) Subsection (c)(1) and (3) of this section do not apply to each individual owner or managing officer listed on a new pharmacy application if the individual possesses an active pharmacist license in Texas.~~]

[~~(c) If the pharmacy is to be licensed as a Class A (Community), Class C (Institutional), or Class F (Freestanding Emergency Medical Care Center) pharmacy owned by a management company, the applicant must submit copies of the following documents in addition to the information required in subsection (a) of this section:~~]

[~~(1) the birth certificate or passport of each individual owner, or, if the pharmacy is owned by a partnership or a closely held corporation:~~]

[~~(A) one of these documents for each managing officer; and~~]

[~~(B) a list of all owners of the corporation;~~]

[~~(2) an approved credit application from a primary wholesaler or other documents showing credit worthiness as approved by the board; and~~]

[~~(3) a current driver license or state issued photo ID card of each individual owner, or, if the pharmacy is owned by a partnership or a closely held corporation, a current driver license or state issued photo ID card for each managing officer.~~]

(b) [~~(d)~~] The applicant may be required to meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs. The criminal history information may be required for each individual owner, or if the pharmacy is owned by a partnership or a closely held corporation for each managing officer.

(c) [~~(e)~~] A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a pharmacy license.

(d) [~~(f)~~] For purpose of this section, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(e) [~~(g)~~] Prior to the issuance of a license for a pharmacy located in Texas, the board shall conduct an on-site inspection of the pharmacy in the presence of the pharmacist-in-charge and owner or representative of the owner, to ensure that the pharmacist-in-charge and owner can meet the requirements of the Texas Pharmacy Act and Board Rules.

(f) [~~(h)~~] If the applicant holds an active pharmacy license in Texas on the date of application for a new pharmacy license or for other good cause shown as specified by the board, the board may waive the pre-inspection as set forth in subsection (e) [~~(g)~~] of this section.

§291.3. Required Notifications.

(a) (No change.)

(b) Change of Managing Officers.

(1) The owner of a pharmacy shall notify the board in writing within 10 days of a change of any managing officer of a partnership or corporation which owns a pharmacy. The written notification shall include the effective date of such change and the following information for all managing officers:

(A) name and title;

(B) home address and telephone number;

(C) date of birth; [~~and~~]

(D) a copy of social security card; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and [~~number.~~]

(E) a copy of current driver's license, state issued photo identification card, or passport.

(2) For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(c) Change of Ownership.

(1) When a pharmacy changes ownership, a new pharmacy application must be filed with the board following the procedures as specified in §291.1 of this title (relating to Pharmacy License Application). In addition, a copy of the purchase contract or mutual agreement between the buyer and seller must be submitted. [~~a new/completed~~

pharmacy application must be filed with the board and the licensed issued to previous owner shall be returned to the board.]

(2) The license issued to the previous owner must be returned to the board. [The new application shall include the following information:]

[(A) the name and address of pharmacy;]

[(B) the type of ownership;]

[(C) the names, home addresses, dates of birth, phone numbers, and social security numbers of all owners; if a partnership or corporation, the name, title, home address, home phone number, date of birth, and social security number of all managing officers;]

[(D) the name and license number of the pharmacist-in-charge and of other pharmacists employed by the pharmacy;]

[(E) a copy of lease agreement or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;]

[(F) a copy of the purchase contract or mutual agreement between the buyer and seller, or a notarized statement of intent to convey ownership signed by both the buyer and seller, stating the proposed date of ownership change;]

[(G) the signature of the pharmacist-in-charge;]

[(H) the notarized signature of the owner, or if the pharmacy is owned by a partnership or corporation, the notarized signature of an owner or managing officer;]

[(I) federal tax ID number;]

[(J) description of business services that will be offered;]

[(K) name and address of malpractice insurance carrier or statement that the business will be self-insured;]

[(L) the certificate of authority, if applicant is an out-of-state corporation;]

[(M) the articles of incorporation, if the applicant is a corporation;]

[(N) a current Texas Franchise Tax Certificate of Good Standing; and]

[(O) any other information requested on the application.]

[(3) Paragraph (4) of this subsection applies to all change of ownership applications for Class A (Community pharmacies, Class C (Institutional) pharmacies, or Class F Freestanding Emergency Medical Care Center) pharmacies, owned by a management company with the following exceptions.]

[(A) Paragraph (4) of this subsection does not apply to a change of ownership application submitted by an entity which already owns a pharmacy licensed in Texas.]

[(B) Paragraph (4)(A) and (C) of this subsection do not apply to each individual owner or managing officer listed on a new pharmacy application if the individual possesses an active pharmacist license in Texas.]

[(4) If the pharmacy is to be licensed as a Class A (Community) pharmacy, a Class C (Institutional) pharmacy, or a Class F (Freestanding Emergency Medical Care Center) pharmacy owned by a management company, the applicant must submit copies of the following documents in addition to the information required in paragraph (2) of this subsection:]

[(A) the birth certificate, passport, or other document proving the date of birth of the owner, or, if the pharmacy is owned by a partnership or a closely held corporation:]

[(i) one of these documents for each managing officer; and]

[(ii) a list of all owners of the corporation;]

[(B) an approved credit application from a primary wholesaler or other documents showing credit worthiness as approved by the board; and]

[(C) a current driver license or state issued photo ID card of each individual owner, or, if the pharmacy is owned by a partnership or a closely held corporation, a current driver license or state issued photo ID card for each managing officer.]

(3) [(5)] A fee as specified in §291.6 of this title will be charged for issuance of a new license.

(d) Change of Pharmacist Employment.

(1) Change of pharmacist employed in a pharmacy. When a change in pharmacist employment occurs, the pharmacist shall report such change in writing to the board within 10 days.

(2) Change of pharmacist-in-charge of a pharmacy.

(A) On the date of change of the pharmacist-in-charge of a Class A [(Community)], Class A-S, Class C [(Institutional)], Class C-S, or Class F [(Freestanding Emergency Medical Care Center)] pharmacy, an inventory specified in §291.17 of this title (relating to Inventory Requirements) shall be taken.

(B) This inventory shall constitute, for the purpose of this section, the closing inventory of the departing pharmacist-in-charge and the beginning inventory of the incoming pharmacist-in-charge.

(C) If the departing and the incoming pharmacists-in-charge are unable to conduct the inventory together, a closing inventory shall be conducted by the departing pharmacist-in-charge and a new and separate beginning inventory shall be conducted by the incoming pharmacist-in-charge.

(D) The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days in writing on a form provided by the board that a change of pharmacist-in-charge has occurred. The notification shall include the following:

(i) the name and license number of the departing pharmacist-in-charge;

(ii) the name and license number of the incoming pharmacist-in-charge;

(iii) the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and

(iv) a statement signed by the incoming pharmacist-in-charge attesting that:

(I) an inventory has been conducted by the departing and incoming pharmacists-in-charge; if the inventory was not taken by both pharmacists, the statement shall provide an explanation; and

(II) the incoming pharmacist-in-charge has read and understands the laws and rules relating to this class of pharmacy.

(e) (No change.)

(f) Fire or Other Disaster. If a pharmacy experiences a fire or other disaster, the following requirements are applicable.

(1) Responsibilities of the pharmacist-in-charge.

(A) The pharmacist-in-charge shall be responsible for reporting the date of the fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of the injury, illness, and disease; such notification shall be immediately reported to the board, but in no event shall exceed 10 days from the date of the disaster.

(B) The pharmacist-in-charge or designated agent shall comply with the following procedures.

(i) If controlled substances, dangerous drugs, or Drug Enforcement Administration (DEA) order forms are lost or destroyed in the disaster, the pharmacy shall:

(I) notify the DEA, Department of Public Safety (DPS), and Texas State Board of Pharmacy (board) of the loss of the controlled substances or order forms. A pharmacy shall be in compliance with this section by submitting to each of these agencies a copy of the DEA's report of theft or loss of controlled substances, DEA Form-106, immediately on discovery of the loss; and

(II) notify the board [~~Texas State Board of Pharmacy~~] in writing of the loss of the dangerous drugs by submitting a list of the dangerous drugs lost.

(ii) If the extent of the loss of controlled substances or dangerous drugs is not able to be determined, the pharmacy shall:

(I) take a new, complete inventory of all remaining drugs specified in §291.17(c) of this title (relating to Inventory Requirements);

(II) submit to DEA and DPS a statement attesting that the loss of controlled substances is indeterminable and that a new, complete inventory of all remaining controlled substances was conducted and state the date of such inventory; and

(III) submit to the board a statement attesting that the loss of controlled substances and dangerous drugs is indeterminable and that a new, complete inventory of the drugs specified in §291.17(c) of this title was conducted and state the date of such inventory.

(C) If the pharmacy changes to a new, permanent location, the pharmacist-in-charge shall comply with subsection (a) of this section.

(D) If the pharmacy moves to a temporary location, the pharmacist shall comply with subsection (a) of this section. If the pharmacy returns to the original location, the pharmacist-in-charge shall again comply with subsection (a) of this section.

(E) If the pharmacy closes due to fire or other disaster, the pharmacy may not be closed for longer than 90 days as specified in §291.11 of this title (relating to Operation of [~~Operating~~] a Pharmacy).

(F) If the pharmacy discontinues business (ceases to operate as a pharmacy), the pharmacist-in-charge shall comply with §291.5 of this title (relating to Closing a Pharmacy).

(G) The pharmacist-in-charge shall maintain copies of all inventories, reports, or notifications required by this section for a period of two years.

(2) (No change.)

(g) - (h) (No change.)

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406097
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-8073

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy proposes amendments to §291.133 concerning Pharmacies Compounding Sterile Preparations. The amendments, if adopted, add a definition for compounding personnel; clarify the in-process checks and evaluation of aseptic technique procedures; require media-fill tests for the most challenging or stressful conditions; and update requirements to be consistent with USP 797 requirements.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure pharmacies are preparing sterile preparations under appropriate and safe conditions. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 23, 2015.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551-569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551-569, Texas Occupations Code.

§291.133. Pharmacies Compounding Sterile Preparations.

(a) (No change.)

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (16) (No change.)

(17) Compounding Personnel--A pharmacist, pharmacy technician, or pharmacy technician trainee who performs the actual compounding; a pharmacist who supervises pharmacy technicians or pharmacy technician trainees compounding sterile preparations, and a pharmacist who performs an intermediate or final verification of a compounded sterile preparation.

(18) [~~(17)~~] Critical Area--An ISO Class 5 environment.

(19) [~~(18)~~] Critical Sites--A location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampuls, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

(20) [~~(19)~~] Device--An instrument, apparatus, implement, machine, contrivance, implant, in-vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(21) [~~(20)~~] Direct Compounding Area--A critical area within the ISO Class 5 primary engineering control where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(22) [~~(21)~~] Disinfectant--An agent that frees from infection, usually a chemical agent but sometimes a physical one, and that destroys disease-causing pathogens or other harmful microorganisms but may not kill bacterial and fungal spores. It refers to substances applied to inanimate objects.

(23) [~~(22)~~] First Air--The air exiting the HEPA filter in a unidirectional air stream that is essentially particle free.

(24) [~~(23)~~] Hazardous Drugs--Drugs that, studies in animals or humans indicate exposure to the drugs, have a potential for causing cancer, development or reproductive toxicity, or harm to organs.

(25) [~~(24)~~] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(26) [~~(25)~~] HVAC--Heating, ventilation, and air conditioning.

(27) [~~(26)~~] Immediate use--A sterile preparation that is not prepared according to USP 797 standards (i.e., outside the pharmacy and most likely not by pharmacy personnel) which shall be stored for no longer than one hour after completion of the preparation.

(28) [~~(27)~~] IPA--Isopropyl alcohol (2-propanol).

(29) [~~(28)~~] Labeling--All labels and other written, printed, or graphic matter on an immediate container of an article or preparation or on, or in, any package or wrapper in which it is enclosed, except any outer shipping container. The term "label" designates that part of the labeling on the immediate container.

(30) [~~(29)~~] Media-Fill Test--A test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as Soybean-Casein Digest Medium is substituted for the actual drug preparation to simulate admixture compounding. The issues to consider in the development of a media-fill test are the following: media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(31) [~~(30)~~] Multiple-Dose Container--A multiple-unit container for articles or preparations intended for potential administration only and usually contains antimicrobial preservatives. The beyond-use date for an opened or entered (e.g., needle-punctured) multiple-dose container with antimicrobial preservatives is 28 days, unless otherwise specified by the manufacturer.

(32) [~~(31)~~] Negative Pressure Room--A room that is at a lower pressure compared to adjacent spaces and, therefore, the net flow of air is into the room.

(33) [~~(32)~~] Office use--The administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 562 of the Act, or for administration or provision by a veterinarian in accordance with §563.054 of the Act.

(34) [~~(33)~~] Pharmacy Bulk Package--A container of a sterile preparation for potential use that contains many single doses. The contents are intended for use in a pharmacy admixture program and are restricted to the preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile syringes. The closure shall be penetrated only one time after constitution with a suitable sterile transfer device or dispensing set, which allows measured dispensing of the contents. The pharmacy bulk package is to be used only in a suitable work area such as a laminar flow hood (or an equivalent clean air compounding area).

(35) [~~(34)~~] Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(36) [~~(35)~~] Preparation or Compounded Sterile Preparation--A sterile admixture compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber. The components of the preparation may or may not be sterile products.

(37) [~~(36)~~] Primary Engineering Control--A device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding sterile preparations. Such devices include, but may not be limited to, laminar airflow workbenches, biological safety cabinets, compounding aseptic isolators, and compounding aseptic containment isolators.

(38) [~~(37)~~] Product--A commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the U.S. Food and Drug Administration (FDA). Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

(39) [~~(38)~~] Positive Control--A quality assurance sample prepared to test positive for microbial growth.

(40) [~~(39)~~] Positive Pressure Room--A room that is at a higher pressure compared to adjacent spaces and, therefore, the net airflow is out of the room.

(41) [~~(40)~~] Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(42) [~~(41)~~] Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predeter-

mined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(43) [~~(42)~~] Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(44) [~~(43)~~] Segregated Compounding Area--A designated space, either a demarcated area or room, that is restricted to preparing low-risk level compounded sterile preparations with 12-hour or less beyond-use date. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of compounded sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

(45) [~~(44)~~] Single-dose container--A single-unit container for articles or preparations intended for parenteral administration only. It is intended for a single use. A single-dose container is labeled as such. Examples of single-dose containers include pre-filled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

(46) [~~(45)~~] SOPs--Standard operating procedures.

(47) [~~(46)~~] Sterilizing Grade Membranes--Membranes that are documented to retain 100% of a culture of 107 microorganisms of a strain of Brevundimonas (Pseudomonas) diminuta per square centimeter of membrane surface under a pressure of not less than 30 psi (2.0 bar). Such filter membranes are nominally at 0.22-micrometer [~~µm~~] or 0.2-micrometer [~~µm~~] nominal pore size, depending on the manufacturer's practice.

(48) [~~(47)~~] Sterilization by Filtration--Passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

(49) [~~(48)~~] Terminal Sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10-6 or a probability of less than one in one million of a non-sterile unit.

(50) [~~(49)~~] Unidirectional Flow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(51) [~~(50)~~] USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) Personnel.

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

(3) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Prior to September 1, 2015 - initial training and continuing education. In addition to specific qualifications for registration, all pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:

(i) have initial training obtained either through completion of:

(I) a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training may be obtained through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience; or

(II) a training program which is accredited by the American Society of Health-System Pharmacists. Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided:

(-a-) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection;

(-c-) the supervising pharmacist conducts periodic in-process checks as documented in the pharmacy's policy and procedures and a final check [~~checks~~].

(ii) acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in paragraph (2) of this subsection or this paragraph.

(C) Effective September 1, 2015 - initial training and continuing education.

(i) Pharmacy technicians and pharmacy technician trainees may compound sterile preparations provided the pharmacy technicians and/or pharmacy technician trainees are supervised by a pharmacist who has completed the training specified in paragraph (2) of this subsection, conducts in-process and final checks, and affixes his or her initials to the appropriate quality control records.

(ii) All pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall comply with the following:

(I) complete through completion of a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience;

(II) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures the areas. Such training may

not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(III) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(iii) Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided:

(I) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection; and

(III) the supervising pharmacist conducts in-process and final checks.

(iv) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding, is qualified and has completed training as specified in paragraph (2) of this subsection or this paragraph.

(v) In order to renew a registration as a pharmacy technician, during the previous registration period, a pharmacy technician engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacy technician is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if pharmacy technician is engaged in compounding high risk sterile preparations.

(4) Evaluation and testing requirements.

(A) All pharmacy personnel preparing sterile preparations shall be trained conscientiously and skillfully by expert personnel through multimedia instructional sources and professional publications in the theoretical principles and practical skills of aseptic manipulations, garbing procedures, aseptic work practices, achieving and maintaining ISO Class 5 environmental conditions, and cleaning and disinfection procedures before beginning to prepare compounded sterile preparations.

(B) All pharmacy personnel preparing sterile preparations shall perform didactic review and pass written and media-fill testing of aseptic manipulative skills initially followed by:

(i) every 12 months for low- and medium-risk level compounding; and

(ii) every six months for high-risk level compounding.

(C) Pharmacy personnel who fail written tests or whose media-fill test vials result in gross microbial colonization shall:

(i) be immediately re-instructed and re-evaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies; and

(ii) not be allowed to compound sterile preparations for patient use until passing results are achieved.

(D) The didactic and experiential training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) structure and engineering controls related to facilities;

(v) equipment and supplies;

(vi) sterile preparation calculations and terminology;

(vii) sterile preparation compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures including proper gowning and gloving technique;

(x) handling of hazardous drugs, if applicable;

(xi) cleaning procedures; and

(xii) general conduct in the clean room.

(E) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile preparations shall be observed and evaluated by expert personnel as satisfactory through written and practical tests, and media-fill challenge testing, and such evaluation documented. Compounding personnel shall not evaluate their own aseptic technique or results of their own media-fill challenge testing.

(F) Media-fill tests must be conducted at each pharmacy where an individual compounds sterile preparations. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(G) Media-fill tests procedures for assessing the preparation of specific types of sterile preparations shall be representative of the most challenging or stressful conditions encountered by the pharmacy personnel being evaluated [~~for each risk level~~] and, if applicable, for sterilizing high-risk level compounded sterile preparations.

(H) Media-fill challenge tests simulating high-risk level compounding shall be used to verify the capability of the compounding environment and process to produce a sterile preparation.

(I) Commercially available sterile fluid culture media, such as Soybean-Casein Digest Medium shall be able to promote exponential colonization of bacteria that are most likely to be transmitted to compounding sterile preparations from the compounding personnel

and environment. Media-filled vials are generally incubated at 20 to 25 or at 30 to 35 for a minimum of 14 days. If two temperatures are used for incubation of media-filled samples, then these filled containers should be incubated for at least 7 days at each temperature. Failure is indicated by visible turbidity in the medium on or before 14 days.

(J) The pharmacist-in-charge shall ensure continuing competency of pharmacy personnel through in-service education, training, and media-fill tests to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis for low- and medium-risk level compounding, and every six months for high-risk level compounding.

(K) The pharmacist-in-charge shall ensure that proper hand hygiene and garbing practices of compounding personnel are evaluated prior to compounding, supervising, or verifying sterile preparations intended for patient use and whenever an aseptic media-fill is performed.

(i) Sampling of compounding personnel glove fingertips shall be performed for all risk level compounding.

(ii) All compounding personnel shall demonstrate competency in proper hand hygiene and garbing procedures and in aseptic work practices (e.g., disinfection of component surfaces, routine disinfection of gloved hands).

(iii) Sterile contact agar plates shall be used to sample the gloved fingertips of compounding personnel after garbing in order to assess garbing competency and after completing the media-fill preparation (without applying sterile 70% IPA).

(iv) The visual observation shall be documented and maintained to provide a permanent record and long-term assessment of personnel competency.

(v) All compounding personnel shall successfully complete an initial competency evaluation and gloved fingertip/thumb sampling procedure no less than three times before initially being allowed to compound sterile preparations for patient use. Immediately after the compounding personnel completes the hand hygiene and garbing procedure (i.e., after donning of sterile gloves and before any disinfecting [~~e.g., donning of sterile gloves prior to any disinfection~~] with sterile 70% IPA), the evaluator will collect a gloved fingertip and thumb sample from both hands of [~~from~~] the compounding personnel onto agar plates or media test paddles by having the individual lightly touching [~~pressing~~] each fingertip onto [~~into~~] the agar. The test plates will be incubated for the appropriate incubation period and at the appropriate temperature. Results of the initial gloved fingertip evaluations shall indicate zero colony-forming units (0 CFU) growth on the agar plates, or the test shall be considered a failure. In the event of a failed gloved fingertip test, the evaluation shall be repeated until the individual can successful don sterile gloves and pass the gloved fingertip evaluation, defined as zero CFUs growth. No preparation intended for patient use shall be compounded by an individual until the results of the initial gloved fingertip evaluation indicate that the individual can competently perform aseptic procedures except that a pharmacist may temporarily supervise pharmacy technicians compounding sterile preparations while waiting for the results of the evaluation for no more than three days. [~~Re-evaluation of all compounding personnel shall occur at least annually for compounding personnel who compound low and medium risk level preparations and every six months for compounding personnel who compound high risk level preparations.~~]

(vi) Re-evaluation of all compounding personnel shall occur at least annually for compounding personnel who compound low and medium risk level preparations and every six months for compounding personnel who compound high risk level preparations. Results of gloved fingertip tests conducted immediately after compounding personnel complete a compounding procedure shall indicate no more than 3 CFUs growth, or the test shall be considered a failure, in which case, the evaluation shall be repeated until an acceptable test can be achieved (i.e., the results indicated no more than 3 CFUs growth).

(L) The pharmacist-in-charge shall ensure surface sampling shall be conducted in all ISO classified areas on a periodic basis. Sampling shall be accomplished using contact plates at the conclusion of compounding. The sample area shall be gently touched with the agar surface by rolling the plate across the surface to be sampled.

(5) Documentation of Training. The pharmacy shall maintain a record of the training and continuing education on each person who compounds sterile preparations. The record shall contain, at a minimum, a written record of initial and in-service training, education, and the results of written and practical testing and media-fill testing of pharmacy personnel. The record shall be maintained and available for inspection by the board and contain the following information:

(A) name of the person receiving the training or completing the testing or media-fill tests;

(B) date(s) of the training, testing, or media-fill challenge testing;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or media-fill challenge testing; and

(E) signature or initials of the person receiving the training or completing the testing or media-fill challenge testing and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or media-fill challenge testing of personnel.

(d) Operational Standards.

(1) (No change.)

(2) Microbial Contamination Risk Levels. Risk Levels for sterile compounded preparations shall be as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF and as listed in this paragraph.

(A) Low-risk level compounded sterile preparations.

(i) Low-Risk conditions. Low-risk level compounded sterile preparations are those compounded under all of the following conditions.

(I) The compounded sterile preparations are compounded with aseptic manipulations entirely within ISO Class 5 or better air quality using only sterile ingredients, products, components, and devices.

(II) The compounding involves only transfer, measuring, and mixing manipulations using not more than three commercially manufactured packages of sterile products and not more than two entries into any one sterile container or package (e.g., bag,

vial) of sterile product or administration container/device to prepare the compounded sterile preparation.

(III) Manipulations are limited to aseptically opening ampuls, penetrating disinfected stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices, package containers of other sterile products, and containers for storage and dispensing.

(IV) For a low-risk preparation, in the absence of direct sterility testing results or appropriate information sources that justify different limits, the storage periods may not exceed the following periods: before administration the compounded sterile preparation is stored properly and are exposed for not more than 48 hours at controlled room temperature, for not more than 14 days if stored at a cold temperature, and for 45 days if stored in a frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius. For delayed activation device systems, the storage period begins when the device is activated.

(ii) Examples of Low-Risk Compounding. Examples of low-risk compounding include the following.

(I) Single volume transfers of sterile dosage forms from ampuls, bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. The solution content of ampules shall be passed through a sterile filter to remove any particles.

(II) Simple aseptic measuring and transferring with not more than three packages of manufactured sterile products, including an infusion or diluent solution to compound drug admixtures and nutritional solutions.

(B) Low-Risk Level compounded sterile preparations with 12-hour or less beyond-use date. Low-risk level compounded sterile preparations are those compounded pursuant to a physician's order for a specific patient under all of the following conditions.

(i) The compounded sterile preparations are compounded in compounding aseptic isolator or compounding aseptic containment isolator that does not meet the requirements described in paragraph (7)(C) or (D) of this subsection (relating to Primary Engineering Control Device) [~~(6)(A)(ii)(II) of this subsection relating to Low and Medium Risk Preparations~~] or the compounded sterile preparations are compounded in laminar airflow workbench or a biological safety cabinet that cannot be located within an ISO Class 7 buffer area.

(ii) The primary engineering control device shall be certified and maintain ISO Class 5 for exposure of critical sites and shall be located in a segregated compounding area restricted to sterile compounding activities that minimizes the risk of contamination of the compounded sterile preparation.

(iii) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction sites, warehouses, or food preparation.

(iv) For a low-risk preparation compounded as described in clauses (i) - (iii) of this subparagraph, administration of such compounded sterile preparations must commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less.

(C) Medium-risk level compounded sterile preparations.

(i) Medium-Risk Conditions. Medium-risk level compounded sterile preparations, are those compounded aseptically under low-risk conditions and one or more of the following conditions exists.

(I) Multiple individual or small doses of sterile products are combined or pooled to prepare a compounded sterile preparation that will be administered either to multiple patients or to one patient on multiple occasions.

(II) The compounding process includes complex aseptic manipulations other than the single-volume transfer.

(III) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing (e.g., reconstitution of intravenous immunoglobulin or other intravenous protein products).

(IV) The compounded sterile preparations do not contain broad spectrum bacteriostatic substances and they are administered over several days (e.g., an externally worn infusion device).

(V) For a medium-risk preparation, in the absence of direct sterility testing results the beyond use dates may not exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature, for not more than 9 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(ii) Examples of medium-risk compounding. Examples of medium-risk compounding include the following.

(I) Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.

(II) Filling of reservoirs of injection and infusion devices with more than three sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed.

(III) Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit).

(IV) Transfer of volumes from multiple ampuls or vials into a single, final sterile container or product.

(D) High-risk level compounded sterile preparations.

(i) High-risk Conditions. High-risk level compounded sterile preparations are those compounded under any of the following conditions.

(I) Non-sterile ingredients, including manufactured products not intended for sterile routes of administration (e.g., oral) are incorporated or a non-sterile device is employed before terminal sterilization.

(II) Any of the following are exposed to air quality worse than ISO Class 5 for more than 1 hour:

(-a-) sterile contents of commercially manufactured products;

(-b-) CSPs that lack effective antimicrobial preservatives; and

(-c-) sterile surfaces of devices and containers for the preparation, transfer, sterilization, and packaging of CSPs.

(III) Compounding personnel are improperly garbed and gloved.

(IV) Non-sterile water-containing preparations are exposed no more than 6 hours before being sterilized.

(V) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients.

(VI) For a sterilized high-risk level preparation, in the absence of passing a sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature, for not more than 3 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(VII) All non-sterile measuring, mixing, and purifying devices are rinsed thoroughly with sterile, pyrogen-free water, and then thoroughly drained or dried immediately before use for high-risk compounding. All high-risk compounded sterile solutions subjected to terminal sterilization are prefiltered by passing through a filter with a nominal pore size not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter. Sterilization of high-risk level compounded sterile preparations by filtration shall be performed with a sterile 0.2 micrometer or 0.22 micrometer nominal pore size filter entirely within an ISO Class 5 or superior air quality environment.

(ii) Examples of high-risk compounding. Examples of high-risk compounding include the following.

(I) Dissolving non-sterile bulk drug powders to make solutions, which will be terminally sterilized.

(II) Exposing the sterile ingredients and components used to prepare and package compounded sterile preparations to room air quality worse than ISO Class 5 for more than one hour.

(III) Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed.

(IV) Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

(3) - (5) (No change.)

(6) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination from contacting critical sites.

(A) Low and Medium Risk Preparations.

[(i)] A pharmacy that prepares low- and medium-risk preparations shall have a clean room for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room shall:

(i) [(I)] be clean, well lit, and of sufficient size to support sterile compounding activities;

(ii) [(II)] be maintained at a comfortable temperature (e.g., 20 degrees Celsius or cooler) allowing compounding personnel to perform flawlessly when attired in the required aseptic compounding garb;

(iii) [(III)] be used only for the compounding of sterile preparations;

(iv) [(IV)] be designed such that hand sanitizing and gowning occurs outside the buffer area but allows hands-free access by compounding personnel to the buffer area;

(v) [(V)] have non-porous and washable floors or floor covering to enable regular disinfection;

(vi) [(VI)] be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;

(vii) [(VII)] have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), non-shedding and resistant to damage by disinfectant agents;

(viii) [(VIII)] have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;

(ix) [(IX)] have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(x) [(X)] contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the clean room;

(xi) [(XI)] contain an ante-area that provides at least an ISO class 8 air quality and contains a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination; and

(xii) [(XII)] contain a buffer area designed to maintain at least ISO Class 7 conditions for 0.5-micrometer [µm] and larger particles under dynamic working conditions. The following is applicable for the buffer area.

(I) [(-a-)] There shall be some demarcation designation that delineates the ante-area from the buffer area. The demarcation shall be such that it does not create conditions that could adversely affect the cleanliness of the area.

(II) [(-b-)] The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored.

(III) [(-c-)] A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(IV) [(-d-)] The buffer area shall not contain sources of water (i.e., sinks) or floor drains.

[(ii) The pharmacy shall prepare sterile preparations in a primary engineering control device, such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator, compounding aseptic containment isolator which is capable of maintaining at least ISO Class 5 conditions for 0.5-µm particles while compounding sterile preparations.]

[(I) The primary engineering control shall:]

[(-a-) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system.]

[(-b-) be certified by a qualified independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and

whenever the device or room is relocated or altered or major service to the facility is performed, in accordance with the manufacturer's specifications and test procedures specified in the Institute of Environmental Sciences and Technology (IEST) document IEST-RP-CC002.3;]

[(-c-) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and]

[(-d-) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column.]

[(II) The compounding aseptic isolator or compounding aseptic containment isolator must be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions.]

[(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.]

[(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.]

[(-c-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.]

(B) High-risk Preparations.

(i) In addition to the requirements in subparagraph (A) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer area that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(ii) Presterilization procedures for high-risk level compounded sterile preparations, such as weighing and mixing, shall be completed in no worse than an ISO Class 8 environment.

(C) Automated compounding device. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a daily basis, based on the manufacturer's recommendations, and review the results at least weekly.

(D) Hazardous drugs. If the preparation is hazardous, the following is also applicable.

(i) [General.]

[(I)] Hazardous drugs shall be prepared only under conditions that protect personnel during preparation and storage.

(ii) [(II)] Hazardous drugs shall be stored separately from other inventory in a manner to prevent contamination and personnel exposure.

(iii) [(III)] All personnel involved in the compounding of hazardous drugs shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving at all times when handling hazardous drugs, including receiving, distribution, stocking, inventorying, preparation, for administration and disposal.

(iv) [(IV)] Appropriate safety and containment techniques for compounding hazardous drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations.

(v) [(V)] Disposal of hazardous waste shall comply with all applicable local, state, and federal requirements.

(vi) [(VI)] Prepared doses of hazardous drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with hazardous agents.

[(ii) Primary engineering control device. Hazardous drugs shall be prepared in a Class II or III vertical flow biological safety cabinet or compounding aseptic containment isolator located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:]

[(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better ante-area; and]

[(II) have a pressure indicator that can be readily monitored for correct room pressurization.]

[(iii) Facilities that prepare a low volume of hazardous drugs. Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clause (ii) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC or CACI that is located in a non-negative pressure room).]

(E) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer areas, ante-areas, and segregated compounding areas.

(i) The pharmacist-in-charge is responsible for developing written procedures for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.

(ii) These procedures shall be conducted at the beginning of each work shift, before each batch preparation is started, when there are spills, and when surface contamination is known or suspected resulting from procedural breaches, and every 30 minutes during continuous compounding of individual compounded sterile preparations, unless a particular compounding procedure requires more than 30 minutes to complete, in which case, the direct compounding area is to be cleaned immediately after the compounding activity is completed. [when there are spills, and when surface contamination is known or suspected from procedural breaches.]

(iii) Before compounding is performed, all items shall be removed from the direct and contiguous compounding areas and all surfaces are cleaned by removing loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), which is allowed to dry before compounding begins.

(iv) Work surfaces in the ISO Class 7 buffer areas and ISO Class 8 ante-areas, as well as segregated compounding areas, shall be cleaned and disinfected at least daily. Dust and debris shall be removed when necessary from storage sites for compounding ingredients and supplies using a method that does not degrade the ISO Class 7 or 8 air quality.

(v) Floors in the buffer area, ante-area, and segregated compounding area are cleaned by mopping with a cleaning and disinfecting agent at least once daily when no aseptic operations are in progress. Mopping shall be performed by trained personnel using approved agents and procedures described in the written SOPs. It is

incumbent on compounding personnel to ensure that such cleaning is performed properly.

(vi) In the buffer area, ante-area, and segregated compounding area, walls, ceilings, and shelving shall be cleaned and disinfected monthly. Cleaning and disinfecting agents shall be used with careful consideration of compatibilities, effectiveness, and inappropriate or toxic residues.

(vii) All cleaning materials, such as wipers, sponges, and mops, shall be non-shedding, and dedicated to use in the buffer area, ante-area, and segregated compounding areas and shall not be removed from these areas except for disposal. Floor mops may be used in both the buffer area and ante-area, but only in that order. If cleaning materials are reused, procedures shall be developed that ensure that the effectiveness of the cleaning device is maintained and that repeated use does not add to the bio-burden of the area being cleaned.

(viii) Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as sterile IPA. After the disinfectant is sprayed or wiped on a surface to be disinfected, the disinfectant shall be allowed to dry, during which time the item shall not be used for compounding purposes. However, if sterile supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the ISO Class 5 area without the need to disinfect the individual sterile supply items. No shipping or other external cartons may be taken into the buffer area or segregated compounding area.

(ix) Storage shelving emptied of all supplies, walls, and ceilings are cleaned and disinfected at planned intervals, monthly, if not more frequently.

(x) Cleaning must be done by personnel trained in appropriate cleaning techniques.

(xi) Proper documentation and frequency of cleaning must be maintained and shall contain the following:

(I) date and time of cleaning;

(II) type of cleaning performed; and

(III) name of individual who performed the cleaning.

(F) Security requirements. The pharmacist-in-charge may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile preparations shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(G) Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating.

(I) Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.

(II) Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.

~~*[(III)* Beyond-use dates for compounded sterile preparations that lack justification from either appropriate literature sources or by direct testing evidence shall be assigned as described in Chapter 795, in Stability Criteria and Beyond-Use Dating under Pharmaceutical Compounding-Nonsterile Preparations of the USP/NF.]~~

(III) [~~(IV)~~] When assigning a beyond-use date, compounding personnel shall consult and apply drug-specific and general stability documentation and literature where available, and they should consider the nature of the drug and its degradation mechanism, the container in which it is packaged, the expected storage conditions, and the intended duration of therapy.

(IV) [~~(V)~~] The sterility and storage and stability beyond-use date for attached and activated container pairs of drug products for intravascular administration shall be applied as indicated by the manufacturer.

(7) Primary engineering control device. The pharmacy shall prepare sterile preparations in a primary engineering control device (PEC), such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator (CAI), or compounding aseptic containment isolator (CACI) which is capable of maintaining at least ISO Class 5 conditions for 0.5 micrometer particles while compounding sterile preparations.

(A) Laminar air flow hood. If the pharmacy is using a laminar air flow hood as its PEC, the laminar air flow hood shall:

(i) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(ii) be certified by a qualified independent contractor according to the appropriate Controlled Environment Testing Association (CETA) standard (CAG-003-2006) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed;

(iii) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(iv) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(B) Biological safety cabinet.

(i) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of hazardous sterile compounded preparations, the biological safety cabinet shall be a Class II or III vertical flow biological safety cabinet located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better ante-area; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(ii) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clause (i) of this subparagraph if the pharmacy uses a device that provides two

tiers of containment (e.g., closed-system vial transfer device within a BSC or CACI that is located in a non-negative pressure room).

(iii) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of non-hazardous sterile compounded preparations, the biological safety cabinet shall:

(I) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(II) be certified by a qualified independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed, in accordance with the manufacturer's specifications and test procedures specified in the Institute of Environmental Sciences and Technology (IEST) document IEST-RP-CC002.3;

(III) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(IV) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(C) Compounding aseptic isolator.

(i) If the pharmacy is using a compounding aseptic isolator (CAI) as its PEC, the CAI shall provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions:

(I) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(II) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(III) The CAI must be validated according to CETA CAG-002-2006 standards.

(IV) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the isolator meets the requirements in clause (i) of this subparagraph, the CAI may be placed in a non-ISO classified area of the pharmacy; however, the area shall be segregated from other areas of the pharmacy and shall:

(I) be clean, well lit, and of sufficient size;

(II) be used only for the compounding of low- and medium-risk, non-hazardous sterile preparations;

(III) be located in an area of the pharmacy with non-porous and washable floors or floor covering to enable regular disinfection; and

(IV) be an area in which the CAI is placed in a manner as to avoid conditions that could adversely affect its operation.

(iii) In addition to the requirements specified in clauses (i) and (ii) of this subparagraph, if the CAI is used in the compounding of high-risk non-hazardous preparations, the CAI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders weighed in at least ISO-8 air quality conditions, compounding utensils for measuring and other compounding equipment are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(D) Compounding aseptic containment isolator.

(i) If the pharmacy is using a compounding aseptic containment isolator as its PEC for the preparation of low- and medium-risk hazardous drugs, the CACI shall be located in a separate room away from other areas of the pharmacy and shall:

(I) be vented to the outside of the building in which the pharmacy is located;

(II) provide at least 0.01 inches water column negative pressure compared to the other areas of the pharmacy;

(III) provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area, unless the CACI meets all of the following conditions.

(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(-c-) The CACI must be validated according to CETA CAG-002-2006 standards.

(-d-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the CACI meets all conditions specified in clause (i) of this subparagraph, the CACI shall not be located in the same room as a CAI, but shall be located in a separate room in the pharmacy, that is not required to maintain ISO classified air. The room in which the CACI is located shall provide a minimum of 0.01 inches water column negative pressure compared with the other areas of the pharmacy and shall meet the following requirements:

(I) be clean, well lit, and of sufficient size;

(II) be maintained at a comfortable temperature (e.g., 20 degrees Celsius or cooler) allowing compounding personnel to perform flawlessly when attired in the required aseptic compounding garb;

(III) be used only for the compounding of hazardous sterile preparations;

(IV) be located in an area of the pharmacy with walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices, non-shedding and resistant to damage by disinfectant agents; and

(V) have non-porous and washable floors or floor covering to enable regular disinfection.

(iii) If the CACI is used in the compounding of high-risk hazardous preparations, the CACI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders, weighed in at least ISO-8 air quality conditions, are not exposed to lesser air

quality prior to the completion of compounding and packaging of the high-risk preparation.

(8) [~~(7)~~] Additional Equipment and Supplies. [~~Equipment and supplies.~~] Pharmacies compounding sterile preparations shall have the following equipment and supplies:

(A) a calibrated system or device (i.e., thermometer) to monitor the temperature to ensure that proper storage requirements are met, if sterile preparations are stored in the refrigerator;

(B) a calibrated system or device to monitor the temperature where bulk chemicals are stored;

(C) a temperature-sensing mechanism suitably placed in the controlled temperature storage space to reflect accurately the true temperature;

(D) if applicable, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy;

(E) equipment and utensils necessary for the proper compounding of sterile preparations. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug preparation beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance;

(F) appropriate disposal containers for used needles, syringes, etc., and if applicable, hazardous waste from the preparation of hazardous drugs and/or biohazardous waste;

(G) appropriate packaging or delivery containers to maintain proper storage conditions for sterile preparations;

(H) infusion devices, if applicable; and

(I) all necessary supplies, including:

(i) disposable needles, syringes, and other supplies for aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) sterile 70% isopropyl alcohol;

(iv) sterile gloves, both for hazardous and non-hazardous drug compounding;

(v) sterile alcohol-based surgical scrub;

(vi) [~~(iii)~~] hand washing agents with bactericidal action;

(vii) [~~(iv)~~] disposable, lint free towels or wipes;

(viii) [~~(v)~~] appropriate filters and filtration equipment;

(ix) [~~(vi)~~] hazardous spill kits, if applicable; and

(x) [~~(vii)~~] masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(9) [~~(8)~~] Labeling.

(A) Prescription drug or medication orders. In addition to the labeling requirements for the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following:

(i) the generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded sterile preparation;

(ii) for outpatient prescription orders only, a statement that the compounded sterile preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement);

(iii) a beyond-use date. The beyond-use date shall be determined as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF, and paragraph (7)(G) of this subsection;

(B) Batch. If the sterile preparation is compounded in a batch, the following shall also be included on the batch label:

(i) unique lot number assigned to the batch;

(ii) quantity;

(iii) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(iv) device-specific instructions, where appropriate.

(C) Pharmacy bulk package. The label of a pharmacy bulk package shall:

(i) state prominently "Pharmacy Bulk Package--Not for Direct Infusion;"

(ii) contain or refer to information on proper techniques to help ensure safe use of the preparation; and

(iii) bear a statement limiting the time frame in which the container may be used once it has been entered, provided it is held under the labeled storage conditions.

(10) [~~(9)~~] Written drug information for prescription drug orders only. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing a prescription drug order. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient shall be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate, the prescriber, concerning the drug.

(11) [~~(10)~~] Pharmaceutical Care Services. In addition to the pharmaceutical care requirements for the pharmacy's specific license classification, the following requirements for sterile preparations compounded pursuant to prescription drug orders must be met.

(A) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(B) Patient training. The pharmacist-in-charge shall develop policies to ensure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction when applicable, regarding:

(i) appropriate disposition of hazardous solutions and ancillary supplies;

(ii) proper disposition of controlled substances in the home;

(iii) self-administration of drugs, where appropriate;

(iv) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(v) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(I) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(II) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(III) handling and disposition of premixed and self-mixed intravenous admixtures; and

(IV) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(C) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(D) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

(i) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider;

(ii) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions; and

(iii) reports of adverse events with a compounded sterile preparation are reviewed promptly and thoroughly to correct and prevent future occurrences.

(12) [~~(11)~~] Drugs, components, and materials used in sterile compounding.

(A) Drugs used in sterile compounding shall be a USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available shall be of a chemical grade in one of the following categories:

(i) Chemically Pure (CP);

(ii) Analytical Reagent (AR);

(iii) American Chemical Society (ACS); or

(iv) Food Chemical Codex.

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) All components shall:

(i) be manufactured in an FDA-registered facility; or

(ii) in the professional judgment of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources; and

(iii) stored in properly labeled containers in a clean, dry area, under proper temperatures.

(E) Drug preparation containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug preparation beyond the desired result.

(F) Components, drug preparation containers, and closures shall be rotated so that the oldest stock is used first.

(G) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug preparation.

(H) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(13) [~~(12)~~] Compounding process.

(A) Standard operating procedures (SOPs). All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed and implemented for:

(i) the facility;

(ii) equipment;

(iii) personnel;

(iv) preparation evaluation;

(v) quality assurance;

(vi) preparation recall;

(vii) packaging; and

(viii) storage of compounded sterile preparations.

(B) USP/NF. Any compounded formulation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Personnel Cleansing and Garbing.

(i) Any person with an apparent illness or open lesion, including rashes, sunburn, weeping sores, conjunctivitis, and active respiratory infection, that may adversely affect the safety or quality of a drug preparation being compounded shall be excluded from working in ISO Class 5 and ISO Class 7 compounding areas until the condition is remedied.

(ii) Before entering the buffer area, compounding personnel must remove the following:

(I) personal outer garments (e.g., bandanas, coats, hats, jackets, scarves, sweaters, vests);

(II) all cosmetics, because they shed flakes and particles; and

(III) all hand, wrist, and other body jewelry or piercings (e.g., earrings, lip or eyebrow piercings) that can interfere

with the effectiveness of personal protective equipment (e.g., fit of gloves and cuffs of sleeves).

(iii) The wearing of artificial nails or extenders is prohibited while working in the sterile compounding environment. Natural nails shall be kept neat and trimmed.

(iv) Personnel shall don personal protective equipment and perform hand hygiene in an order that proceeds from the dirtiest to the cleanest activities as follows:

(I) Activities considered the dirtiest include donning of dedicated shoes or shoe covers, head and facial hair covers (e.g., beard covers in addition to face masks), and face mask/eye shield. Eye shields are optional unless working with irritants like germicidal disinfecting agents or when preparing hazardous drugs.

(II) After donning dedicated shoes or shoe covers, head and facial hair covers, and face masks, personnel shall perform a hand hygiene procedure by removing debris from underneath fingernails using a nail cleaner under running warm water followed by vigorous hand washing. Personnel shall begin washing arms at the hands and continue washing to elbows for at least 30 seconds with either a plain (non-antimicrobial) soap, or antimicrobial soap, and water while in the ante-area. Hands and forearms to the elbows shall be completely dried using lint-free disposable towels[~~, an electronic hands-free hand dryer, or a HEPA filtered hands dryer~~].

(III) After completion of hand washing, personnel shall don clean non-shedding gowns with sleeves that fit snugly around the wrists and enclosed at the neck.

(IV) Once inside the buffer area or segregated compounding area, and prior to donning sterile powder-free gloves, antiseptic hand cleansing shall be performed using a sterile 70% IPA [~~waterless alcohol~~] based surgical hand scrub with persistent activity following manufacturers' recommendations. Hands shall be allowed to dry thoroughly before donning sterile gloves.

(V) Sterile gloves that form a continuous barrier with the gown shall be the last item donned before compounding begins. Sterile gloves shall be donned using proper technique to ensure the sterility of the glove is not compromised while donning. The cuff of the sterile glove shall cover the cuff of the gown at the wrist. When preparing hazardous preparations, the compounder shall double glove ensuring that the outer gloves are sterile powder-free chemotherapy-rated gloves. Routine application of sterile 70% IPA shall occur throughout the compounding day and whenever non-sterile surfaces are touched.

(v) When compounding personnel shall temporarily exit the ISO Class 7 environment during a work shift, the exterior gown, if not visibly soiled, may be removed and retained in the ISO Class 8 ante-area, to be re-donned during that same work shift only. However, shoe covers, hair and facial hair covers, face mask/eye shield, and gloves shall be replaced with new ones before re-entering the ISO Class 7 clean environment along with performing proper hand hygiene.

(vi) During high-risk compounding activities that precede terminal sterilization, such as weighing and mixing of non-sterile ingredients, compounding personnel shall be garbed and gloved the same as when performing compounding in an ISO Class 5 environment. Properly garbed and gloved compounding personnel who are exposed to air quality that is either known or suspected to be worse than ISO Class 7 shall re-garb personal protective equipment along with washing their hands properly, performing antiseptic hand cleansing with a sterile 70% IPA [~~waterless alcohol~~] based surgical hand scrub, and donning sterile gloves upon re-entering the ISO Class 7 buffer area.

(vii) When compounding aseptic isolators or compounding aseptic containment isolators are the source of the ISO Class 5 environment, at the start of each new compounding procedure, a new pair of sterile gloves shall be donned within the CAI or CACI. In addition, the compounding personnel should follow the requirements as specified in this subparagraph, unless the isolator manufacturer can provide written documentation based on validated environmental testing that any components of personal protective equipment or cleansing are not required.

(14) [~~(13)~~] Quality Assurance.

(A) Initial Formula Validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a preparation that is sterile and that contains the stated amount of active ingredient(s).

(i) Low risk preparations.

(I) Quality assurance practices include, but are not limited to the following:

(-a-) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.

(-b-) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles.

(-c-) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.

(-d-) Visual inspection of compounded sterile preparations to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually by each person authorized to compound in a low-risk level under conditions that closely simulate the most challenging or stressful conditions encountered during compounding of low-risk level sterile preparations. Once begun, this test is completed without interruption within an ISO Class 5 air quality environment. Three sets of four 5-milliliter aliquots of sterile Soybean-Casein Digest Medium are transferred with the same sterile 10-milliliter syringe and vented needle combination into separate sealed, empty, sterile 30-milliliter clear vials (i.e., four 5-milliliter aliquots into each of three 30-milliliter vials). Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(ii) Medium risk preparations.

(I) Quality assurance procedures for medium-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations, as well as a more challenging media-fill test passed annually, or more frequently.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually under conditions that closely simulate the most challenging or stressful conditions encountered during compounding. This test is completed without interruption within an ISO Class 5 air quality environment. Six 100-milliliter aliquots of sterile Soybean-Casein Digest Medium are aseptically transferred by gravity through separate tubing sets into separate evacuated sterile containers. The six containers are then

arranged as three pairs, and a sterile 10-milliliter syringe and 18-gauge needle combination is used to exchange two 5-milliliter aliquots of medium from one container to the other container in the pair. For example, after a 5-milliliter aliquot from the first container is added to the second container in the pair, the second container is agitated for 10 seconds, then a 5-milliliter aliquot is removed and returned to the first container in the pair. The first container is then agitated for 10 seconds, and the next 5-milliliter aliquot is transferred from it back to the second container in the pair. Following the two 5-milliliter aliquot exchanges in each pair of containers, a 5-milliliter aliquot of medium from each container is aseptically injected into a sealed, empty, sterile 10-milliliter clear vial, using a sterile 10-milliliter syringe and vented needle. Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(iii) High risk preparations.

(I) Procedures for high-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations. In addition, a media-fill test that represents high-risk level compounding is performed twice a year by each person authorized to compound high-risk level compounded sterile preparations.

(II) Example of a Media-Fill Test Procedure Compounded Sterile Preparations Sterilized by Filtration. This test, or an equivalent test, is performed under conditions that closely simulate the most challenging or stressful conditions encountered when compounding high-risk level compounded sterile preparations. Note: Sterility tests for autoclaved compounded sterile preparations are not required unless they are prepared in batches of more than 25 units. This test is completed without interruption in the following sequence:

(-a-) Dissolve 3 grams of non-sterile commercially available Soybean-Casein Digest Medium in 100 milliliters of non-bacteriostatic water to make a 3% non-sterile solution.

(-b-) Draw 25 milliliters of the medium into each of three 30-milliliter sterile syringes. Transfer 5 milliliters from each syringe into separate sterile 10-milliliter vials. These vials are the positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation.

(-c-) Under aseptic conditions and using aseptic techniques, affix a sterile 0.2-micron porosity filter unit and a 20-gauge needle to each syringe. Inject the next 10 milliliters from each syringe into three separate 10-milliliter sterile vials. Repeat the process for three more vials. Label all vials, affix sterile adhesive seals to the closure of the nine vials, and incubate them at 20 to 35 degrees Celsius for a minimum of 14 days. Inspect for microbial growth over 14 days as described in Chapter 797 Pharmaceutical Compounding--Sterile Preparations, of the USP/NF.

(III) Bubble Point Testing. Bubble point testing is an evaluation of the integrity of the filter(s) used to sterilize high-risk preparations. Bubble point testing is not a replacement sterility testing and shall not be interpreted as such. A bubble point test shall be performed after a sterilization procedure on all filters used to sterilize each high-risk preparation or batch preparation and the results documented. The results should be compared with the filter manufacturers bubble point pressure for the specific filter used (typically between 50 and 54 psig). If a filter fails the bubble point test, the preparation or batch must be sterilized again using new unused filters.

(B) Finished preparation release checks and tests.

(i) All high-risk level compounded sterile preparations that are prepared in groups of more than 25 identical individual single-dose packages (such as ampuls, bags, syringes, and vials), or in multiple dose vials for administration to multiple patients, or are exposed longer than 12 hours at 2 - 8 degrees Celsius and longer than six hours at warmer than 8 degrees Celsius before they are sterilized shall be tested to ensure they are sterile and do not contain excessive bacterial endotoxins as specified in Chapter 71, Sterility Tests of the USP/NF before being dispensed or administered.

(ii) All compounded sterile preparations that are intended to be solutions must be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded sterile preparations at all contamination risk levels shall be inspected for accuracy of correct identities and amounts of ingredients, aseptic mixing and sterilization, packaging, labeling, and expected physical appearance before they are dispensed or administered.

(iv) Written procedures for double-checking compounding accuracy shall be followed for every compounded sterile preparation during preparation and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. A pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(C) Environmental Testing.

(i) [~~(C)~~] Viable and nonviable environmental sampling testing. Environmental sampling shall occur, at a minimum, every six months as part of a comprehensive quality management program and under any of the following conditions:

(I) [~~(i)~~] as part of the commissioning and certification of new facilities and equipment;

(II) [~~(ii)~~] following any servicing of facilities and equipment;

(III) [~~(iii)~~] as part of the re-certification of facilities and equipment;

(IV) [~~(iv)~~] in response to identified problems with end products or staff technique; or

(V) [~~(v)~~] in response to issues with compounded sterile preparations, observed compounding personnel work practices, or patient-related infections (where the compounded sterile preparation is being considered as a potential source of the infection).

(ii) [~~(D)~~] Total particle counts. Certification that each ISO classified area (e.g., ISO Class 5, 7, and 8), is within established guidelines shall be performed no less than every six months and whenever the equipment is relocated or the physical structure of the buffer area or ante-area has been altered. All certification records shall be maintained and reviewed to ensure that the controlled environments comply with the proper air cleanliness, room pressures, and air changes per hour. Testing shall be performed by qualified operators using current, state-of-the-art equipment, with results of the following:

(I) [~~(i)~~] ISO Class 5 - not more than 3520 particles 0.5 micrometer [~~µm~~] and larger size per cubic meter of air;

(II) [~~(ii)~~] ISO Class 7 - not more than 352,000 particles of 0.5 micrometer [~~µm~~] and larger size per cubic meter of air for any buffer area; and

(III) [~~(iii)~~] ISO Class 8 - not more than 3,520,000 particles of 0.5 micrometer [~~µm~~] and larger size per cubic meter of air for any ante-area.

(iii) [~~(E)~~] Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the ante-area and between the ante-area and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 and the general pharmacy area shall not be less than 0.02 inch water column.

(iv) [~~(F)~~] Sampling plan. An appropriate environmental sampling plan shall be developed for airborne viable particles based on a risk assessment of compounding activities performed. Selected sampling sites shall include locations within each ISO Class 5 environment and in the ISO Class 7 and 8 areas and in the segregated compounding areas at greatest risk of contamination. The plan shall include sample location, method of collection, frequency of sampling, volume of air sampled, and time of day as related to activity in the compounding area and action levels.

(v) [~~(G)~~] Viable air sampling. Evaluation of airborne microorganisms using volumetric collection methods in the controlled air environments shall be performed by properly trained individuals for all compounding risk levels. For low-, medium-, and high-risk level compounding, air sampling shall be performed at locations that are prone to contamination during compounding activities and during other activities such as staging, labeling, gowning, and cleaning. Locations shall include zones of air backwash turbulence within the laminar airflow workbench and other areas where air backwash turbulence may enter the compounding area. For low-risk level compounded sterile preparations within 12-hour or less beyond-use-date prepared in a primary engineering control that maintains an ISO Class 5, air sampling shall be performed at locations inside the ISO Class 5 environment and other areas that are in close proximity to the ISO Class 5 environment during the certification of the primary engineering control.

(vi) [~~(H)~~] Air sampling frequency and process. Air sampling shall be performed at least every 6 months as a part of the re-certification of facilities and equipment. A sufficient volume of air shall be sampled and the manufacturer's guidelines for use of the electronic air sampling equipment followed. At the end of the designated sampling or exposure period for air sampling activities, the microbial growth media plates are recovered and their covers secured and they are inverted and incubated at a temperature and for a time period conducive to multiplication of microorganisms. Sampling data shall be collected and reviewed on a periodic basis as a means of evaluating the overall control of the compounding environment. If an activity consistently shows elevated levels of microbial growth, competent microbiology personnel shall be consulted.

(vii) [~~(I)~~] Compounding accuracy checks. Written procedures for double-checking compounding accuracy shall be followed for every compounded sterile preparation during preparation and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(15) [~~(14)~~] Quality control.

(A) Quality control procedures. The pharmacy shall follow established quality control procedures to monitor the compounding environment and quality of compounded drug preparations for conformity with the quality indicators established for the preparation. When developing these procedures, pharmacy personnel shall consider the provisions of USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding-Non-sterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, Chapter 1075, Good Compounding Practices, and Chapter 1160, Pharmaceutical Calculations in Prescription Compounding, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding of the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Verification of compounding accuracy and sterility.

(i) The accuracy of identities, concentrations, amounts, and purities of ingredients in compounded sterile preparations shall be confirmed by reviewing labels on packages, observing and documenting correct measurements with approved and correctly standardized devices, and reviewing information in labeling and certificates of analysis provided by suppliers.

(ii) If the correct identity, purity, strength, and sterility of ingredients and components of compounded sterile preparations cannot be confirmed such ingredients and components shall be discarded immediately. Any compounded sterile preparation that fails sterility testing following sterilization by one method (e.g., filtration) is to be discarded and not subjected to a second method of sterilization.

(iii) If individual ingredients, such as bulk drug substances, are not labeled with expiration dates, when the drug substances are stable indefinitely in their commercial packages under labeled storage conditions, such ingredients may gain or lose moisture during storage and use and shall require testing to determine the correct amount to weigh for accurate content of active chemical moieties in compounded sterile preparations.

(e) Records. Any testing, cleaning, procedures, or other activities required in this subsection shall be documented and such documentation shall be maintained by the pharmacy.

(1) Maintenance of records. Every record required under this section must be:

(A) kept by the pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug orders. Compounding records for all compounded preparations shall be maintained by the pharmacy electronically or manually as part of the prescription drug or medication order, formula record, formula book, or compounding log and shall include:

(i) the date of preparation;

(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) or official name and name(s) of the manufacturer(s) or distributor of the raw materials and the quantities of each;

(iii) signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(iv) signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting in-process and finals checks of compounded pharmaceuticals if pharmacy technicians or pharmacy technician trainees perform the compounding function;

(v) the quantity in units of finished preparation or amount of raw materials;

(vi) the container used and the number of units prepared; and

(vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) specific equipment used during preparation; and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number for each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) - (g) (No change.)

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406095
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-8073

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CHAPTER 295. PHARMACISTS

22 TAC §295.1

The Texas State Board of Pharmacy proposes amendments to §295.1 concerning Change of Address and/or Name. The amendments, if adopted, eliminate the requirement for pharmacists to return their renewal certificate when requesting a change of name.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendment will ensure pharmacists are licensed under their legal name. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 23, 2015.

The amendments are proposed under §551.002 and §554.051, of the Texas Pharmacy Act (Chapters 551-569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551-569, Texas Occupations Code.

§295.1. Change of Address and/or Name.

(a) (No change.)

(b) Change of name.

(1) A pharmacist shall notify the board in writing within 10 days of a change of name by:

(A) sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc.); and

[~~(B) returning the current renewal certificate which reflects the previous name; and~~]

(B) [~~(C)~~] paying a fee of $20.

(2) Pharmacists who change their name may retain the original license to practice pharmacy (wall certificate). However, if the pharmacist wants an amended certificate issued which reflects the pharmacist's name change, the pharmacist must:

(A) return the original certificate; and

(B) pay a fee of $35.

(3) An amended license and/or certificate reflecting the new name of the pharmacist will be issued by the board.

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406098
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-8073

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.9

The Texas State Board of Pharmacy proposes amendments to §297.9 concerning Notifications. The amendments, if adopted, eliminate the requirement for pharmacy technicians to return their renewal certificate when requesting a change of name; and eliminate the requirement for pharmacy technicians to post their registration certificates at the pharmacy where they are working.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendment will ensure pharmacist technicians are registered under their legal name; and ensure the rules are consistent with changes to the Texas Pharmacy Act. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 23, 2015.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551-569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551-569, Texas Occupations Code.

§297.9. Notifications.

[~~(a) Display of Registration Certificate.~~]

[~~(1) A pharmacy technician or pharmacy technician trainee shall publicly display their current registration certificate in their primary place of employment except as noted in paragraph (2) of this subsection.~~]

[~~(2) A pharmacy technician or pharmacy technician trainee who only works in the inpatient portion of a Class C pharmacy is not required to publicly display their current registration certificate in the pharmacy, provided the pharmacist-in-charge makes and retains a copy of their current registration certificate for inspection by a board representative.~~]

(a) [~~(b)~~] Change of Address and/or Name.

(1) Change of address. A pharmacy technician or pharmacy technician trainee shall notify the board electronically or in writing within 10 days of a change of address, giving the old and new address and registration number.

(2) Change of name.

(A) A pharmacy technician or pharmacy technician trainee shall notify the board in writing within 10 days of a change of name by:

(i) sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc.); and

[~~*(ii)* returning the current renewal certificate which reflects the previous name; and~~]

(ii) [~~(iii)~~] paying a fee of $20.

(B) An amended registration and/or certificate reflecting the new name of the pharmacy technician or pharmacy technician trainee will be issued by the board.

(b) [~~(c)~~] Change of Employment. A pharmacy technician or pharmacy technician trainee shall report electronically or in writing to the board within 10 days of a change of employment giving the name and license number of the old and new pharmacy and registration number.

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406099
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-8073

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CHAPTER 303. DESTRUCTION OF DRUGS

22 TAC §303.1, §303.2

The Texas State Board of Pharmacy proposes amendments to §303.1 concerning Destruction of Dispensed Drugs; and §303.2 concerning Disposal of Stock Prescription Drugs. The amendments, if adopted, update the rules to be consistent with DEA requirements.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure the safe disposal of prescription drugs. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with these sections.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 23, 2015.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551-569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551-569, Texas Occupations Code.

§303.1. Destruction of Dispensed Drugs.

(a) Drugs dispensed to patients in health care facilities or institutions.

(1) Destruction by the consultant pharmacist. The consultant pharmacist, if in good standing with the Texas State Board of Pharmacy, is authorized to destroy dangerous drugs dispensed to patients in health care facilities or institutions. A consultant pharmacist may [~~not~~] destroy controlled substances as [~~unless~~] allowed to do so by federal laws or rules of the Drug Enforcement Administration. Dangerous drugs may be destroyed provided the following conditions are met.

(A) A written agreement exists between the facility and the consultant pharmacist.

(B) The drugs are inventoried and such inventory is verified by the consultant pharmacist. The following information shall be included on this inventory:

(i) name and address of the facility or institution;

(ii) name and pharmacist license number of the consultant pharmacist;

(iii) date of drug destruction;

(iv) date the prescription was dispensed;

(v) unique identification number assigned to the prescription by the pharmacy;

(vi) name of dispensing pharmacy;

(vii) name, strength, and quantity of drug;

(viii) signature of consultant pharmacist destroying drugs;

(ix) signature of the witness(es); and

(x) method of destruction.

(C) The signature of the consultant pharmacist and witness(es) to the destruction and the method of destruction specified in subparagraph (B) of this paragraph may be on a cover sheet attached to the inventory and not on each individual inventory sheet, provided the cover sheet contains a statement indicating the number of inventory pages that are attached and each of the attached pages are initialed by the consultant pharmacist and witness(es).

(D) The drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(E) The actual destruction of the drugs is witnessed by one of the following:

(i) a commissioned peace officer;

(ii) an agent of the Texas State Board of Pharmacy;

(iii) an agent of the Texas Health and Human Services Commission, authorized by the Texas State Board of Pharmacy to destroy drugs;

(iv) an agent of the Texas Department of State Health Services, authorized by the Texas State Board of Pharmacy to destroy drugs; or

(v) any two individuals working in the following capacities at the facility:

(I) facility administrator;

(II) director of nursing;

(III) acting director of nursing; or

(IV) licensed nurse.

(F) If the actual destruction of the drugs is conducted at a location other than the facility or institution, the consultant pharmacist and witness(es) shall retrieve the drugs from the facility or institution, transport, and destroy the drugs at such other location.

(2) Destruction by a waste disposal service. A consultant pharmacist may utilize a waste disposal service to destroy dangerous drugs dispensed to patients in health care facilities or institutions. A consultant pharmacist may [~~not use a waste disposal service to~~] destroy controlled substances as [~~unless~~] allowed to do so by federal laws or rules of the Drug Enforcement Administration. Dangerous drugs may be transferred to a waste disposal service for destruction provided the following conditions are met.

(A) The waste disposal service is in compliance with applicable rules of the Texas Commission on Environmental Quality and United States Environmental Protection Agency relating to waste disposal.

(B) The drugs are inventoried and such inventory is verified by the consultant pharmacist prior to placing the drugs in an appropriate container, and sealing the container. The following information must be included on this inventory:

(i) name and address of the facility or institution;

(ii) name and pharmacist license number of the consultant pharmacist;

(iii) date of packaging and sealing of the container;

(iv) date the prescription was dispensed;

(v) unique identification number assigned to the prescription by the pharmacy;

(vi) name of dispensing pharmacy;

(vii) name, strength, and quantity of drug;

(viii) signature of consultant pharmacist packaging and sealing the container; and

(ix) signature of the witness(es).

(C) The consultant pharmacist seals the container of drugs in the presence of the facility administrator and the director of nursing or one of the other witnesses listed in paragraph (1)(E) of this subsection as follows:

(i) tamper resistant tape is placed on the container in such a manner that any attempt to reopen the container will result in the breaking of the tape; and

(ii) the signature of the consultant pharmacist is placed over this tape seal.

(D) The sealed container is maintained in a secure area at the facility or institution until transferred to the waste disposal service by the consultant pharmacist, facility administrator, director of nursing, or acting director of nursing.

(E) A record of the transfer to the waste disposal service is maintained and attached to the inventory of drugs specified in subparagraph (B) of this paragraph. Such record shall contain the following information:

(i) date of the transfer;

(ii) signature of the person who transferred the drugs to the waste disposal service;

(iii) name and address of the waste disposal service; and

(iv) signature of the employee of the waste disposal service who receives the container.

(F) The waste disposal service shall provide the facility with proof of destruction of the sealed container. Such proof of destruction shall contain the date, location, and method of destruction of the container and shall be attached to the inventory of drugs specified in subparagraph (B) of this paragraph.

(3) Record retention. All records required in this subsection shall be maintained by the consultant pharmacist at the health care facility or institution for two years from the date of destruction.

(b) Drugs [~~Dangerous drugs~~] returned to a pharmacy. A pharmacist in a pharmacy may accept and destroy dangerous drugs that have been previously dispensed to a patient and returned to a pharmacy by the patient or an agent of the patient. However, a pharmacist may [~~not~~] accept controlled substances that have been previously dispensed to a patient as [~~unless~~] allowed by federal laws of the Drug Enforcement Administration. The following procedures shall be followed in destroying dangerous drugs.

(1) The dangerous drugs shall be destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(2) Documentation shall be maintained that includes the following information:

(A) name and address of the dispensing pharmacy;

(B) unique identification number assigned to the prescription, if available;

(C) name and strength of the dangerous drug; and

(D) signature of the pharmacist.

§303.2. Disposal of Stock Prescription Drugs.

(a) Definition of stock. "Stock" as used in these sections means dangerous drugs or controlled substances which are packaged in the original manufacturer's container.

(b) Disposal of stock dangerous drugs. A pharmacist, licensed by the board, is authorized to destroy stock dangerous drugs owned by a licensed pharmacy if such dangerous drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements. [~~However, the following procedures shall be followed in destroying any brand or dosage form of nalbuphine (e.g., Nubain), and carisoprodol (e.g., Soma):~~]

[~~(1) the dangerous drugs are inventoried; and~~]

[~~(2) the destruction is witnessed by another licensed pharmacist or a commissioned peace officer.~~]

(c) Disposal of stock controlled substances. A pharmacist, licensed by the board, may dispose of stock controlled substances owned by a licensed pharmacy in accordance with procedures authorized by the Federal and Texas Controlled Substances Acts and sections adopted pursuant to such Acts. Disposal of controlled substances is deemed to be in accordance with the Federal and Texas Controlled Substances Acts and sections adopted pursuant to such Acts if any one of the following actions is taken:

(1) transfer to a controlled substances registrant authorized to possess controlled substances is the preferred method of disposal (e.g., DEA registered disposal firm); if transferred, the stock controlled substances shall be documented by appropriate invoices, federal Drug Enforcement Administration (DEA) order forms, or other documents legally transferring the controlled substances; or

(2) with prior DEA approval, destruction of the controlled substances according to following guidelines.

(A) Class A and Class A-S [~~Community (Class A)~~] pharmacies. [~~This method of drug destruction may be used only one time in each calendar year.~~]

(i) The pharmacy shall inventory the controlled substances to be destroyed and itemize the inventory on DEA Form 41, making three copies.

(ii) DEA approval shall be obtained by submitting a registered or certified letter to DEA at least 14 days prior to the anticipated destruction date indicating the day, time, and place of the anticipated destruction, and including a copy of DEA Form 41 which lists the controlled substances to be destroyed. No written or other response

from DEA regarding the planned destruction will constitute DEA approval of the destruction.

(iii) The controlled substances shall be destroyed beyond reclamation and disposed of in compliance with all applicable state and federal requirements on the approved date/time/place in the presence of one of the following witnesses:

(I) a commissioned peace officer;

(II) an agent of the Drug Enforcement Administration;

(III) an agent of the Department of Public Safety; or

(IV) an agent of the Texas Board of Pharmacy.

(iv) After destruction of the drugs, DEA Form 41 shall be completed to indicate the method of destruction and be signed and dated by the registrant and witness.

(v) The pharmacy shall distribute copies of the completed DEA Form 41 as follows:

(I) maintain the original in the records of the pharmacy for at least two years; and

(II) mail one copy to the appropriate DEA divisional office.

(B) Class C and Class C-S [~~Institutional (Class C)~~] pharmacies.

(i) Written DEA approval giving authorization to destroy controlled substances must be obtained from the appropriate DEA divisional office. The hospital may destroy controlled substances at any time provided the written authorization is maintained in the files of the hospital pharmacy.

(ii) The pharmacy shall inventory the controlled substances to be destroyed and itemize the inventory on DEA Form 41, making two copies.

(iii) The controlled substances shall be destroyed beyond reclamation and disposed of in compliance with all applicable state and federal requirements in the presence of one of the following witnesses:

(I) a commissioned peace officer;

(II) a supervisory member of the hospital's security department;

(III) an agent of the Drug Enforcement Administration;

(IV) an agent of the Department of Public Safety; or

(V) an agent of the Texas State Board of Pharmacy.

(iv) After destruction of the drugs, DEA Form 41 shall be completed to indicate the method of destruction and be signed and dated by the registrant and witness.

(v) The hospital pharmacy shall distribute copies of the completed DEA Form 41 as follows:

(I) maintain the original in the records of the pharmacy for at least two years; and

(II) mail one copy to the appropriate DEA divisional office.

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406101
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-8073

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.11, Professional Development. The proposed amendment would recognize professional development hours received from state and federal agencies as satisfying the requirements of Board rule §461.11(c)(3). The proposed amendment would also incorporate a previous determination by the Board that professional development hours from counseling centers that host accredited psychology training programs, satisfy those same requirements. Lastly, the proposed amendment would delete provisions that have been superseded.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.11. Professional Development.

(a) Requirements.

[~~(1) All licensees of the Board are obligated to continue their professional education by completing a minimum of 12 hours of professional development during each year that they hold a license~~

from the Board regardless of the number of separate licenses held by the licensee. Of these 12 hours, all licensees must complete a minimum of three hours of professional development per year in the areas of ethics, the Board's Rules of Conduct, or professional responsibility.]

[(2)] All licensees of the Board are obligated to continue their professional education by completing a minimum of 20 hours of professional development during each year that they hold a license from the Board regardless of the number of separate licenses held by the licensee. Of these 20 hours, all licensees must complete a minimum of three hours of professional development per year in the areas of ethics, the Board's Rules of Conduct, or professional responsibility, and a minimum of three hours in the area of cultural diversity (these include, but are not limited to age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and social economic status). [This paragraph shall take effect and supersede paragraph (1) of this subsection on October 1, 2014.]

(b) Relevancy. All professional development hours must be directly related to the practice of psychology. The Board shall make the determination as to whether the activity or publication claimed by the licensee is directly related to the practice of psychology. In order to establish relevancy to the practice of psychology, the Board may require a licensee to produce, in addition to the documentation required by subsection (d) of this section, course descriptions, conference catalogs and syllabi, or other material as warranted by the circumstances. The Board does not pre-approve professional development credit. The Board shall not allow professional development credit for personal psychotherapy, workshops for personal growth, the provision of services to professional associations by a licensee, foreign language courses, or computer training classes.

(c) Professional development.

(1) Required hours may be obtained by participating in one or more of the following activities, provided that the specific activity may not be used for credit more than once:

(A) attendance or participation in a formal professional development activity for which professional development hours have been pre-assigned by a provider;

(B) teaching or attendance as an officially enrolled student in a graduate level course in psychology at a regionally accredited institution of higher education;

(C) presentation of a program or workshop; and

(D) authoring or editing publications.

(2) Providers include:

(A) national, regional, state, or local psychological associations;[,] public school districts;[,] regional service centers for public school districts; state or federal agencies; or psychology programs, or counseling centers which host accredited psychology training programs, at regionally accredited institutions of higher education; or

(B) other formally organized groups providing professional development that is directly related to the practice of psychology. Examples of such providers include: public or private institutions, professional associations, and training institutes devoted to the study or practice of particular areas or fields of psychology; and professional associations relating to other mental health professions such as psychiatry, counseling, or social work.[; and state or federal agencies.]

(3) At least half (10) of the required 20 hours of professional development must be obtained from or endorsed by a provider listed in subsection (c)(2)(A) of this section. [national, regional, state, or local psychological associations, public school districts, regional service centers for public school districts, or psychology programs at regionally accredited institutions of higher education. This paragraph shall take effect on October 1, 2014.]

(4) Credits will be provided as follows:

(A) For attendance at formal professional development activities, the number of hours pre-assigned by the provider.

(B) For teaching or attendance of a graduate level psychology course, four hours per credit hour. A particular course may not be taught or attended by a licensee for professional development credit more than once.

(C) For presentations of workshops or programs, three hours for each hour actually presented, for a maximum of six hours per year. A particular workshop or presentation topic may not be utilized for professional development credit more than once.

(D) For publications, eight hours for authoring or co-authoring a book; six hours for editing a book; four hours for authoring a published article or book chapter. A maximum credit of eight hours for publication is permitted for any one year.

(5) Professional development hours must have been obtained during the 12 months prior to the renewal period for which they are submitted. If the hours were obtained during the license renewal month and are not needed for compliance for that year, they may be submitted the following year to meet that year's professional development requirements. A professional development certificate may not be considered towards fulfilling the requirements for more than one renewal year.

(d) Documentation. It is the responsibility of each licensee to maintain documentation of all professional development hours claimed under this rule and to provide this documentation upon request by the Board. Licensees shall maintain documentation of all professional development hours claimed for at least five years. The Board will accept as documentation of professional development:

(1) for hours received from attendance or participation in formal professional development activities, a certificate or other document containing the name of the sponsoring organization, the title of the activity, the number of pre-assigned professional development hours for the activity, the signature of an official representative of the sponsoring organization, and the name of the licensee claiming the hours;

(2) for hours received from attending college or university courses, official grade slips or transcripts issued by the institution of higher education must be submitted;

(3) for hours received for teaching college or university courses, documentation demonstrating that the licensee taught the course must be submitted;

(4) for presenters of professional development workshops or programs, copies of the official program announcement naming the licensee as a presenter and an outline or syllabus of the contents of the program or workshop;

(5) for authors or editors of publications, a copy of the article or table of contents or title page bearing the name of licensee as the author or editor;

(6) for online or self-study courses, a copy of the certificate of completion containing the name of the sponsoring organization, the title of the course, the number of pre-assigned professional development hours for the activity, and stating the licensee passed the examination given with the course.

(e) Declaration Form. All licensees must sign and submit a completed Professional Development Declaration Form for each year in which they are licensed by the Board specifying the professional development received for the preceding renewal period. Licensees wishing to renew their license must submit the declaration form with the annual renewal form and fee no later than the renewal date. Licensees who do not wish to renew their license must submit the declaration form along with a written request to retire the license on or before the renewal date. Licensees shall not submit documentation of professional development credits obtained unless requested to do so by the Board. Licensees who are not audited pursuant to subsection (f) of this section and who are otherwise eligible may declare their professional development on the online license renewal form.

(f) Audit. The Board conducts two types of audits. Licensees shall comply with all Board requests for documentation and information concerning compliance with professional development and/or Board audits.

(1) Random audits. Each month, 10% of the licensees will be selected by an automated process for an audit of the licensee's compliance with the Board's professional development requirements. The Board will notify a licensee by mail of the audit. Upon receipt of an audit notification, licensees planning to renew their licenses must submit requested documentation of compliance to the Board with their annual renewal form no later than the renewal date of the license. A licensee who is audited may renew their license online provided that they submit the professional development documentation to the Board at least two weeks in advance of their online renewal so that it can be pre-approved. Licensees wishing to retire their licenses should submit the requested documentation no later than the renewal date of the license.

(2) Individualized audits. The Board will also conduct audits of a specific licensee's compliance with its professional development requirements at any time that the Board determines that there are grounds to believe that a licensee has not complied with the requirements of this rule. Upon receipt of notification of an individualized audit, the licensee must submit all requested documentation within the time period specified in the notification.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406043
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-7706

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22 TAC §461.12

The Texas State Board of Examiners of Psychologists proposes a new rule §461.12, Prohibition Against Dual Office Holding. The proposed new rule requires the Board to enact rules prohibiting dual office holding pursuant to Chapter 574 of the Texas Government Code.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed new rule will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed new rule may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.12. Prohibition Against Dual Office Holding.

(a) Neither Board members nor the Executive Director may accept an offer to serve in another nonelective office unless they first obtain from the Board a finding that they have satisfied Article XVI, Section 40, of the Texas Constitution.

(b) The Board must make a written record of any finding under subsection (a). The finding must include any compensation that the Board member or Executive Director receives from holding the additional office, including salary, bonus, or per diem payment.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406045
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-7706

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.7

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.7, Criminal History Record Reports. The proposed amendment will ensure that those licensees returning their license to active status from inactive status, are required to undergo a fingerprint criminal history check if they have never done so in the past. This amendment is necessary because the automated method utilized to identify the licensees selected to undergo a fingerprint criminal history check, cannot identify those licensees on inactive status.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect,

there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.7. Criminal History Record Reports.

(a) Before issuing a license, the Board will obtain or require the applicant to obtain a criminal history record report as determined by the Board.

(b) The Board will obtain updated criminal history record reports on all licensees quarterly from the Texas Department of Public Safety.

(c) The Board may obtain an updated criminal history record report at any time on a licensee alleged to have violated the Act or rules of the Board.

(d) Each licensee who was not required to submit a fingerprint criminal history record report as a condition of licensure must submit a fingerprint criminal history record report to the Board as a condition for renewal. This one-time renewal requirement begins for January 2015 [~~2011~~] renewals and will be phased in with approximately one-fourth of licensees required to submit their reports in the first calendar year and remaining licensees required to submit their reports in the following three calendar years as prescribed by the Board. A report must be received by the Board before the eligible licensee is allowed to renew the license.

(e) A licensee requesting their license be returned to active status from inactive status, must undergo a fingerprint criminal history check before their license will be returned to active status if the licensee has not submitted to a fingerprint criminal history check for the Board in the past. A report must be received by the Board before the license will be returned to active status.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406047

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-7706

CHAPTER 471. RENEWALS

22 TAC §471.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §471.5, Updated Information Requirements. The proposed amendment will clarify reporting requirements in connection with renewal, and will synchronize the reporting requirements set forth in the rule with the reporting requirements on the Board's renewal form.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§471.5. Updated Information Requirements.

Each license shall provide the following information when renewing his/her license each year:

(1) If the licensee has ever been arrested, charged, sentenced, or placed on community supervision or pretrial diversion for any crime [~~arrested, indicted or convicted of any criminal offense~~] which the licensee has not previously reported to the Board;

(2) If the licensee has been a party (plaintiff or defendant) to any civil lawsuit pertaining to the practice of psychology or involving any patient or former patient not previously reported to the Board;

(3) The names of all jurisdictions where the licensee currently holds a license to practice psychology;

(4) If there is a pending action or final action against a mental health professional license held by the licensee in any jurisdiction that the licensee has not previously reported to the Board;

(5) If the licensee has complied with the annual requirements for professional development;

(6) If the licensee has a guaranteed student loan in default; and

(7) If the licensee is currently in default of any court-ordered child support.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406048
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-7706

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CHAPTER 473. FEES

22 TAC §473.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.5, Miscellaneous Fees (Non Refundable). The proposed amendment would incorporate Board policy regarding fees that are charged for written verifications and mailing lists into Board rule.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§473.5. Miscellaneous Fees (Non Refundable).

(a) Duplicate or Replacement Calligraphy License--$25.

(b) Inactive Status [~~status~~] (two-year period)--$100.

(c) Remailing of License [~~license~~]--$10.

(d) Returned Check Fee [~~check fee~~]--$25.

(e) Returned Renewal Application Fee [~~renewal application fee~~]--$10.

(f) Analysis of Jurisprudence Examination [~~jurisprudence examination~~]--$50.

(g) Cost of Duplicate or Replacement [~~destroyed, lost or stolen~~] annual renewal permit--$10.

[~~(h) Cost of replacement renewal notice--$10.~~]

(h) [~~(i)~~] Limited Temporary License--$100.

(i) [~~(j)~~] Preliminary Evaluation of [~~for~~] Eligibility for Licensure of Person with Criminal Record--$150.

(j) Written Verification of License:

(1) Without State Seal--$30

(2) With State Seal--$50

(k) Mailing List--$100.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406049
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 305-7706

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PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

CHAPTER 711. DIETITIANS

SUBCHAPTER A. LICENSED DIETITIANS

22 TAC §711.12

The Texas State Board of Examiners of Dietitians (board) proposes an amendment to §711.12, concerning the licensing and regulation of dietitians.

BACKGROUND AND PURPOSE

The proposed amendments implement Senate Bill (SB) 1733, 82nd Legislature, 2011, Regular Session, and SB 162 and House Bill (HB) 2254 of the 83rd Legislature, Regular Session, 2013, which amended Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses), as well as implementing other provisions of this chapter that are not presently addressed in existing rule. The amendments relate to the occupational licensing of spouses of members of the military, the eligibility requirements for certain occupational licenses issued to applicants with military experience, and apprenticeship requirements for occupational licenses issued to applicants with military experience.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §711.12(a) remove the language concerning a damaged or destroyed license certificate or identification card and adds this language to subsection (b) for clarity. New subsection (c) adds new language to define military service member, military spouse, and military veteran, and to describe

application and eligibility procedures and requirements applicable to those individuals.

FISCAL NOTE

Bobbe Alexander, Executive Director, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no adverse economic effect to small businesses or micro-businesses. This was determined by interpretation of the rule that these entities will not be required to alter their business practices to comply with the section as proposed.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

REGULATORY ANALYSIS

The board 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 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

The board 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of implementing and administering the section is that the statutory directives will be carried out and more flexible standards for members of the military, their spouses, and veterans could potentially increase the availability to the public of licensed dietitians in Texas, and promote public health, safety, and welfare.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Director, State Board of Examiners of Dietitians, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to dietitian@dshs.state.tx.us. When emailing comments to the board, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §701.152, which authorizes the board to adopt rules consistent with Chapter 701, and by Texas Occupations Code, §55.004, §55.005, and §55.007, and SB 162, 83rd Legislature, Regular Session, 2013, which authorize rulemaking regarding certain licensing provisions for military service members, military veterans, and military spouses.

The proposed amendment affects Texas Occupations Code, Chapter 701, and Texas Occupations Code, Chapter 55.

§711.12. Licensing.

(a) Issuance of licenses.

[~~(1)~~] The board will send each applicant whose application has been approved and who has passed the examination (if applicable) a license certificate and identification card containing a license number.

[~~(2) The board shall replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or identification card or be accompanied by the damaged certificate or card.~~]

(b) License certificates.

(1) - (6) (No change.)

(7) The board shall replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or identification card or be accompanied by the damaged certificate or card.

(c) Licensing of Military Service Members, Military Veterans, and Military Spouses.

(1) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(A) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(B) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(C) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(2) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(3) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(4) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(5) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or internship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(6) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The board shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with paragraph (9) of this subsection.

(7) In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(8) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

(9) If the board issues an initial license to an applicant who is a military spouse in accordance with paragraph (6) of this subsection, the board shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The board shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406116
Janet Hall
Chair
Texas State Board of Examiners of Dietitians
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 776-6972

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (TBPG or Board) proposes amendments to 22 TAC §§851.10, 851.20, 851.30, 851.80, and 851.152, concerning the licensure and regulation of Professional Geoscientists. TBPG also proposes new §851.154 and §851.155.

BACKGROUND AND PURPOSE

The TBPG proposes amendments to clarify the definition of "Geoscience Firm" and remove the Geoscience Firm registration requirements currently applicable to a Professional Geoscientist who offers or performs non-exempt geoscience work for the public in Texas as a sole proprietor. TBPG proposes amendments to remove the restriction that requires a new licensee to report to TBPG within 60 days of becoming licensed the name of the firm or organization with which the licensee is employed if the employment includes the practice of geoscience. TBPG proposes amendments to remove the registration and renewal fees for sole-proprietorships. TBPG proposes amendments to remove the restriction that a business entity, unless registered, may not represent to the public that it is engaged in the non-exempt public practice of geoscience by using the terms "geoscientist," "geoscience," "geoscience services," "geoscience company," or "geoscience, inc." because usage of these terms does not require that a business entity be registered by the TBPG. TBPG also proposes new rules to outline its implementation of the requirements in the Family Code Chapter 232, regarding denial of a license, nonrenewal, suspension, and reinstatement of a license due to non- payment of child support. Proposed new rules also outline TBPG's implementation of the requirements in Texas Education Code, Chapter 57, §57.491 in regard to the nonrenewal of a Professional Geoscientist license due to a default status with the Texas Guaranteed Student Loan Corporation (TGSLC).

SECTION BY SECTION SUMMARY

Proposed amendment to §851.10 is proposed to revise the definition of "Geoscience Firm" as "any entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas..., including "a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization." It also adds the words "or other entity" to the definition of "licensee" and removes the phrase "or the Authorized Official of a Firm" from the definition of "registrant". Proposed amendment to §851.20 removes item (3) under subsection (q), which requires a new licensee to report to TBPG within 60 days of becoming licensed the name of the firm or organization with which the licensee is employed if the employment includes the practice of geoscience. This proposed change is a result of public comment from the four-year rules review. The item is being proposed for deletion because the item does not reflect current TBPG process. Additionally, the requested information is already provided at the time of application, and other rules require a licensee to keep the Board informed of changes in employment. Proposed amendment to §851.30 adds wording in subsection (a)(2) that the term "firm" includes these entities: "a sole practitioner registered with the TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization." The proposed amendment also removes items (A) and (B) under subsection (a)(2) regarding "For the purpose of fees, Geoscience Firms are categorized as...", and adds wording in new subsection (c) that "A currently licensed P.G. who offers services as an unincorporated sole proprietor is exempt from the firm registration requirements in this section. A P.G. who is exempt from the firm registra-

tion requirements under this paragraph and who offers services under an assumed name must report the assumed name to the TBPG. A P.G. who is otherwise exempt from the firm registration requirements under this paragraph may choose to register as a Geoscience Firm and pay the current Geoscience Firm registration fee." It also makes minor wording changes, and re-letters the subsections accordingly. The proposed amendment reflects the determination that a sole proprietorship is not a legal entity separate from the individual who is the sole proprietor. A P.G. who is a sole proprietor maintains licensure through the annual renewal of the P.G. license. The proposed rules, however, would allow a P.G. sole proprietor to also register as a Geoscience Firm by following the requirements for firm registration, including the paying of a separate firm registration fee. Proposed amendment to §851.80 removes subsections (m) and (n) to remove the fee for registration and renewal fees of a sole proprietor, and re-letters the subsections accordingly. The required fee for firm registration by a sole proprietorship is deleted to be consistent with the amendment to the rules that makes it optional for a P.G. who is a sole proprietor to register as a firm. The sole proprietor that chooses to register as a firm in addition to being a licensed P.G. may do so under the fee structure for Firm Registration. Proposed amendment to §851.152 (d) removes the terms listed in subsections (1-5) because usage of those terms is not subject to the requirement that an entity be licensed or registered in the state of Texas to offer or perform the non-exempt public practice of geoscience. This proposal is in response to public comment received during the four-year rule review. The subsection will be renumbered accordingly. Proposed new rule §851.154 outlines TBPG's implementation of the requirements in Texas Education Code, Chapter 57, §57.491 regarding the nonrenewal of a Professional Geoscientist license due to a default status with the Texas Guaranteed Student Loan Corporation (TGSLC).

Proposed new rule §851.155 outlines TBPG's implementation of the Family Code Chapter 232, regarding the denial of a license, nonrenewal, suspension, and reinstatement of a license related to non- payment of child support. FISCAL NOTE Charles Horton, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the sections are in effect there is an annual cost to the state of approximately $2900 as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Mr. Horton has determined that there will be little to no anticipated economic costs to small businesses or micro-businesses required to comply with proposed amended §§851.10, 851.20, 851.30, 851.80, 851.152, and proposed new §851.154 and §851.155. Consequently, an economic impact statement or regulatory flexibility analysis is not required. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections. There is no anticipated negative impact on state or local government. PUBLIC BENEFIT Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is that the Texas Board of Professional Geoscientists' rules are clarified, and the Board will be able to more effectively regulate the public practice of geoscience in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Board has determined that these proposals are 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 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. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed amendments and new rules may be submitted in writing to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to chorton@tbpg.state.tx.us. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

22 TAC §851.10

The proposed amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); and by Occupations Code §1002.154 which provides that Board shall enforce the Act. The proposed amendments implement the Texas Occupations Code §1002.151 and §1002.154.

§851.10. Definitions.

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

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

(3) Address of record--In the case of an individual or firm licensed, certified, or registered by the TBPG, the address which is filed by the licensee [~~or registrant~~] with the TBPG.

(4) - (23) (No change.)

(24) Geoscience Firm--Any entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas. This term includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization. [~~A firm, corporation, or other business entity registered by the TBPG to engage in the public practice of geoscience.~~]

(25) - (27) (No change.)

(28) Licensee--An individual or other entity holding a current Professional Geoscientist license, GIT certificate, or firm registration.

(29) - (35) (No change.)

(36) Registrant--An individual whose sole-proprietorship is currently registered with the TBPG or a firm [~~or the Authorized Official of a Firm~~] that is currently registered with the TBPG.

(37) - (42) (No change.)

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

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405944
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-4405

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SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.20, 851.30, 851.80

The proposed amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.152 which provides that the Board shall set reasonable and necessary fees; by Occupations Code §1002.351 which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation; and by Occupations Code §1002.154 which provides that Board shall enforce the Act.

The proposed amendments implement the Texas Occupations Code, §§1002.151, 1002.152, 1002.351, and 1002.154.

§851.20. Professional Geoscientist Licensing Requirements and Application Procedure.

(a) - (p) (No change.)

(q) Once the requirements for licensure have been satisfied and the new license and license certificate have been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and submit TBPG Seal Submission (Form X) to the TBPG; and

(2) Register as a Geoscience Firm, if appropriate, as described in §851.30 of this chapter.[~~; and~~]

[~~(3) Provide to the TBPG the following information: the name of every firm, governmental agency, or other organization with which the licensee is employed on a full-time or part-time basis, if the employment includes the practice of geoscience. If the practice of geoscience includes the public practice of geoscience, the licensee shall report the employer's Geoscience Firm registration number, unless the employer is a governmental agency or otherwise exempt from the requirement of registration with the TBPG.~~]

(r) (No change.)

§851.30. Firm Registration.

(a) Registration required. Unless an exemption applies, as outlined in Texas Occupations Code §1002.351(b), a firm or corporation may engage in the public practice of geoscience only if the firm is currently registered with the TBPG; and

(1) The geoscientific work is performed by, or under the supervision of, a Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) The business of the firm [~~or corporation~~] includes the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a Professional Geoscientist and has overall supervision and control of the geoscientific work performed in this state. As provided in §851.10(24) of this chapter, the term firm includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization [~~corporations, sole-proprietorships, partnerships and/or joint stock associations~~]. For the purposes of this section, the term public includes but is not limited to political subdivisions of the state, business entities, and individuals. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience. [~~For the purpose of fees, Geoscience Firms are categorized as either:~~]

[~~(A) An unincorporated sole-proprietorship (a single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner) registered by the TBPG to engage in the public practice of geoscience; or~~]

[~~(B) Any other type of firm, corporation, partnership (whether or not the partnership is an incorporated entity) or other business entity registered by the TBPG to engage in the public practice of geoscience.~~]

(b) Unless registered by the TBPG or exempt from registration under Texas Occupations Code §1002.351 or elsewhere in this section, an individual or firm[~~, firm, or corporation~~] may not represent to the public that the individual or firm[~~, firm, or corporation~~] is a Professional Geoscientist or is able to perform geoscientific services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Texas Occupations Code §1002.263(b).

(c) A currently licensed P.G. who offers services as an unincorporated sole proprietor is exempt from the firm registration requirements in this section. A P.G. who is exempt from the firm registration requirements under this paragraph and who offers services under an assumed name must report the assumed name to the TBPG. A P.G. who is otherwise exempt from the firm registration requirements under this paragraph may choose to register as a Geoscience Firm and pay the current Geoscience Firm registration fee.

(d) [~~(c)~~] Registration requirements. In order to be eligible to register as a Geoscience Firm, the firm must:

(1) Affirm and demonstrate that the firm is an unincorporated sole-proprietorship or another business entity that offers or performs work that includes the public practice of geoscience;

(2) Identify an Authorized Official of a Firm who shall be responsible for submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration; ensuring that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience; ensuring that the firm renews its registration status

as long as the firm offers or provides public geoscientific services; and communicating with the TBPG regarding any other necessary matter;

(3) Operate under a business model such that:

(A) The geoscientific work is performed by, or under the supervision of, a licensed Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(B) The principal business of the firm [~~or corporation~~] is the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a licensed Professional Geoscientist and has overall supervision and control of the geoscientific work performed in this state;

(4) Identify the business model and the Professional Geoscientist who fulfills the role of the licensed Professional Geoscientist in paragraph (3) of this subsection;

(5) Unless the firm is an unincorporated sole-proprietorship, a firm seeking registration with the TBPG must register the firm with the Office of the Secretary of State (SOS) and obtain a certificate of authority. If the firm operates under a name other than that which is filed with the SOS, an Assumed Name Certificate must be filed with the County Clerk. A firm's SOS certificate of authority number and all Assumed Name Certificate instrument numbers must be provided to the TBPG upon initial application. If the firm is a sole-proprietorship and the firm operates under a name that does not include the last name of the individual sole proprietor, the firm shall file an Assumed Name Certificate with the County Clerk;

(6) Submit an Initial Firm Registration Application (Form C), in accordance to the procedures outlined in subsection (e) [~~(d)~~] of this section;

(7) Upon initial application, [~~a firm shall~~] affirm that the licensed Professional Geoscientist performing or supervising the geoscientific work for a Geoscience Firm is an employee. A Geoscience Firm shall provide evidence of employment status upon request of the Board staff or an Appointed Board Member.

(e) [~~(d)~~] Firm Registration Application Process.

(1) The Authorized Official of a Firm shall complete and submit, along with the required application fee, the form furnished by the TBPG which includes but is not limited to the following information listed in subparagraphs (A) - (E) of this paragraph:

(A) The name, address, and phone number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(B) The name, position, address, and phone numbers of each officer or director;

(C) The name, address and current active Texas Professional Geoscientist license number of each employee performing geoscientific work for the public in Texas on behalf of the firm;

(D) The name, location, and phone numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any; and

(E) A signed statement attesting to the correctness and completeness of the application.

(2) Upon receipt of all required materials and fees and having satisfied requirements in this section, the firm shall be registered and a unique Geoscience Firm registration number shall be assigned to the firm registration. The new firm registration shall expire at the end of the calendar month occurring one year after the firm registration is issued.

(3) An application is active for one year including the date that it is filed with the TBPG. After one year an application expires.

(4) Obtaining or attempting to obtain a firm registration by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(5) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application.

(6) Applicants should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(f) [~~(e)~~] The initial certificate of registration shall be valid for a period of one year from the date it is issued, plus any days remaining through the end of that month. A renewed firm registration is valid for a period of one year from the expiration date of the firm registration being renewed.

(g) [~~(f)~~] A Geoscience Firm's completed and approved registration is the legal authority granted the holder to actively offer or practice geoscience upon meeting the requirements as set out in the Act and TBPG Rules. When a firm registration is issued, a firm registration wall certificate, the first firm registration certificate expiration card, and the first portable firm registration card is provided to the new Geoscience Firm. The firm registration wall certificate shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the firm registration was originally issued. The firm registration wall certificate is not valid proof of current registration as a firm, unless it is accompanied by the firm registration certificate expiration card and the date on the firm registration certificate card is not expired. The firm registration certificate expiration card shall bear the name of the firm, the firm's unique firm registration license number, and the date the firm registration will expire, unless it is renewed. The portable firm registration card shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the registration will expire, unless it is renewed.

(h) [~~(g)~~] At least sixty (60) days in advance of the date of the expiration, the Board staff shall notify each registered firm of the date of the expiration and the amount of the fee that shall be required for its annual renewal. The registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Appointed Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(i) [~~(h)~~] A certificate of registration which has been expired for less than one (1) year may be renewed by completing a Firm Registration Renewal Application (Form D); an affirmation signed by the Authorized Official of a Firm indicating whether geoscientific services were offered, pending, or performed for the public in Texas when the firm's registration was expired and payment of a $50 late renewal penalty. If a firm under application for late firm registration renewal has met the requirements for renewal and has indicated that the geoscience services were offered, pending, or performed for the public in Texas while the firm's registration was expired, unless certain allegations of misconduct are present, the firm's registration shall be renewed. Information regarding unregistered geoscience practice received under this section shall be referred to the enforcement division

for appropriate action that could include the initiation of a complaint by the Board staff. A firm registration that has been expired for more than one year is permanently expired and may not be renewed; a new application is required.

§851.80. Fees.

(a) All fees are non-refundable.

(b) P.G. Initial application and license fee--$255.

(c) Examination processing fee--$25.

(d) Applicable examination fees:

(1) Geology--Fundamentals and Practice as determined by the National Association of State Boards of Geology (ASBOG®).

(2) Geophysics--$175.

(3) Soil Science--Fundamentals and Practice as determined by the Council of Soil Science Examiners (CSSE).

(e) Issuance of a revised or duplicate license--$25.

(f) P.G. renewal fee--$223 or as prorated under §851.28(b) of this chapter. The fee for annual renewal of licensure for any individual sixty-five (65) years of age or older as of the renewal date shall be half the current renewal fee.

(g) Late renewal penalty--$50.

(h) Fee for affidavit of licensure--$15.

(i) Verification of licensure--$15.

(j) Temporary license--$200.

(k) Firm registration initial application--$300.

(l) Firm registration renewal--$300.

~~[(m) Sole-proprietorship registration--$50.]~~

~~[(n) Sole-proprietorship renewal--$50.]~~

(m) [~~(o)~~] Insufficient funds fee--$25.

(n) [~~(p)~~] Initial application for Geoscientist-in-Training certification--$25.

(o) [~~(q)~~] Annual renewal of Geoscientist-in-Training certification--$25.

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

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405945
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-4405

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §851.152

The proposed amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.351 which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation; and by Occupations Code §1002.154 which provides that Board shall enforce the Act. The proposed amendments implement the Texas Occupations Code, §§1002.151, 1002.351, and 1002.154.

§851.152. Firm Compliance.

(a) - (c) (No change.)

(d) A business entity or sole proprietor that is not registered with the TBPG may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the non-exempt public practice of geoscience by using the terms:

~~[(1) "geoscientist;"]~~

~~[(2) "geoscience;"]~~

~~[(3) "geoscience services;"]~~

~~[(4) "geoscience company;"]~~

~~[(5) "geoscience, inc.;"]~~

(1) [~~(6)~~] "Professional Geoscientist [~~Geoscientists~~];"

(2) [~~(7)~~] "licensed geoscientist [~~geoscientists~~];"

(3) [~~(8)~~] "registered geoscientist [~~geoscientists~~];"

(4) [~~(9)~~] "licensed Professional Geoscientist [~~Geoscientists~~];"

(5) [~~(10)~~] "registered Professional Geoscientist;" or

(6) [~~(11)~~] any abbreviation or variation of those terms listed in paragraphs (1) - (5) [~~(10)~~] of this subsection, or directly or indirectly use or cause to be used any of those terms in combination with other words.

(e) (No change.)

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

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405946
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-4405

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22 TAC §851.154, §851.155

The proposed new sections are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); and by Occupations Code §1002.154 which provides that Board shall enforce the Act. The proposed new sections implement the Texas Occupations Code, §1002.151 and §1002.154.

§851.154. Loan Default Ground for Nonrenewal of License.

(a) The TBPG complies with the provisions of Texas Education Code, Chapter 57, §57.491 in regard to the nonrenewal of a Professional Geoscientist license due to a default status with the Texas Guaranteed Student Loan Corporation (TGSLC).

(b) Upon receipt of notification from the TGSLC that a licensee is in default status on a loan or a repayment agreement, Board staff shall provide a notice to the licensee that it intends not to renew the license unless the licensee provides Board staff with a certificate from the TGSLC certifying that:

(1) The licensee has entered a repayment agreement or another repayment agreement on the defaulted loan or repayment agreement; or

(2) The licensee is not in default on a loan guaranteed by TGSLC or on a repayment agreement. The notice will provide an opportunity for a hearing to a licensee before the agency takes action concerning the nonrenewal of the license. The licensee shall be provided 30 days to request a hearing.

(c) A licensee shall file a request for a hearing within 30 days from the date of receipt of the notice provided in subsection (b) of this section. Upon written request for a hearing by a licensee, Board staff shall refer the matter to the Office of the Attorney General for appropriate action. Hearings shall be conducted by the State Office of Administrative Hearings.

(d) If a timely request for a hearing is not made, no hearing will be held and the license will not be renewed unless the licensee provides Board staff with a certificate from the TGSLC indicating the licensee is not in default on a guaranteed loan or a repayment agreement.

(e) If a hearing on the nonrenewal is held, the Appointed Board shall review the results of the hearing and make a final determination.

§851.155. Actions Following Certain Notifications Regarding Child Support Delinquency.

(a) In accordance with the Family Code Chapter 232, on receipt of a final order from a court or the Title IV-D agency suspending a license, the Board staff shall immediately determine if the TBPG has issued a license to the individual named on the order and, if a license has been issued, Board staff shall suspend the license and record the suspension of the license in the TBPG's licensing records.

(b) Board staff shall implement the terms of a final order suspending license without additional review or hearing. Board staff shall provide notice of the suspension to the license holder and to any employers on record with the TBPG.

(c) A licensee whose license has been suspended under this section is not entitled to a refund for any fee paid to the licensing authority.

(d) On receipt of an order from a court or the Title IV-D agency vacating or staying an order suspending a license, Board staff shall promptly reinstate the suspended license. If the reinstated license is expired, Board staff shall provide a renewal notice to the licensee and provide for the license to be renewable online. Board staff shall provide notice of the reinstatement to the license holder's employers on record with the TBPG, upon a written request and payment of a license verification fee.

(e) In accordance with the Family Code Chapter 232, on receipt of a notice from a child support agency, as defined by Texas Family Code, §101.004 concerning an obligor who has failed to pay child support under a support order for six months or more that requests the authority to refuse to approve an application for issuance of a license to the obligor or renewal of an existing license of the obligor, Board staff shall refuse to approve an application for issuance of a license to the obligor or renewal of an existing license of the obligor until the authority is notified by the child support agency that the obligor has:

(1) paid all child support arrearages;

(2) made an immediate payment of not less than $200 toward child support arrearages owed and established with the agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(3) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or

(4) successfully contested the denial of issuance or renewal of license under Texas Family Code §232.1035(d).

(f) Board staff shall provide notice of the request to refuse to approve an application to the applicant or licensee.

(g) Upon receipt of a notice from a child support agency, as defined by Texas Family Code, §101.004, that a request to refuse to act on an application has been withdrawn, upon receipt of a notice that a court has ordered that a request be withdrawn, or upon the receipt of any other legal action has been taken that would warrant it, Board staff shall notify the applicant or licensee and take up the review of an application held by the process described in this section and process the application, as appropriate.

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

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405947
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 936-4405

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.6, §703.11

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §703.6 and §703.11, regarding the grants review process and the matching fund requirements.

As part of the grants review process, the Institute engages an independent third-party observer to attend peer review and review council meetings in order to confirm the correct processes are used. The proposed amendment to §703.6(g) would allow the Institute's Chief Compliance Officer, in place of a third-party observer, to attend and observe those meetings. Following the meetings, the Chief Compliance Officer shall report any issues

to the Oversight Committee before a vote on award applications is taken. The proposed amendment would not preclude the Institute from contracting with an independent third-party to observe meetings. If a third-party is utilized, the third-party shall issue a report to the Chief Compliance Officer.

The Institute permits a grant recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, to credit toward the grant recipient's matching funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the grant recipient and the five percent (5%) indirect cost limit imposed by §102.203(c), Texas Health and Safety Code. The proposed amendment to §703.11(b) provides guidance for calculating the federal indirect cost rate applicable for the matching funds credit when the federal indirect cost rate changes during the project year. The proposed amendment to §703.11(c) addresses how encumbered funds expended by subcontractors or subawardees on the grant project may be counted as matching funds.

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas has determined that for the first five-year period the rule changes are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of policies and procedures the Institute will follow to implement its statutory duties.

Ms. Doyle has determined that the rule shall not have an effect on small businesses or on micro businesses.

Written comments on the proposed rule changes may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than January 26, 2015. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.state.tx.us. Comments may be submitted by facsimile transmission to (512) 475-2563.

The rule changes are proposed under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provides the Institute with broad rule-making authority to administer the chapter. Kristen Pauling Doyle, the Institute's General Counsel, has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article or code that is affected by these rules.

§703.6. Grants Review Process

(a) - (f) (No change.)

(g) The Institute's Chief Compliance Officer [~~Institute~~] shall [~~engage an independent third party to~~] observe meetings of the Peer Review Panel and Review Council where Grant Applications are discussed.

(1) The Chief Compliance Officer [~~independent third party~~] shall [~~serve as a neutral observer to~~] document that the Institute's Grant Review Process is consistently followed, including observance of the Institute's established Conflict of Interest rules and that participation by Institute employees, if any, is limited to providing input on the Institute's Grant Review Process and responding to committee questions unrelated to the merits of the Grant Application. Institute Program staff shall not participate in a discussion of the merits, vote, or any other action taken related to a Grant Application.

(2) The [~~independent third party reviewer shall issue a report to the~~] Chief Compliance Officer shall report to the Oversight Committee prior to a vote on the award recommendations specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(3) Nothing herein shall prevent the Institute from contracting with an independent third party to serve as a neutral observer of meetings of the Peer Review Panel and/or the Review Council where Grant Applications are discussed and to assume the reporting responsibilities of the Chief Compliance Officer described in this subsection. In the event that the independent third party observes the meeting of the Peer Review Panel and/or the Review Council, then the independent third party reviewer shall issue a report to the Chief Compliance Officer specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(h) - (k) (No change.)

§703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants

(a) (No change.)

(b) For purposes of the certification required by subsection (a) of this section, a Grant Recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, may credit toward the Grant Recipient's Matching Funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code, subject to the following requirements:

(1) The Grant Recipient shall file certification with the Institute documenting the federal indirect cost rate authorized for research grants awarded to the Grant Recipient;

(2) To the extent that the Grant Recipient's Matching Funds credit does not equal or exceed one-half of the Grant Award funds to be distributed for the Project Year, then the Grant Recipient's Matching Funds certification shall demonstrate that a combination of the dollar amount equivalent credit and the funds to be dedicated to the Grant Award project as described in subsection (c) of this section is available and sufficient to meet or exceed the Matching Fund requirement; [~~and~~]

(3) Calculation of the portion of federal indirect cost rate credit associated with subcontracted work performed for the Grant Recipient shall be in accordance with the Grant Recipient's established internal policy; and[.]

(4) If the Grant Recipient's federal indirect cost rate changes less than six months following the anniversary of the Effective Date of the Grant Contract, then the Grant Recipient may use the new federal indirect cost rate for the purpose of calculating the Grant Recipient's Matching Funds credit for the entirety of the Project Year.

(c) For purposes of the certification required by subsection (a) of this section, Encumbered Funds may include:

(1) Federal funds, including, but not limited to American Recovery and Reinvestment Act of 2009 funds, and the fair market

value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(2) State of Texas funds;

(3) funds of other states;

(4) Non-governmental funds, (including private funds, foundation grants, gifts and donations; [~~and~~]

(5) Unrecovered Indirect Costs not to exceed ten percent (10%) of the Grant Award amount, subject to the following conditions:

(A) These costs are not otherwise charged against the Grant Award as the five percent (5%) indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Grant Recipient must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; and

(C) The Grant Recipient is not a public or private institution of higher education as defined by §61.003 of the Texas Education Code; and [~~.~~]

(6) Funds contributed by a subcontractor or subawardee and spent on the Grant Project, so long as the subcontractor's or subawardee's portion of otherwise allowable Matching Funds for a Project Year may not exceed the percentage of the total Grant Funds paid to the subcontractor or subawardee for the same Project Year.

(d) - (j) (No change.)

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

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405967
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 463-3190

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§101.300 - 101.303, 101.306, 101.309, 101.350 - 101.354, 101.356, 101.359, 101.360, 101.370 - 101.373, 101.376, 101.378, 101.379, 101.390 - 101.394, 101.396, 101.399, and 101.400; and the repeal of §§101.304, 101.358, and 101.374.

If adopted, the amended and repealed 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 Emissions Banking and Trading (EBT) Program rules in Chapter 101, Subchapter H include market-based programs that provide sites with additional flexibility for complying with air regulations, such as the offset requirements in nonattainment new source review (NNSR) permits or the unit-specific emission limits in various state rules. Two of the EBT programs are voluntary programs designed to incentivize emission reductions beyond regulatory requirements. In 1993, the commission adopted the emission reduction credit (ERC) rules in Division 1 to allow sources in nonattainment areas to generate, bank, trade, and use credits from permanent reductions in emissions. In 1997, the commission adopted the discrete emission reduction credit (DERC) rules in Division 4 to allow statewide sources to generate, bank, trade, and use credits from reductions in emissions below regulatory requirements.

The commission has also adopted two mandatory EBT programs that apply in the Houston-Galveston-Brazoria (HGB) ozone nonattainment area. In 2000, the commission adopted the Mass Emissions Cap and Trade (MECT) Program rules in Division 3 to provide additional flexibility in the implementation of the SIP strategy to reduce nitrogen oxides (NO_x) emissions in the HGB ozone nonattainment area. The MECT Program rules specify the allocation, banking, trading, and use of allowances to cover NO_x emissions from affected sources in the HGB area. In 2004, the commission adopted the Highly Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) Program rules in Division 6 to provide additional flexibility in the implementation of the SIP strategy to reduce HRVOC emissions in the HGB ozone nonattainment area. The HECT Program rules specify the allocation, banking, trading, and use of allowances to cover HRVOC emissions from affected sources in Harris County.

Because the programs are market-based, the costs associated with trades of credits and allowances are not controlled. In response to recent increases in the cost and lack of availability of credits, there has been considerable interest from the regulated community for alternatives that facilitate credit generation and for flexibility in credit use, including options provided in the existing EBT rules that have historically not been used. Specifically, there has been interest in generating credits by reducing emissions from area and mobile sources. However, the research into the feasibility of generating area and mobile source credits has uncovered significant implementation issues associated with ensuring that these source credits would meet the EPA and Federal Clean Air Act (FCAA) requirements. In addition, there has been considerable interest from the regulated community for flexibility in existing rules for the use of allowances to satisfy NNSR offset requirements. The proposed rulemaking would revise the EBT Program rules in Chapter 101 to respond to these emerging issues and clearly provide additional flexibility where possible or remove options that cannot be practically implemented.

DERC Use in the Dallas-Fort Worth (DFW) Area

In 2008, the commission established a ton per day (tpd) limit on the use of NO_x DERCs in the DFW 1997 eight-hour ozone nonattainment area to ensure that NO_x DERC use does not interfere with the attainment and maintenance of the 1997 eight-hour ozone National Ambient Air Quality Standards (NAAQS). The current methodology used to calculate the NO_x DERC limit incorporates emission reductions from annual mobile fleet turnover. The reliance on fleet turnover requires annual computation of the limit and prevents the affected regulated community from accurately planning the future use of NO_x DERCs. Additionally, di-

minishing annual reductions from fleet turnover are expected to cause the NO_x DERC limit to become more restrictive in the future, which could eventually restrict regulated entities in the DFW area from using available NO_x DERCs for compliance. The EPA has not yet acted on this portion of the DERC rules.

On July 20, 2012, the 10-county DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) was designated a moderate nonattainment area for the 2008 eight-hour ozone NAAQS. As part of this rulemaking and the *Attainment Demonstration SIP Revision for the DFW 2008 Eight-Hour Ozone Nonattainment Area* proposed concurrently with this rulemaking, the technical basis of the NO_x DERC limit was reviewed to determine if it is necessary to extend this provision to the DFW 2008 eight-hour ozone nonattainment area. The proposed rulemaking would not extend the NO_x DERC limit to Wise County. The nine-county DFW 1997 eight-hour ozone nonattainment area is currently classified as serious, but under the 2008 eight-hour ozone NAAQS the nine original counties and Wise County are classified as moderate. No NO_x DERCs have ever been generated in Wise County. If NO_x DERCs are generated in Wise County in the future, the use of these DERCs in the nine-county DFW 1997 eight-hour ozone nonattainment area could only be approved in accordance with the restrictions on the inter-area use of DERCs in §101.372(f)(7). Additionally, NO_x DERCs generated in the nine-county DFW 1997 eight-hour ozone nonattainment area could also only be approved for use in Wise County in accordance with the restrictions on the inter-area use of DERCs in §101.372(f)(7). Therefore, it is not necessary to extend the NO_x DERC limit to Wise County at this time.

As part of this rulemaking, the commission also evaluated alternative methodologies that could be used to limit NO_x DERC use in the 1997 eight-hour ozone nonattainment DFW area. The evaluation included a review of the NO_x DERC limits set from 2009-2014, and the *Notice of Intent to Use DERCs* and *Notice of Use of DERCs* applications submitted by regulated entities in the DFW area during this same time. The NO_x DERC limits set from 2009 - 2014 range from 3.2 to 24.3 tpd. The *Notice of Intent to Use DERCs* applications submitted by regulated entities from 2009 - 2014 requested the potential use of 3.2 to 11.4 tpd NO_x DERCs. However, the *Notice of Use of DERCs* applications submitted for this same time indicate that the actual NO_x DERC use ranged from 0.1 to 1.5 tpd.

The proposed rulemaking would replace the existing annually-calculated NO_x DERC limit in §101.379(c) with a fixed limit of 17.0 tpd of NO_x DERC use in the DFW area. This limit would apply only to NO_x DERCs generated and used in the nine-county DFW 1997 eight-hour ozone nonattainment area. The proposed 17.0 tpd limit was selected based on the 2013 NO_x DERC limit of 16.9 tpd, which was the second highest limit that had been set at the time the modeling sensitivity was conducted. The proposed limit is one and a half times greater than the largest request to use DERCs submitted from 2009 - 2014 and more than 11 times greater than any actual DERC use during this same time. The proposed use of a fixed limit would provide certainty to the affected regulated community and facilitate planning for the future use of NO_x DERCs. The proposed limit also provides the affected regulated community with flexibility because it exceeds the amount of DERCs historically requested for use. The proposed 17.0 tpd limit on NO_x DERC use is also consistent with the attainment and maintenance of the 1997 and 2008 eight-hour ozone NAAQS because the modeling sensitivity conducted indicates the proposed limit will not cause any additional monitor to exceed the standard. The *Attainment Demonstration SIP Revision for the DFW 2008 Eight-Hour Ozone Nonattainment Area* proposed concurrently with this rulemaking provides details regarding the modeled ozone impacts of the proposed new NO_x DERC limit in Section 3.7.4.3: *DERC Sensitivity.*

Generating Credits from Area Sources

The existing rules allow an area source to generate ERCs from emission reductions that are demonstrated to be real, quantifiable, permanent, enforceable, and surplus to the SIP and all applicable rules, and DERCs from reductions that are real, quantifiable, and surplus to the SIP and all applicable rules. However, research into the feasibility of generating area source credits has uncovered significant implementation issues associated with ensuring that area source credits would meet the EPA and FCAA requirements.

Under the existing EBT rules, an area source is a stationary source that is not required to submit an annual emissions inventory (EI) under §101.10(a) based on the quantity of emissions from the source (e.g., an account that emits less than 10 tons per year (tpy) of volatile organic compounds (VOC) or 25 tpy of NO_x in an ozone nonattainment area). Examples of area sources include, but are not limited to, upstream oil and gas production, painting operations, gasoline stations, dry cleaners, and residential fuel combustion. Although emissions from individual area sources are relatively small, area sources are numerous enough to collectively emit significant quantities of air pollution and must be accounted for in the EI. Area sources are too small and too numerous to be inventoried individually. For this reason, emissions from area sources are estimated at the county level using information such as population, emission factors, and activity or production data. County level emission estimates make it very challenging to demonstrate that a particular emission reduction is surplus to the SIP EI.

To effectively implement an area source EBT program, facility-specific EI information would be required for an individual site to be eligible to generate credits. It may also be necessary to require facility-specific EI information from all sites in an area source category to ensure that any credits generated are surplus to the emissions represented in the SIP. Once inventoried as an individual regulated entity, the area source would be required to submit detailed emissions inventories annually and this facility-specific information would be included in subsequent SIPs. To generate an ERC, an area source would also be required to make the emission reductions federally enforceable through permitting actions or other federally enforceable means. Many of these area sources are typically authorized with a permit by rule, which may not currently require registration. Satisfying these requirements would create a significant regulatory and financial responsibility for these area sources, which are typically small businesses. To be eligible to generate credits, these sources would incur costs associated with the completion and submittal of an annual EI and permitting documents. A *de minimis* reporting threshold for area sources may need to be established so that only sources able to generate a significant amount of credits could submit inventories in recognition of the impact on these sources as well as the commission resources needed to process the inventories and credits.

Therefore, the commission is proposing to remove the rules that allow an area source to generate credits due to the significant regulatory and financial responsibility for industry and the agency associated with implementing an area source program consistent with federal requirements. The commission requests com-

ment on the proposed removal and the associated impacts of removing the potential for generation of area source credits. Additionally, the commission requests comment from individuals who support retaining an area source credit program specifically regarding suggestions for how an area source ERC or DERC program could be implemented in a manner consistent with EPA and FCAA requirements and minimize the burden to applicants. Comments focusing on how an area source program might be implemented for specific industry types or sectors are also requested. The commission also notes that if the proposed removal of the rules for area sources is not adopted or is modified then all of the proposed changes to the ERC and DERC Program rules in Chapter 101, Subchapter H, Divisions 1 and 4 would also apply to area sources.

Generating Credits from Mobile Sources

The existing rules allow a mobile source to generate ERCs from emission reductions that are demonstrated to be real, quantifiable, permanent, enforceable, and surplus to the SIP and all applicable rules, and DERCs from reductions that are real, quantifiable, and surplus to the SIP and all applicable rules. However, research into the feasibility of generating mobile source credits has uncovered significant implementation issues associated with ensuring that mobile source credits would meet the EPA and FCAA requirements.

Mobile sources are categorized as on-road and non-road sources and are defined at §101.300(16) and §101.370(17) as "on-road (highway) vehicles (e.g., automobiles, trucks, and motorcycles) and non-road vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels)." The on-road sources include automobiles, buses, trucks, and other vehicles traveling on local and highway roads. Non-road sources are any mobile combustion sources, such as locomotives, marine vessels, off-road motorcycles, snowmobiles, lawn/garden equipment, and farm, construction, and industrial equipment.

The mobile source EI used in attainment demonstration (AD) SIP revisions relies on historical and future-year emission estimates. Since there are several million mobile sources in the state, it is unrealistic to have line-item emission estimates in the SIP for each one. Also, since there is no registration database for non-road equipment, it is impossible for the TCEQ to know about individual equipment owners, hours of use, model years of new purchases, ages of in-use equipment, etc. Instead, the commission uses computer models, such as the Motor Vehicle Emission Simulator and Texas NONROAD, to estimate the emissions from mobile sources based on fleet-average characteristics. The models used account for emission reductions from mobile sources that are subject to the EPA rules for engine manufacturers. For these sources, the future-year emission estimates are usually lower than the historical emissions because of the ongoing fleet turnover benefits from replacing older higher-emitting engines with newer lower-emitting units that meet more stringent standards. Proving that an emission reduction from a specific mobile source is surplus to the SIP and not accounted for through fleet turnover is very challenging.

Federal law allows only the EPA and the State of California to establish engine certification standards for mobile sources. In the 1990s, it was feasible to generate ERCs and DERCs from mobile sources because California standards were more stringent than the EPA standards, and there was not a requirement for California-certified vehicles or equipment to be used in Texas. However, changes in federal emission standards have essentially aligned the EPA and California standards in regards to emissions certification for mobile sources. In addition, the burden of meeting on-road vehicle and non-road equipment emission standards falls with the manufacturer and not the purchaser. As long as the vehicle or equipment met the standards in place at the time it was manufactured, the owner may operate it in most parts of Texas for years without demonstrating that the equipment consistently meets the original emissions certification standards, although annual emissions testing is required in some areas.

Given these legal and technical issues with generating credits from mobile sources, the commission is proposing to remove the rules that allow a mobile source to generate credits due to the difficulties associated with demonstrating these reductions are surplus to the federal requirements already accounted for in the SIP. The proposed removal would not affect the use of the existing mobile DERCs that were previously generated.

Using Allowances to Satisfy NNSR Offset Requirements

The proposed rulemaking would revise the MECT and HECT rules to provide clarity and additional flexibility for the use of allowances for NNSR offsets. The existing MECT rules limit the use of allowances for offsets to a new or modified facility that either did not have an administratively complete application for a permit under 30 TAC Chapter 116 before January 2, 2001, or did not qualify for a permit by rule under 30 TAC Chapter 106 and commence construction before January 2, 2001. The proposed rulemaking would expand the rules to provide for the use of MECT allowances to satisfy NO_x offset requirements for any facility in the HGB area that is required to participate in the MECT Program as described in §101.351. The proposed rulemaking would also continue to provide for the use of HECT allowances to satisfy VOC offset requirements for any facility in Harris County that is required to participate in the HECT Program as described in §101.391 and §101.392. The existing MECT and HECT rules only address the use of allowances for the one-to-one portion of the offset requirement. The proposed rulemaking would expand the rules to provide for the use of allowances to satisfy any portion of the NNSR offset requirement. The proposed revisions would provide additional flexibility and would not adversely affect air quality because the amount of allowances in the MECT and HECT caps would not increase. The proposed expansion of the rules to provide for the use of allowances to satisfy the environmental contribution portion of the NNSR offset requirement would ultimately cause a permanent reduction in the overall MECT and HECT caps because the allowances used to satisfy the environmental contribution portion of the offset requirement would be permanently retired, would not be used to simultaneously comply with the MECT or HECT Programs, and would not be returned when the facility shuts down.

Demonstrating Noninterference under FCAA, Section 110(l)

The commission provides the following information to demonstrate why the proposed amendments would not negatively affect the status of the state's progress towards attainment with the ozone NAAQS, would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

General Revisions

The proposed rulemaking includes various administrative changes, removal of the option for area and mobile sources to generate credits, and includes other changes that are intended to provide flexibility in a manner consistent with the requirements in the SIP. The commission has determined that these proposed

rule changes would not increase emissions (and therefore, will not negatively affect the status of the state's progress towards attainment with the ozone NAAQS), would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

DERC Use in the DFW Area

The proposed rulemaking would replace the existing annually calculated NO_x DERC limit with a fixed limit of 17.0 tpd of NO_x DERC use in the DFW area. The current methodology used to calculate the NO_x DERC limit incorporates emission reductions from annual mobile fleet turnover. The NO_x DERC limits range from 3.2 tpd for 2009 to 42.8 tpd for 2015. These fluctuations are most often related to the use of on-road Federal Motor Vehicle Control Program values that continuously change in a nonlinear manner based in part on the vehicle-age distributions, vehicle populations, and vehicle-miles-traveled distributions by vehicle type.

A modeling sensitivity run was performed and indicated the proposed 17.0 tpd limit would not substantively affect future design values in the DFW area for the 2008 eight-hour ozone NAAQS by causing any additional monitor to exceed the standard by 2018. Additionally, the modeling sensitivity run and current monitoring data show attainment with the 1997 eight-hour ozone NAAQS by 2018. Details regarding the modeled ozone impacts of the proposed new NO_x DERC limit are provided in Section 3.7.4.3: *DERC Sensitivity* of the Attainment Demonstration SIP Revision for the DFW 2008 Eight-Hour Ozone Nonattainment Area proposed concurrently with this rulemaking. Since this current modeling shows attainment with the 1997 eight-hour ozone NAAQS and that this limit would not substantively affect future design values in the DFW area for the 2008 eight-hour ozone NAAQS, the commission considers the proposed 17.0 tpd limit on NO_x DERC use consistent with the attainment and maintenance of the 1997 and 2008 ozone NAAQS.

Given the large fluctuations in the current DERC limit and the results of the modeling sensitivity, the commission has determined that the proposed rule change would not negatively affect the status of the state's progress towards attainment with the 1997 and 2008 ozone NAAQS, would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the 1997 and 2008 ozone NAAQS.

Allowances Used for NNSR Offset Requirements

The proposed rulemaking would revise the MECT and HECT rules to provide clarity and additional flexibility for the use of allowances for NNSR offsets. The proposed rulemaking would expand the rules to provide for the use of MECT allowances to satisfy NO_x offset requirements for any facility in the HGB area that is required to participate in the MECT Program. The proposed rulemaking for the MECT and HECT Programs would expand the rules to provide for the use of allowances to satisfy any portion of the NNSR offset requirement. The additional flexibility provided by the proposed revisions would not adversely affect air quality because the amount of allowances in the MECT and HECT caps would not increase. Additionally, the use of allowances to satisfy the environmental contribution portion of the NNSR offset requirement would ultimately cause a permanent reduction in the overall MECT and HECT caps because these allowances would be permanently retired and would not be returned when the facility shuts down. Therefore, the commission has determined that these proposed rule changes would not negatively affect the status of the state's progress towards attainment with the 1997 and 2008 ozone NAAQS, would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the 1997 and 2008 ozone NAAQS.

Based on this analysis, the commission has determined that the proposed rulemaking would not negatively affect the status of the state's progress towards attainment with the 1997 and 2008 ozone NAAQS, would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the 1997 and 2008 ozone NAAQS.

Section by Section Discussion

General Revisions

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,* August 2014. Such changes include the appropriate and consistent use of acronyms, defined terms, singular nouns, punctuation, section references, and certain terminology like "may," "may not," "shall," and "must." Revisions are proposed throughout the rules where needed to conform to the *Texas Legislative Council Drafting Manual* guidance for rule language, such as changing "in the event that" to "if," "on or after" a date to "after" with one calendar day earlier, "prior to" to "before," "pursuant to" to "under," "provided in" to "provided by," "time period" to "period," and "Web site" to "website."

In the current and proposed rules, the term "executive director" is used as defined at 30 TAC §3.2(16) to include any staff member designated to act on behalf of the executive director of the agency; for the proposed rules, this use would mean the staff in the EBT Program. For consistency, references to "owner" or "operator" are proposed to be changed to "owner or operator" to indicate that these entities share the responsibility for certain actions in the rules. Throughout the rules, the phrase "law, rule, regulation, or agreed order" in its entirety or in part is proposed to be changed to "requirement" for conciseness. In many cases, this phrase is used in conjunction with "local, state, and/or federal." Where these words are in a different order, they are changed to this order for consistency. Where the phrase "local, state, and/or federal requirements" is used in the rules, the commission means any such requirement that is legally enforceable against the owner or operator of the facility, including all laws, ordinances, rules, regulations, agreed orders, authorization limits, and similar requirements. The use of this phrase in the rules refers to the most stringent requirement rather than allowing the applicant to choose among all the requirements. Additionally, if there are requirements that limit emissions in different ways (e.g., an annual emission limit and a limit on operating hours), all of these must be considered as a group to determine the actual regulatory limit for a facility. Throughout the proposed rules, references to the NNSR permitting rules are revised to Chapter 116, Subchapter B for consistency and to ensure the references include all appropriate NNSR rules. Throughout the proposed rules, the term "transfer" is changed to "trade" for consistency with the section titles; the use of "trade" is intended to include all types of transfers as well.

In the introductory paragraph of the definition section for each division, a sentence is proposed to be added to specify that terms used in the rules have the normal meaning in the field of air pollution control unless defined differently in 30 TAC §3.2 or §101.1 or in the Texas Clean Air Act. The current sentence in the in-

troductory paragraph of each definition section would be revised to be more concise. The proposed revisions are consistent with the definition sections in other subchapters in Chapter 101.

The proposed revisions would replace the phrase "emission credit" with "emission reduction credit" or "ERC" and "discrete emission credit" with "discrete emission reduction credit" or "DERC" for consistency with common usage and the proposed removal of the mobile credit programs. Additionally, the proposed revisions update form names and form designations to include the program acronym and reflect other changes proposed in the rules. The proposed revisions would also use the form title followed by its designation the first time the form is mentioned in a section. Subsequent references to the same form in the section are proposed to be the form designation (e.g., Form ERC-1, Form MECT-2, etc.).

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.

Division 1: Emission Credit Banking and Trading

The title of this division is proposed to be changed from "Emission Credit Banking and Trading" to "Emission Reduction Credit Program." As discussed in the background section of this preamble, the commission is proposing removal of the option to generate ERCs by reducing emissions from area and mobile sources, and all corresponding references to area and mobile sources are proposed for removal or revision in this division. Throughout the division, the commission proposes to remove requirements to submit ERC certificates and revise the term "certificate" to "identification number" for consistency with current practice. This proposed revision will not affect the way ERCs are generated, used, or traded. Throughout the division, the commission proposes to remove references to 30 TAC Chapter 114 because there are no longer any provisions therein for which ERCs can be used for compliance.

Section 101.300, Definitions

Wording changes are proposed in the definition of "activity" at §101.300(1) to add "fuel usage," and "power output" because these measurements are commonly used for reporting emissions; to remove "vehicle miles traveled" and "or mobile source" because these terms are for mobile sources; and to change "economic output" to "usage" because some types of facilities (like flares) do not have an economic output. As part of the proposed removal of provisions related to area sources, the definition of "area source" at §101.300(3) is proposed to be deleted. The definitions of "baseline activity" at §101.300(4) and "baseline emission rate" at §101.300(5) are also proposed to be deleted because they are redundant due to the proposed new definition of "historical adjusted emissions." The subsequent definitions would be renumbered.

The commission proposes to amend the definition of "baseline emissions" currently at §101.300(6), which would be renumbered as §101.300(3), to: 1) remove "actual" before "emissions" because the amount of actual emissions may be reduced in calculating emission reductions if they exceed a limit on the baseline emissions value; 2) change "prior to" to "before" for consistency with the *Texas Legislative Council Drafting Manual;* 3) add "implementation of" before "an emission reduction strategy" for clarity; and 4) add "the lowest of the facility's historical adjusted emissions or state implementation plan emissions" to describe the values that limit baseline emissions.

A definition of "compliance account" is proposed to be added as §101.300(5) to specify where ERCs are held for use, and the subsequent definitions would be renumbered. At §101.300(7), the definition of "emission rate" is proposed to be added to specify the rate of emissions per unit of activity that does not exceed any regulatory limit. The proposed definition is the same as the existing definition of "baseline emission rate" and is being renamed because the term is used to describe a facility's emission rate in context other than determining the two-year average baseline emissions. Subsequent definitions would be renumbered.

Because the provisions for mobile ERCs are proposed to be deleted from the division, the commission proposes removal of the obsolete definition of "emission credit" at current §101.300(9) and to renumber subsequent definitions. In current §101.300(11), which would be renumbered as §101.300(9), a change is proposed to the definition of "emission reduction credit" to specify that an ERC is expressed in tenths of a "ton per year" (rather than "tons per year") because ERCs are generated and used in these units.

The existing definition of "emission reduction strategy" in current §101.300(12) is proposed to be renumbered as §101.300(10) and to have the phrase "beyond that required by state or federal law, regulation, or agreed order" changed to "below the baseline emissions" to clarify that the baseline emissions rather than only regulatory limits restrict the certification of ERCs. Because of the proposed removal of provisions for area sources to generate ERCs, the definition of "facility" at current §101.300(13) is proposed to be renumbered as §101.300(11) and amended to clarify that this term includes only a facility included in the agency EI under the point source category.

A definition of "historical adjusted emissions" is proposed to be added as §101.300(13), and the subsequent definitions would be renumbered. The definition would specify that the facility's historical adjusted emissions before implementing the emission reduction strategy are calculated as the average emissions during any two consecutive years selected in accordance with §101.303(b)(2), not to exceed any (i.e., the most stringent overall) applicable local, state, or federal requirement. The proposed definition contains the applicable portions of the existing definition of "baseline emissions" and the existing equation for calculating baseline emission in existing §101.303(c). Throughout the division, the commission proposes to use this new term to replace other references to the facility's emissions before implementing the emission reduction strategy calculated as the average emissions during any two consecutive years.

As part of the removal of provisions related to mobile sources, the commission proposes to delete the definitions of mobile emission reduction credit, mobile source, mobile source baseline activity, mobile source baseline emissions, and mobile source baseline emission rate in existing §101.300(15) - (19), respectively. The definition of "most stringent allowable emissions rate" at current §101.300(20) is also proposed for deletion because the term is not used in Division 1. Subsequent definitions would be renumbered.

The definition of "protocol" at current §101.300(22) is proposed to be renumbered as §101.300(15) and amended to change "estimating" to "determining" to better describe how protocols work. The definition of "quantifiable" at current §101.300(23) is pro-

posed to be renumbered as §101.300(16) and amended to clarify that an approved protocol must be used to calculate an emission reduction. Because the term "real reduction" is not used in Division 1, current §101.300(24) is proposed to be renumbered as §101.300(17) and amended to define the word "real" as reductions in actual, not allowable, emissions. In the definition of "shutdown" at current §101.300(25), which is proposed to be renumbered as §101.300(18), the word "permanent" is proposed to be deleted because a shutdown can be permanent or temporary; the use of the term "shutdown" in the rules includes "permanent" where appropriate, so it is not needed in the definition. The definition of "source" at §101.300(27) would be deleted because it is not needed if the provisions for mobile sources generating or using ERCs are removed.

For conciseness throughout Division 1, the term "state implementation plan emissions" is proposed to be added as §101.300(21), and subsequent definitions would be renumbered. The term would be defined as a facility's annual emissions as reported in the state's point source EI for the year in which that facility's emissions are specifically identified in the SIP revision submitted to the EPA for the area where the facility is located. The SIP emissions may not exceed any (i.e., the most stringent overall) applicable local, state, or federal requirement. The SIP emissions are determined for the calendar year used to represent the facility's emissions in the projection-base year inventory used in the modeling included in the most recent AD SIP revision or maintenance plan SIP revision for the most current NAAQS for the pollutant that was submitted to the EPA for the area where the facility is located. If no AD SIP revision or maintenance plan SIP revision for the most current NAAQS has been submitted to the EPA for the area where the facility is located, the SIP emissions are determined for the calendar year used to represent the facility's emissions in the most recent AD SIP revision or attainment inventory used in the most recent maintenance plan SIP revision submitted to the EPA for the area where the facility is located for an earlier NAAQS. If no AD or maintenance plan SIP revisions have been submitted to the EPA for the area where the facility is located, the SIP emissions are determined for the calendar year used to represent the facility's emissions in the point source inventory used in the most recent EI SIP revision submitted to the EPA for the area where the facility is located. Throughout the division, the commission proposes to use this new term to replace other references to the EI used in the SIP.

The definition of "strategic emissions" at current §101.300(29) is proposed to be renumbered as §101.300(22), and the word "allowable" is proposed to be changed to "enforceable" because the reduced emission limit must be federally enforceable for the reduction to be eligible to be certified as an ERC.

Section 101.301, Purpose

The commission proposes to revise §101.301 to clarify that the division would apply to a person buying and selling credits, including a broker. The word "another" would be changed to "a" because the owner or operator of the facility whose emission reductions resulted in the generation of an ERC might choose to use the ERC for compliance purposes or netting.

Section 101.302, General Provisions

Amendments to §101.302(a) are proposed to move the provisions for the inter-pollutant use of ERCs to §101.306 where the other provisions for ERC use are already covered. Language is proposed to be added to §101.302(b) to specify that the owner or operator of a facility in a nonattainment area may generate ERCs from emission reductions that meet the criteria in this division. In §101.302(b)(1), eligible facilities would be specified as those with SIP emissions reported in the point source category of the EI. The commission proposes to delete §101.302(b)(2) because the paragraph would be obsolete due to removing the option to generate ERCs from mobile sources. Because referenced §101.30 no longer exists, the citation to this section in §101.302(b)(3) is proposed to be changed to the federal conformity rules, 40 Code of Federal Regulations (CFR) Part 93. Therefore, subsection (b) is proposed to be rewritten to clarify that the owner or operator of a facility located in a nonattainment area may generate an ERC if the emission reduction meets the criteria in this division.

The proposed revisions in §101.302(c)(1) would remove redundant language for conciseness and update the language to reflect the proposed definition of "SIP emissions." Given the proposed definition of "SIP emissions" the commission is also requesting comments on whether it is necessary to retain the language in §101.302(c)(1)(D). The deletion of §101.302(c)(2) is proposed as part of the removal of provisions for mobile sources, and the subsequent paragraph would be renumbered. In current §101.302(c)(3), which would be renumbered as §101.302(c)(2), the phrase "another division within this subchapter" is proposed to be changed to "Division 4 of this subchapter" to clarify that the limitation on recertification only applies to DERCs rather than allowances under the other divisions.

Changes are proposed throughout §101.302(d) to indicate that this subsection applies to both generators and users, including changing "baseline emissions" to "emissions" because users do not calculate baseline emissions. Non-substantive changes are also proposed throughout subsection (d) to remove redundant and obsolete language. In §101.302(d)(1), the phrase "if existing for the applicable facility or mobile source" is proposed to be deleted because all protocols must be submitted to the EPA by the executive director prior to use, as specified in §101.302(d)(1)(C). Additionally, the phrase "executive director and" is proposed to be added before "EPA approval" to clarify that the executive director has discretion on whether a protocol that was not previously approved can be used. The decision by the executive director on use of such a protocol can be made at any time in the process of certifying an ERC. In §101.302(d)(1)(A), (B), and (C)(iii), addition of "the owner or operator of" is proposed to clarify that this person (rather than the facility) must quantify reductions. In §101.302(d)(1)(A), two rule citations are proposed to be deleted because these sections are in the process of being repealed from 30 TAC Chapter 117. In §101.302(d)(1)(B), a citation of 30 TAC Chapter 115 as a whole would replace the citations of specific sections to ensure that all monitoring and testing requirements are reflected. The provision in §101.302(d)(1)(C) is proposed to be expanded to apply to users of ERCs as well as generators. Protocols must be used to calculate emissions for both the generation and use of ERCs, so the current omission of users here could be interpreted as prohibiting use of an ERC if the protocol used to determine the credits needed had not already been submitted to the EPA. This limitation was not the commission's intent, so this change is proposed to clarify this issue.

In §101.302(d)(2), the phrase "required under" is proposed to be changed to "specified in" because the referenced paragraph (1) does not itself require monitoring and testing data. For clarity, the provision in current §101.302(d)(3) requiring the use of the most conservative method is proposed to be moved to paragraph (2).

The word "conservative" is intended to mean the method that would result in the fewest ERCs generated or the most ERCs used (i.e., conservative of air quality). However, the requirement to use the most conservative method, either in the existing rule language or in the proposed revision, is not intended to override the requirement for using the methods listed in subparagraphs (A) - (F) in order of preference. Additionally, in the last sentence, the clause "the data is missing or unavailable" would be inserted after the phrase "period of time" to clarify that the data substitution can only be used for the period when the monitoring required by Chapter 115 or 117 is not available. Using the data replacement requirements in Chapters 115 and 117 when monitoring equipment is not functioning properly does not require the use of alternate data for ERC generation or use. However, for ERC generation, adjustments may be required (such as cases where data substitution requires the use of higher values) to ensure that the reductions are real. For ERC use, the replaced data would be used to determine the excess emissions to be covered.

The provisions in §101.302(e)(2) are proposed to be rewritten for clarity to specify that the executive director (i.e., program staff) must review an application. The proposed changes would also indicate that an identification number will be assigned to each ERC certified. Although not explicitly stated in the proposed rule, the commission plans to continue the current practice of assigning one identification number for multiple ERCs that are generated from the same site and expire on the same date. The proposed changes would also indicate that a new number will be assigned when an ERC is partly used or traded. Although not explicitly stated in the proposed rule, this provision would include separate identification numbers for the traded and retained credits if only part of an ERC is traded. For clarity, the phrase "and in compliance with all other requirements of this division" would be added after the word "creditable" in the last sentence.

In §101.302(e)(3), the phrase "emission credit application" is proposed to be changed to "ERC generation" to clarify that, if appropriate, the executive director would deny the generation of an ERC rather than the Form ERC-1 that was submitted. For consistency, in §101.302(e)(4) the phrase "its allowable emission limit" is proposed to be replaced with "any applicable local, state, or federal requirement." The generation of ERCs is not being prohibited entirely if a requirement is exceeded, but the amount certified would be adjusted downward to account for the amount that the emissions exceeded the requirement. The phrase "upon completion of the public comment period" in §101.302(e)(5) is proposed to be changed to "after the EPA's 45-day adequacy review of the protocol" because the current language is not consistent with the requirements of §101.302(d)(1)(C)(v) and (vi). Reductions quantified under a protocol that has not been submitted to the EPA for review after approval by the executive director cannot be certified until the EPA has received the protocol and had time to review it. The EPA can deny the use of a protocol even after the 45-day period has expired by printing its finding in the *Federal Register;* however, the commission does not want to delay the processing of Forms ERC-1 and ERC-3 more than necessary. If the EPA should deny the use of a protocol through *Federal Register* publication after that protocol has been used to certify ERCs, the commission would review the ERCs and make appropriate adjustments to the amount certified.

The commission proposes to revise §101.302(g) to make nonsubstantive wording changes. In §101.302(h) the word "immediately" is proposed to be changed to "as soon as practicable" because all non-confidential information is added to the credit registry as the forms are processed, so complete information is not available until the processing is complete. Upon completion, the information will be available in the registry. The proposed revisions would not change the way EBT information is made available to the public and are only intended to more accurately reflect the process that has historically been used to disseminate this information.

Changes are proposed in §101.302(j) to clearly provide the executive director authority to prohibit, with cause as currently delineated, a person from participating in the ERC Program in any way. The term "person," as defined in §3.2(25), includes organizations, individuals, and other legal entities and is used in the proposed language to better describe all that can participate in the ERC Program. Similarly, the phrase "the ERC Program" is broader than "emission credit trading," and this change shows that the executive director's authority includes all aspects of the program rather than only trading. Non-substantive wording changes are proposed in §101.302(k).

Current §101.302(l) is proposed to be deleted. The provision is not needed because of the removal of the provisions for generating ERCs from area and mobile sources. The determination of ownership of ERCs has always been based on ownership of the facility at the time the emissions reduction is generated. Section 101.302(b) already indicates it is the owner or operator of the facility that may generate an ERC if the emission reduction meets the criteria in this division. The commission is requesting comment on whether it is necessary to retain this provision.

Section 101.303, Emission Reduction Credit Generation and Certification

In §101.303(a), the catch line "methods of generation" is proposed to be changed to "emission reduction strategy" to have consistent use of the latter term throughout the division. In §101.303(a)(1)(B) and (C), a wording change is proposed to clarify that the emissions "level required of the facility" is any (i.e., the most stringent overall) applicable local, state, or federal requirement. In §101.303(a)(2)(C), the phrase "the shutdown of" is proposed to be deleted and wording would be clarified to say that reductions from a facility that does not qualify as having SIP emissions are not eligible because all emission reductions that generate ERCs (not just those from shutdowns) must be from facilities that have SIP emissions.

In §101.303(b)(1), language changes are proposed to specify that the SIP emissions set one possible upper limit for the baseline emissions used in certifying an ERC. Language pertaining to §116.170(b) would be removed from §101.303(b)(1) because the applicable deadlines specified in 30 TAC §116.170(b) have passed and the language is no longer relevant. The commission proposes to revise §101.303(b)(2) to specify that the two years selected must be the same for the activity and emission rate used to calculate historical adjusted emissions. The commission also proposes to limit the period available for selecting the historical baseline years to the ten years before the emission reduction occurred. Since ERCs have been predominantly used for NNSR offsets, the change is proposed to ensure consistency with the NNSR program by preventing the use of historical adjusted emissions from a period longer than ten years if the year used to determine the facility's SIP emissions is more than ten years old.

In §101.303(c), the second sentence is proposed to be deleted because it is not needed and only recapitulates how the term "strategic emissions" is defined. The equation for calculating ERCs generated in §101.303(c) is proposed to be changed. The

current equation has been incorporated into the definition of historical adjusted emissions. The proposed changes are intended to reflect the existing requirement that the baseline emissions value is the lowest value among the historical adjusted emissions, the SIP emissions, and any applicable local, state, or federal requirement. Therefore, a replacement equation is proposed that shows the amount of ERCs generated are the difference between the baseline emissions (i.e., whichever of the above values is lowest) and the strategic emissions.

The commission proposes to extend the deadline to submit an Application to Generate ERCs (Form ERC-1) in §101.303(d)(1) from 180 days to two years after the implementation of the emission reduction strategy. This proposed change would not alter the lifespan of an ERC, which would continue to be five years after the implementation of the emission reduction strategy, but would allow more time to submit the paperwork. This additional flexibility was requested by some stakeholders at the initiation of this rulemaking. A two-year period was chosen based on precedent in Pennsylvania's rules and because it should provide sufficient time for preparing the form while still leaving a substantial portion of the lifespan after certification. The use of "no more than two years after" is intended to mean two years to the day after the emission reduction strategy is implemented, so if implementation occurs on February 1, 2014, the owner or operator would have until February 2, 2016, to submit the Form ERC-1. The current 180-day period in §101.303(d)(1) was originally promulgated to allow the commission to determine which reductions would be banked as ERCs and which would be permanently removed from the airshed since the minimum time needed for a modeling demonstration for a SIP revision is about six months. However, the proposed two-year period would not negate the provision in §101.302(c)(1)(C) that limits emission reductions used to generate ERCs to those that occurred after the year used to determine the SIP emissions. Because of the provisions of §101.302(c)(1)(C), the full two-year period proposed in §101.303(d)(1) would not be available after adoption of a revised SIP until two years have passed after the EI year used to determine the SIP emissions. If a SIP revision is adopted between the time the emission reduction strategy is implemented and the time the application is submitted, the commission would determine the amount of ERCs certified based on the most recently adopted SIP revision and not the SIP in place at the time the reduction is made. It is also possible that an application submitted after the commission proposes a SIP revision that affects the amount of ERCs that could be certified may not be approved before the commission adopts the SIP revision. The commission is requesting comments on the proposed extension of the deadline to submit an ERC generation application and any potential issues associated with applications submitted after the commission proposes a SIP revision that affects the amount of ERCs that could be certified.

Non-substantive changes are proposed in §101.303(d)(3) to remove redundant language and ensure the consistent use of defined terms. In §101.303(d)(3)(D) and (E), the newly defined terms "historical adjusted emissions" and "SIP emissions" are proposed to be specifically added to the list of required documentation. However, this proposed change does not require the applicant to submit any information that is not currently required. Amendments are proposed for §101.303(d)(3)(F) to remove the redundant phrase "for the applicable facility" because §101.303(d)(3) already requires this information to be submitted for all facilities and pollutants or precursors.

For conciseness, current §101.303(d)(4)(C) is proposed to be revised to cover the provisions currently in §101.303(d)(4)(D) and (E). The references to the Special Certification Form for Exemptions and Standard Permits (Form PI-8) would be updated to the current Certification of Emission Limits (Form APD-CERT). Proposed revisions to subparagraph (C) would also indicate that any facility without an NNSR permit that is otherwise authorized by commission rule (e.g., standard permit, standard exemption, or permit by rule) would make the reduction enforceable by certifying the emission reduction and the new maximum emission limit on a Form APD-CERT, other form considered equivalent by the executive director, or an agreed order. Current §101.303(d)(4)(D) and (E) are proposed to be deleted because they would no longer be needed.

Section 101.304, Mobile Emission Reduction Credit Generation and Certification

As part of the removal of the provisions for generating ERCs from mobile sources, §101.304 is proposed to be repealed in its entirety.

Section 101.306, Emission Credit Use

In the title of §101.306, "Emission Credit Use" is proposed to be changed to "Emission Reduction Credit Use." Non-substantive changes are proposed in current §101.306(a)(1) to specify ERCs can be used as an offset in an NNSR permit and to reference Chapter 116, Subchapter B that regulates this use. Current §101.306(a)(2), which allows ERCs to be used for mitigation offsets in certain circumstances, is proposed to be changed because the rule section referenced was previously repealed. The provision would cite the federal conformity rule instead of §101.30. The reference to Chapter 114 in §101.306(a)(3) is proposed to be deleted because there are no longer any provisions in Chapter 114 for which ERCs can be used for compliance. In §101.306(a)(4), the reference to §116.150 is proposed to be changed to Chapter 116, Subchapter B. Current §101.306(a)(5) is proposed to be deleted because the provisions for converting ERCs to allowances under the MECT Program have expired and the provisions for converting ERCs to allowances under the HECT Program are proposed to be removed. Current §101.306(a)(6) is proposed to be deleted because the motor fleet requirements in §114.201 have been repealed. Because of the proposed deletions, current §101.306(a)(7) would be renumbered as §101.306(a)(5), and rewording is proposed for conciseness.

For consistency, "ERC" is proposed to be substituted for "credit" in the catch line for §101.306(b). In §101.306(b)(1), the citation of §116.150 is proposed to be changed to Chapter 116, Subchapter B. In §101.306(b)(2), rewording is proposed for readability and to remove references to Chapter 114 because it no longer has any provisions for which ERCs can be used for compliance. The equation in §101.306(b)(2) is proposed to be updated to current figure format requirements and update terminology. The current language in §101.306(b)(3) is proposed to be modified for readability and to remove references to §117.223 and §117.1120 because these sections are being proposed for repeal concurrent with this rulemaking. The equation in §101.306(b)(3) is proposed to be updated to current figure format requirements. In §101.306(b)(4), the phrase "emission credits used" is proposed to be changed to "the number of ERCs needed" for consistency with how the other paragraphs are proposed to be reworded. Additionally, the word "extra" would be replaced by "an additional" for clarity.

The catch line of §101.306(c) is proposed to be changed for consistency with the proposed revisions to EBT forms. The provision in §101.306(c)(1) is proposed to be deleted, and the part of the provision would be moved with changes (as described below) to proposed §101.306(c)(2)(A). The requirement to identify the ERCs to be used as offsets before permit issuance would be deleted to allow additional time for obtaining the ERCs and to avoid the need to modify the permit if different ERCs are used as offsets than were originally intended. A new paragraph (1) is proposed to clarify that the executive director would not accept an Application to Use ERCs (Form ERC-3) until an ERC is available in the compliance account for the site where the ERC will be used. Proposed §101.306(c)(1) would also specify that, if the ERC would be used for NNSR offsets, the executive director would not accept the Form ERC-3 before the applicable NNSR permit application is administratively complete. EPA approval, where required, is not necessary when the Form ERC-3 is submitted but is required prior to the use of any ERCs included on the Form ERC-3.

Proposed §101.306(c)(2)(A) would require the user to submit a completed Form ERC-3 at least 90 days before the start of operation for an ERC used to satisfy NNSR offsets requirements. Proposed subparagraph (A) revises the existing requirement in §101.306(c)(1) to change the deadline for submitting the Form ERC-3 from before construction to before the start of operation for consistency with NNSR requirements for the new or modified facility to obtain offsets before beginning operation. For consistency with NNSR requirements, proposed subparagraph (A) also removes the existing requirement in §101.306(c)(1) for users to identify ERCs prior to permit issuance because this is not a requirement in the commission's NNSR permit program in Chapter 116, Subchapter B. However, any facility using the ERCs as NNSR offsets could not start operation until the use of the ERC as an offset is approved.

Proposed §101.306(c)(2)(B) would require the user to submit a completed Form ERC-3 at least 90 days before the planned use for an ERC used for compliance with the requirements of Chapter 115 or 117 or any other program. Proposed subparagraph (B) would revise the existing requirement in current §101.306(c)(2) to remove the obsolete references to mobile sources, Chapter 114, and the original ERC certificate. Proposed subparagraph (B) would also remove the redundant provision that users must keep records since this requirement is proposed to be in §101.302(g). The provision that ERCs can only be used after executive director approval is proposed to be deleted for consistency with the amendments proposed for §101.306(c)(1). In §101.306(c)(3), the redundant phrase "by the executive director's decision" after "any affected person" is proposed to be deleted because affected persons in this instance are those impacted by the executive director's decision to deny use of the ERC. Proposed §101.306(c)(4) would specify that if the executive director approves the ERC use, the date the Form ERC-3 is submitted will be considered the date the ERC is used.

The commission proposes to move the specific provisions for the inter-pollutant use of ERCs (i.e., the substitution of an ERC certified for one criteria pollutant or precursor for another criteria pollutant or precursor) from §101.302(a) to proposed §101.306(d) because this is the section pertaining to ERC use. Proposed subsection (d) would revise the language moved from §101.302(a) to limit inter-pollutant use to NO_x and VOC ERCs used as NNSR offsets. The proposed changes are consistent with EBT guidance on inter-pollutant use of ERCs as offsets for NNSR permits. Proposed subsection (d) would also revise the language moved from §101.302(a) to require the user to provide a photochemical modeling demonstration to show that the substitution of one ozone precursor for the other will not adversely affect the overall air quality or regulatory design value in the ozone nonattainment area of use. The term "photochemical modeling" would be used in place of the current term "urban airshed modeling" because this older type of photochemical modeling software is no longer used extensively. The commission expects that demonstration will use the photochemical modeling system used by the commission for the area's AD SIP. The language moved to §101.306(d) would continue to require that the user receive approval from the executive director and the EPA before inter-pollutant use occurs.

Section 101.309, Emission Credit Banking and Trading

In the title of §101.309, "Emission Credit Banking and Trading" is proposed to be changed to "Emission Reduction Credit Banking and Trading." Non-substantive changes are proposed in paragraphs (1) - (3) for clarity and to update the language to use "identification number" instead of the term "certificate."

An amendment is proposed to §101.309(b)(1) for clarity. The phrase "for which the ERC was used" would replace the phrase "applicable user." All ERCs with a ten-year lifespan have been used or have expired so the obsolete language in §101.309(b)(2) is proposed to be deleted, and the subsequent paragraphs renumbered. The current language in §101.309(b)(3) is proposed to be renumbered as §101.309(b)(2) and simplified because the five-year lifespan applies to all ERCs currently available or that will be generated in the future. Current §101.309(b)(4) is proposed to be renumbered as §101.309(b)(3) and amended to remove the obsolete reference to paragraph (3).

The proposed language in §101.309(c) would correct grammatical errors and update terminology. Revisions to §101.309(d) are proposed for conciseness and to update EBT form names and other terminology. In §101.309(d)(3), the phrase "in whole or in part" would be deleted because it is included in the wording "in any manner."

Proposed amendments in §101.309(e) update the reference to Chapter 116, Subchapter B, to clarify that an owner cannot void an ERC from the credit registry to keep it from being public information, and remove language that is obsolete now that all ERCs have the same five-year lifespan as the reductions that can be used for netting. Owners can void an ERC at any point during its lifetime and hold the emission reductions for the purpose of netting as provided by Chapter 116, Subchapter B, but the reductions are not ERCs after this occurs.

Division 3: Mass Emissions Cap and Trade Program

Section 101.350, Definitions

In §101.350(2), the commission proposes to define the term "affected facility" as a facility subject to an emission specification in §§117.310, 117.1210, or 117.2010 that is located at a site subject to this division, and the subsequent definitions would be renumbered. The definition of "banked allowance" at §101.350(4) is proposed to be renamed as "vintage allowance" in proposed new paragraph (14) because this is the term commonly used.

In the definition of "broker account" at §101.350(6), the phrase "held in a broker account" is proposed to be moved and "while" added at the beginning to make it clear that allowances can be used for compliance after being transferred from a broker ac-

count. The definition of "compliance account" at §101.350(7) is proposed to be revised to clarify that the owner or operator (rather than a facility) holds allowances and that a compliance account must cover each affected facility at that site.

A change is proposed to the definition of "existing facility" at §101.350(9). The first letter of "facility" would not be capitalized to be consistent with the rest of the definitions and Texas Register formatting requirements. In §101.350(10), the definition of "Houston-Galveston-Brazoria ozone nonattainment area" is proposed to be changed from a citation of the definition in §101.1 to a list of the counties in that area. This change is proposed to allow for flexibility if it is needed by the commission.

The definition of "person" at §101.350(12) is proposed to be deleted and the subsequent definitions would be renumbered. The term "person" is defined somewhat more broadly in §3.2, and that definition would not cause any issue with the single use of this term in current Division 3. The proposed definition of "vintage allowance" is proposed as §101.350(14). The definition is meant to replace the definition of "banked allowance" with wording changes for clarity and conciseness.

Section 101.351, Applicability

In §101.351(a), the clause "and each affected facility at that site" is proposed to be added to clarify that the division applies both to sites and the affected facilities located there. In §101.351(a)(1) and (2), rewording changes are proposed for conciseness, and the phrase "one or more" is proposed to be added before "facilities" to clarify the division applies to a site with only one facility as well as with multiple facilities if the applicability criteria are met. In both paragraphs, the newly defined term "affected facility" is proposed to be added. In §101.351(a)(2), the word "ten" is proposed to be changed to the figure "10.0" for clarity only and is not intended to expand applicability to any sites not currently subject to the division.

Non-substantive changes are proposed to improve the readability of §101.351(b) and (c). Additionally, an error in the current §101.351(b) is proposed to be corrected by changing the word "chapter" to "division" to clarify that the applicability section only applies to this division and not to the rest of Chapter 101. Brokers use broker accounts for holding MECT allowances for trading purposes, but neither is currently covered in §101.351; therefore, proposed subsection (d) would clarify that the requirements of this division also apply to brokers and broker accounts.

Section 101.352, General Provisions

Proposed revisions in §101.352(a) would clarify that an allowance can only be used by an affected facility and can only be used for a purpose described in the division. For clarity, §101.352(b) is proposed to be amended to change "following the end of every control period" to "after each control period" and to specify that a site's compliance account must hold sufficient allowances to cover emissions from affected facilities. Amendments to §101.352(c) are proposed to incorporate the newly defined term "affected facility" and to clarify that this provision only applies to generating NO_x ERCs. Proposed revisions to §101.352(c)(1) would require the permanent reduction of 1.0 tpy of allowances for 1.0 tpy of ERCs generated. In §101.352(c)(2), reference to the title of Division 1 would be updated to reflect the change proposed for the title.

The provisions for using allowances for offsets in §101.352(e) are proposed to be substantially rewritten for clarity and completeness. The current provision only addresses using allowances for the one-to-one portion of the offset requirement and limits the use to facilities that do not meet the definition of an existing facility. This language would be replaced with new provisions that are more complete and specify the requirements for using MECT allowances for offset purposes in NNSR permits. Proposed subsection (e) would specify that allowances could be used for any part of the offset requirement if the use is authorized in the NNSR permit for an affected facility that is subject to the MECT Program.

Proposed §101.352(e)(1) would require the owner or operator to use a permanent allowance allocation stream equal to the amount specified in the NNSR permit to offset NO_x emissions from an affected facility. Only current allowances can be used for NO_x offsets. Proposed §101.352(e)(1) would clarify that a vintage allowance or an allowance allocated based on permit allowable emissions, as described under §101.353, cannot be used as an offset. Vintage allowances cannot be used to satisfy offsets because the amount of available vintage allowances cannot be determined until after the end of a control period, but the NOx emission increase from the affected facilities must be offset at all times. The use of vintage allowances would result in a lapse in compliance for the period between the start of a control period and the determination that vintage allowances remain in the compliance account. Proposed §101.352(e)(1) would clarify that an allowance used for offsets may not be banked, traded, or used for any other purpose other than simultaneous use for MECT compliance. Proposed §101.352(e)(1) would also indicate that allowances used for offsets may be used simultaneously for compliance with the MECT Program as allowed in §101.354(g), which is consistent with the existing requirements in this subsection.

Proposed §101.352(e)(2) would require the owner or operator to permanently set aside allowances for offsets by submitting an Application to Use Allowances for Offsets (Form MECT-O) at least 30 days before the start of operation of the affected facility. Proposed §101.352(e)(2)(A) would specify that the executive director will permanently set aside in the site's compliance account an allowance used for the one-to-one portion of the offset ratio. Proposed subparagraph (A) would specify that if the allowances set aside for offsets devalues in accordance with §101.353(d), the owner or operator would be required to submit a Form MECT-O at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. The owner or operator can either set aside additional allowances equal to the amount of the devaluation or, if the NNSR permit authorizes the use of ERCs or DERCs for offsets, the owner or operator can revise the amount of allowances set aside for offsets. The owner or operator would also need to submit the appropriate form for the credit use in accordance with the requirements in §101.306 or §101.376. Instead of being permanently retired to satisfy the offset requirement for the life of the facility, allowances must be surrendered annually in order to be used to satisfy both the annual MECT compliance obligation and the one-to-one portion of the offset ratio for each year the facility is in operation. Therefore, if the annual allocation is later reduced to reflect new or existing SIP requirements in accordance with §101.353(d), it is possible for the amount of allowances deposited into the site's compliance account to be less than the amount of allowances required to be set aside for the one-to-one portion of the offset ratio. An owner or operator that elects to use allowances for the one-to-one portion of the offset ratio is responsible for ensuring the site's compliance account contains sufficient allowances at all times to ensure compliance with the offset requirement in

the NNSR permit. Proposed subparagraph (A) would also clarify that at the end of each control period, the executive director will deduct from the site's compliance account all allowances set aside as offsets regardless of whether the actual NO_x emissions from the affected facility are less than this amount. Proposed §101.352(e)(2)(B) would specify that the executive director will permanently retain an allowance used for the environmental contribution portion of the offset ratio. Proposed subparagraph (B) would prohibit an allowance used for the environmental contribution portion of the offset ratio from being used for compliance with this division. Proposed subparagraph (B) would also specify that allowances set aside for this purpose would not devalue due to regulatory changes because this portion of the offset requirement would be met when the allowances are permanently retired prior to the start of operation. If an allowance used for the environmental contribution portion of the offset ratio is later released in accordance with proposed §101.352(e)(3)(A), the allowance could then be used for compliance with this division and would again be subject to devaluation due to regulatory changes.

Proposed §101.352(e)(3)(A) would allow the user to submit a request to the executive director to release allowances set aside for any portion of the offset ratio if the user receives authorization in the NNSR permit for the affected facility to use an alternative means of compliance (i.e., ERCs or DERCs) for the NO_x offset requirement. Proposed §101.352(e)(3)(B) would allow the user to submit a request to the executive director to release allowances set aside for the one-to-one portion of the offset ratio if the user permanently shuts down the affected facility. If a request submitted under §101.352(e)(3)(A) or (B) is approved, the release would become effective in the control period following the date that the alternative means of offsetting takes effect, and allowances would not be released retroactively for any previous control periods.

For consistency, non-substantive amendments are proposed in §101.352(g) to use the term "traded" and to indicate that allowances are expressed in tenths of a ton. The phrase "to determine the number of allowances" would be deleted because it is not necessary. Because the calculation of retained allowances is done in conjunction with subtracting the amount used, the clause "the number of allowances will be rounded down to the nearest tenth when determining excess allowances and rounded up to the nearest tenth when determining allowances used" is proposed to be shorted to "the number of allowances will be rounded up to the nearest tenth of a ton when determining allowances used." An amendment is proposed in §101.352(h) to specify the owner or operator is responsible for using a single compliance account for all affected facilities at a site under common ownership or control. In §101.352(i), an amendment is proposed to specify that the executive director (rather than the commission) will maintain a registry of the allowances in both compliance and broker accounts.

Proposed §101.352(j) would be added to specify that if there is a change in ownership of a site subject to the MECT Program, the new owner of the site is responsible for complying with the requirements of this division beginning with the control period during which the site was purchased. The owner of the site at the end of the control period (December 31) is responsible for demonstrating compliance for the entire control period. This provision is intended to clarify which party the commission would hold accountable for MECT compliance and would not preclude the two parties from arranging for compliance as part of the sale of the site. Proposed subsection (j) would require the new owner to contact the EBT Program to request a compliance account for the site. The proposed provision would ensure that the executive director has accurate information about the owner or operator that is responsible for demonstrating compliance with the MECT Program. Proposed subsection (j) would also clarify that the new owner must acquire allowances in accordance with the banking and trading provisions in §101.356. If any allowances are being transferred to the new owner as part of the change of site ownership, the original owner must submit the appropriate trade forms in accordance with the rules in §101.356.

Section 101.353, Allocation of Allowances

Amendments are proposed in §101.353(a) to clarify that the executive director deposits allowances. The current equation for allocating MECT allowances in §101.353(a) is proposed to be replaced with a simpler equation and updated to current formatting standards. The obsolete factors B (baseline emission rate) and X (reduction factor) in the current equation are proposed to be removed because the deadlines have passed where these would affect the calculation. In the current equation the product of X times B is subtracted from B; since X became equal to 1.00 in 2004, B minus B times 1.00 is zero, which does not affect the calculation. The proposed revisions retain the main portion of the equation wherein allocations are determined based on the average historical level of activity and the emission factor from Chapter 117.

Non-substantive changes are proposed in §101.353(b)(1) - (4) to replace "and/or" with "or" because a facility is either new or modified, indicate that the owner or operator rather than a facility submits an application, and update terminology. The existing provisions in §101.353(b)(5) are combined into §101.353(b)(4) by using the defined term "existing facility."

The existing requirements in §101.353(c) are proposed to be moved to §101.354(h) because this section contains the provisions related to deducting allowances from a site's compliance account.

The obsolete provision in current §101.353(d)(1) that the executive director will allocate allowances initially by January 1, 2002, is proposed for removal. The provision for subsequent allocations in current §101.353(d)(2) would be re-lettered as proposed §101.353(c) and would specify that the executive director will allocate and deposit allowances into each compliance account by January 1 of each year. Current §101.353(e) and (f) would be re-lettered as proposed §101.353(d) and (e) respectively with non-substantive changes to use active rather than passive voice. In re-lettered subsection (e), the word "following" would be changed to "based on" to clarify that the addition or deduction of allowances from a compliance account is based on the reported emissions with possible adjustments to correct errors noted in review of an annual compliance report, rather than in an unspecified manner after the review. The deadline in current §101.353(g)(1) has passed, so this obsolete provision is proposed for deletion with §101.353(g)(2) and (3) and renumbered as proposed §101.353(f)(1) and (2), respectively. Proposed revisions to renumbered §101.353(f)(1) include updating the citation for the variable related to allowances allocated based on permit allowable emissions. In current §101.353(h), which would be re-lettered as proposed §101.353(g), the phrase "activity levels" would be changed twice to "level of activity" for consistency with the defined term.

Section 101.354, Allowance Deductions

In §101.354(a), amendments are proposed to specify that the deduction of allowances is the responsibility of the executive di-

rector and that the amount deducted is equal to the NO_x emissions from all affected facilities. The phrase "based upon" would be changed to "quantified using" for clarity.

Amendments are proposed in §101.354(b) to clarify that the substitute data would be used to quantify (rather than report) emissions. The provision to use the equation currently provided in §101.354(b) instead of the listed substitute data sources is proposed to be deleted because there are no limitations or accuracy requirements for the substitute data used with the equation; changing the provision to make the equation the required method for calculating emissions using the listed substitute data is not proposed because the equation is not appropriate for all the substitute data (such as a continuous emissions monitoring system that directly monitors emissions). The last sentence in current §101.354(b) is proposed to be moved with non-substantive changes to §101.354(b)(1) and would require the owner or operator to submit the justification for not using the monitoring required by Chapter 117 and for using the method selected. In §101.354(b)(2), the commission proposes to specify that the executive director will deduct allowances equal to the NO_x emissions quantified under this subsection plus an additional 10% if emissions are quantified under subsection (b) due to non-compliance with the Chapter 117 monitoring and testing requirements. This additional amount of allowances is proposed to ensure that the emissions reported using alternate data are at least the amount that would have been deducted if required monitoring data had been used to calculate emissions. The temporary failure of a monitoring device is not considered noncompliance for the purpose of this subsection if the owner or operator repairs or replaces it in a reasonable time. In such cases, any applicable Chapter 117 data substitution provisions would be used to calculate emissions. If no data substitution provisions are specified in Chapter 117 for a monitoring device that failed, the substitute data in §101.354(b) would be used to quantify the NO_x emissions for the period of time the required data is missing.

In §101.354(d) the term "banked" is proposed to be changed to "vintage" for consistency with the proposed revisions to these terms in §101.350. Proposed changes in §101.354(e) specify the executive director is responsible for the deduction of allowances and clarify that the owner or operator is required to submit the documentation.

In §101.354(f), the citation for allowable allowances would be updated to reflect the proposed changes to the equation in §101.353(a), and the phrase "other facilities at the same site during the same control period" would be changed to "any other facility" for conciseness. Allowable allowances can only be used by the specific facility to which the allowances are allocated in the control period in which the allowances are allocated and cannot be banked, traded, used for offsets, or used for any purpose other than compliance with this section.

The removal of the redundant provision in §101.354(g) is proposed because §101.352(b) already requires the site's compliance account to hold a quantity of allowances equal to or greater than the total NO_x emissions emitted by March 1 after every control period. Proposed replacement of §101.354(g) would specify that the amount of allowances deducted from a site's compliance account to cover the actual NO_x emissions from the affected facilities as calculated under subsection (a) would be reduced by the amount of allowances deducted for the one-to-one portion of the NNSR offset requirement in accordance with proposed §101.352(e)(2)(A). Consistent with the existing provisions in §101.352(e), proposed subsection (g) would provide a mechanism for deducting allowances when used simultaneously for the one-to-one portion of the NNSR offset requirement and compliance with the MECT Program. The executive director will first deduct from a site's compliance account all allowances set aside for the one-to-one portion of the NNSR offset requirement in accordance with proposed §101.352(e)(2)(A). Then, the executive director will deduct from a site's compliance account allowances equal to the amount of allowances required to cover the actual NO_x emissions from affected facilities as calculated under §101.354, less the amount of allowances already deducted for the one-to-one portion of the NNSR offset requirement under proposed §101.352(e)(2)(A). If the amount of allowances deducted under proposed §101.352(e)(2)(A) is greater than the amount of allowances calculated under §101.354, no additional allowances will be deducted to demonstrate compliance with §101.354.

The existing §101.353(c) is proposed to be moved to proposed §101.354(h) and (h)(2) because §101.354 contains provisions related to allowance deductions. Consistent with existing §101.353(c), proposed §101.354(h) specifies that if the NO_x emissions from the affected facilities during a control period exceed the amount of allowances in the site's compliance account on March 1 following that control period, the executive director will reduce allowances for the next control period by an amount equal to the emissions exceeding the allowances in the site's compliance account plus an additional 10%. Proposed §101.354(h)(1) specifies that if the site's compliance account does not hold sufficient allowances to accommodate this reduction, the executive director will issue a Notice of Deficiency and require the owner or operator to obtain sufficient allowances within 30 days of the notice. This new requirement is based on a similar requirement in the HECT rule and is necessary to ensure an owner or operator resolves any deficiencies in a timely manner. Consistent with existing §101.353(c), proposed §101.354(h)(2) clarifies that these actions do not preclude additional enforcement action by the executive director.

Section 101.356, Allowance Banking and Trading

Non-substantive changes are proposed in §101.356(a) - (c) to update the formatting. Proposed changes in §101.356(a) also include the use of the proposed new term vintage allowance. The provisions in current §101.356(d) - (f) are proposed to be consolidated to minimize repetition and shorten the rules. The provisions in current §101.356(d)(2), (e)(2), and (f)(2) are proposed to be combined in proposed §101.356(d). Proposed subsection (d) would require the seller to submit the appropriate trade application to the executive director at least 30 days before the allowances are deposited into the buyer's account and specify that the completed application must show the amount of allowances traded and, except for trades between sites under common ownership or control, the purchase price per ton of allowances traded.

The provisions in current §101.356(d)(1) and (3), (e)(1), and (f)(1) are proposed to be combined into subsection (d)(1) - (3), respectively. Proposed subsection (d)(1) would require the seller to submit an Application to Trade Allowances (Form MECT-2) in order to trade a current allowance or vintage allowance for a single year and specify that trades involving allowances needed for compliance with a control period must be submitted on or before January 30 of the following control period. Proposed subsection (d)(2) would require the seller to submit an Application for Stream Trade (Form MECT-4) to permanently trade ownership of any portion of the allowances allocated annually to an individ-

ual facility. Proposed subsection (d)(3) would require the seller to submit an Application for Future Trade (Form MECT-5) to trade any portion of the individual future year allowances to be allocated annually to an individual facility.

The provisions in current §101.356(d)(4), (e)(3), and (f)(3) are proposed to be combined in proposed §101.356(e) and revised to indicate that information regarding the quantity and sales price of allowances will be made available to the public as soon as practicable because time is needed for the submitted forms to reach the EBT and to be processed before information is posted on the MECT website. The information will be available in the registry. The proposed revisions would not change the way EBT information is made available to the public and are only intended to more accurately reflect the process that has historically been used to disseminate this information. The provisions in current §101.356(d)(5), (e)(4), and (f)(4) would be combined in proposed §101.356(f) and revised to indicate that the executive director will send letters to the seller and buyer if the trade is approved or denied. If approved, the trade is final on the date of the letter from the executive director.

There are still allowances based on permit allowable limits rather than historical emissions for certain facilities at three sites. Although no more allowable allowances will be certified, the existing provisions limiting trading are still needed until those allowances are recertified or voided. Therefore, the existing provision that allowable allowances cannot be banked or traded in current §101.356(g)(1) is proposed to be re-lettered as §101.356(g). The provision in current §101.356(g)(2) for allowances allocated before January 1, 2005 is no longer needed because these allowances have expired, so this provision is proposed for deletion.

Non-substantive changes are proposed to the provisions for using DERCs for MECT compliance in §101.356(h) to update terminology and references. The provisions in §101.356(h)(2) - (4) are proposed to be deleted because they are obsolete and subsequent paragraphs would be renumbered. Current §101.356(h)(5) and (6) are proposed to be renumbered as §101.356(h)(2) and (3) with non-substantive changes to be clear that a ton-for-ton substitution is intended. In current §101.356(h)(9), which would be renumbered as proposed §101.356(h)(5) with amendments to improve the grammar, changes are proposed to specify that the owner or operator of the site must submit the required forms and to remove the requirement to submit the DERC certificate(s). Current §101.356(h)(7) and (10) are proposed to be combined as §101.356(h)(6) with changes to remove the obsolete dates, update formatting, and change the word "shall" to "may" to clarify that the executive director has discretion in whether to approve the use of DERCs for MECT compliance. Similar to this last change, in §101.356(h)(6)(A) the wording "approval will be given to use" is proposed to be changed to "the executive director may approve the use of" to specify that the executive director has discretion to deny the use if needed. In §101.356(h)(6)(B), non-substantive changes are proposed to clarify the meaning. The obsolete provisions in §101.356(i) are proposed for removal since all ERCs that could be converted to MECT allowances have been used or have expired.

Section 101.358, Emission Monitoring and Compliance Demonstration

Section 101.358 is proposed to be repealed. In 2000, more specific provisions were adopted in §101.354, so these provisions are now obsolete.

Section 101.359, Reporting

In §101.359(a), amendments are proposed to change the clause "beginning March 31, 2003, for each control period" to "no later than March 31 after each control period" because the start date is now obsolete and the new language is clearer. Proposed revisions would clarify that the owner or operator, rather than a facility, is required to file the Form MECT-1. The phrase "by March 31 of each year" would be deleted because it is not needed with the initial change proposed for the subsection. The word "detailing" would be changed to the phrase "which must include" because the listed information is all required for a Form MECT-1. In §101.359(a)(1) the phrase "from applicable facilities at the site" would be added to clarify that only NO_x emissions subject to Division 3 are to be reported. The proposed term "affected facility" is not used here because §101.354(e) may require reporting information for a facility that is not an affected facility. In §101.359(a)(4), the phrase "activity level" would be changed to "level of activity" to be consistent with how the term is defined in §101.350; in the second sentence, the term "level of activity" would be inserted before emission factor because it is appropriate to reference previously submitted documentation of either of these factors instead of appending another copy with each Form MECT-1 submitted.

The commission is proposing §101.359(a)(5) requiring detailed documentation on NO_x emissions from each facility not subject to an emission specification under §117.310 or §117.2010 that result from changes made after December 31, 2000, to an affected facility as required in §101.354(e).

In §101.359(b), an amendment is proposed to clarify that the owner or operator of a site, rather than the site itself, is responsible for submitting a Form MECT-1. Proposed subsection (c) would provide a mechanism to allow the owner or operator of a site that has been subject to Division 3 to stop filing a Form MECT-1 annually if the site no longer has any affected facilities. To do so, the owner or operator would send a letter documenting why the site no longer has any affected facilities. Once approved by the executive director, the owner or operator can stop submitting Form MECT-1. The subsection provides that if an affected facility is brought back onto the site, reporting must resume; the criteria for site applicability in §101.351(a) are not relevant to determining if the new facility is subject to Division 3 because the site remains subject to MECT until it is permanently shut down.

Proposed §101.359(c) would allow the owner or operator of a site subject to this division that no longer has authorization to operate any affected facilities to request a waiver from the reporting requirements in this section. If approved, the Form MECT-1 will not be required until a new affected facility is authorized at the site.

Section 101.360, Level of Activity Certification

The deadline of June 30, 2001, for certifying historical level of activity in §101.360(a) would be deleted because it is obsolete; although the deadline for filing a Level of Activity Certification (Form MECT-3) has passed, certain facilities could still certify activity if any provision in §101.360(a)(1) - (3) is met. For clarity, a new sentence is proposed to put "as follows" near "historical level of activity" rather than after the list of supporting documentation. For consistency, the proposed revisions in §101.360(a)(2) would use the term "existing facility" instead of including a description of this already defined term.

In §101.360(b)(1), the word "certify" is proposed to be moved and the word "from" changed to "after" to improve the readabil-

ity. In §101.360(c) "such" is proposed to be changed to "the" because a specific certification is referenced. In the last sentence of proposed §101.360(c) "or no later than 90 days from the effective date of this rule, whichever is later" is deleted so that the certification period is not restarted by revisions to this section for facilities that have been subject to the division for more than 90 days.

Division 4: Discrete Emission Credit Banking and Trading

The title of this division is proposed to be changed from "Discrete Emission Credit Banking and Trading" to "Discrete Emission Reduction Credit Program." As discussed in the background section of this preamble, the commission proposes to remove the option to generate DERCs by reducing emissions from area and mobile sources and all corresponding references to area and mobile sources. Throughout the division, the commission proposes to remove requirements to submit DERC certificates and revise the term certificate to identification number for consistency with current practice. This proposed revision would not affect the way DERCs are generated, used, or traded. Throughout the division, the commission proposes to remove references to Chapter 114 because there are no longer any provisions therein for which DERCs can be used for compliance.

Section 101.370, Definitions

Wording changes are proposed in the definition of "activity" at §101.370(1) to add "fuel use," "power output," and "operating hours" because these measurements are commonly used for reporting emissions and to change the term "economic output" to "use" because some types of facilities that could generate DERCs (like flares) do not have any economic output. As part of the proposed removal of provisions related to area sources, the definition of "area source" at §101.370(3) is proposed to be deleted. The definitions of "baseline activity" at §101.370(4) and "baseline emission rate" at §101.370(5) are proposed to be deleted because these terms are redundant due to the proposed removal of the provisions related to mobile sources. The subsequent definitions would be renumbered.

The definition of "baseline emissions" at §101.370(6) is proposed to be renumbered as §101.370(3) and revised to add the phrase "implementation of" before "an emission reduction strategy" for consistency; and add the phrase "the lowest of the facility's historical adjusted emissions or state implementation plan emissions" to describe the values that limit baseline emissions. The use of "any applicable local, state, or federal requirement" in this context and elsewhere in the rules means the most stringent requirement rather than allowing the applicant to choose among all the requirements. Additionally, if there are requirements that limit emissions in different ways (e.g., and annual emission limit and a limit on operating hours), all of these must be considered as a group to determine the actual regulatory limit for a facility.

The definition of "compliance account" is proposed as §101.370(5), and the subsequent definitions would be renumbered. The definition would clarify that a compliance account is for all facilities at a single site, except for a compliance account used for compliance with an area-wide emission limitation. Proposed §101.370(7) would define the "Dallas-Fort Worth area" as the counties that have been designated by EPA as nonattainment for the 1997 eight-hour ozone NAAQS to more clearly indicate the area subject to the limit on the use of NO_x DERCs in §101.376(f). This term is only used in the rule in regards to the NO_x DERC limit in the DFW area.

As part of the proposed removal of provisions related to mobile sources, the definition of "discrete emission credit" at §101.370(9) is proposed to be deleted, and the subsequent definitions would be renumbered. The definition of "discrete emission reduction credit" at §101.370(10) is proposed to be renumbered as §101.370(8) and amended to indicate that DERCs are measured in tenths of a ton and that, with respect to the use and trading, this term includes DERC generated from mobile sources certified before June 1, 2015.

The definition of "emission rate" is proposed as §101.370(9), defining the term as the rate per unit of activity, not to exceed regulatory limits. The proposed definition is the same as the existing definition of "baseline emission rate" and is being renamed because the term is used to describe a facility's emission rate in context other than determining the two-year average baseline emissions. The subsequent definitions would be renumbered. In the definition of "emission reduction strategy" currently at §101.370(12), which would be renumbered as §101.370(11), the phrase "below the baseline emissions" is proposed to be substituted for "beyond that required by state or federal law, regulation, or agreed order" for conciseness and consistency with the definition of "baseline emissions." As part of the removal of provisions for area sources, in the definition of "facility" at current §101.370(13), which would be renumbered as proposed §101.370(12), a sentence would be added to specify that area sources are not included since this term only applies to a facility included in the agency's point source EI.

The definition of "historical adjusted emissions" is proposed to be added as §101.370(15), and the subsequent definitions would be renumbered. The definition would specify that the facility's historical adjusted emissions before implementing the emission reduction strategy are calculated as the average emissions during any two consecutive years selected in accordance with §101.373(b)(2), not to exceed any applicable local, state, or federal requirement. Throughout the division, the commission proposes to use this new term to replace other references to the facility's emissions before implementing the emission reduction strategy calculated as the average emissions during any two consecutive years.

As part of the removal of provisions related to mobile sources, the commission proposes to delete the definitions of "mobile discrete emission reduction credit or discrete mobile credit," "mobile source," "mobile source baseline activity," "mobile source baseline emissions," and "mobile source baseline emissions rate" in existing §101.370(16) - (20) respectively. The definition of "most stringent allowable emissions rate" currently at §101.370(21) is also proposed to be deleted because the term is not used in Division 4. The definition of "permanent" at current §101.370(23) is proposed to be deleted because this term is not relevant to DERCs, which are normally certified from temporary emission reductions. Subsequent definitions would be renumbered.

The definition of "protocol" at current §101.370(24) is proposed to be renumbered as §101.370(17) and amended to change "estimating" to "determining" to better describe how protocols work. The definition of "quantifiable" at §101.370(25) is proposed to be renumbered as §101.370(18) and amended to clarify that an approved protocol must be used to calculate an emission reduction.

Because the term "real reduction" is not used in Division 4, current §101.370(26) is proposed to be renumbered as §101.370(19) and amended to define the word "real" as reductions in actual, not allowable, emissions. In the definition

of "shutdown" at current §101.370(27), which is proposed to be renumbered as §101.370(20), the word "permanent" is proposed to be deleted because a shutdown can be permanent or temporary; the use of the term "shutdown" in the rules includes "permanent" where appropriate, so it is not needed in the definition. The definition of "source" at §101.370(29) is proposed to be deleted because it is not needed if the provisions for mobile sources are removed.

For conciseness throughout Division 4, the term "state implementation plan emissions" is proposed to be added as §101.370(23), and subsequent definitions would be renumbered. The term would be defined as a facility's annual emissions as reported in the state's point source EI for the year in which that facility's emissions are specifically identified in the SIP revision submitted to the EPA for the area where the facility is located. The SIP emissions may not exceed any applicable local, state, or federal requirement. The SIP emissions are determined for the calendar year used to represent the facility's emissions in the projection-base year inventory used in the modeling included in the most recent AD SIP revision or in the attainment inventory used in the most recent maintenance plan SIP revision, whichever is most recent, for the most current NAAQS for the pollutant that was submitted to the EPA for the area where the facility is located. If no AD or maintenance plan SIP revision for the most current NAAQS has been submitted to the EPA for the area where the facility is located, the SIP emissions are determined for the calendar year used to represent the facility's emissions in the projection-base year inventory used in the modeling included in the most recent AD SIP revision or in the attainment inventory used in the most recent maintenance plan SIP revision, whichever is most recent, that was submitted to the EPA for the area where the facility is located. If no AD or maintenance plan SIP revisions have been submitted to the EPA for the area where the facility is located, the SIP emissions are determined for the calendar year used to represent the facility's emissions in the point source inventory used in the most recent EI SIP revision submitted to the EPA for the area where the facility is located. Throughout the division, the commission proposes to use this new term to replace other references to the EI used in the SIP.

The definitions of "strategy activity" and "strategy emission rate" currently at §101.370(31) and (32) are proposed to be renumbered as §101.370(24) and (25) and amended to replace the word "strategy" with "strategic" for consistency with the same terms in Division 1. The definition of "surplus" at current §101.370(33) would be renumbered as §101.370(26) and revised to reference local requirements for consistency. The definition of "use period" at current §101.370(34) is proposed to be renumbered as §101.370(27) and amended to specify the 12-month maximum time for a use period.

Section 101.371, Purpose

Amendments are proposed to §101.371. In addition to wording changes described for all rules, the phrase "another source" would be replaced with "a facility" to clarify DERCs can be used by the owner or operator of the source that generated the credits, rather than only by the owner or operator of another source. Language is proposed to be added specifying that the division allows a person to buy and sell credits to clarify that brokers who may only engage in trading are covered by the trading provisions.

Section 101.372, General Provisions

For consistency with the corresponding provision in Division 1, proposed revisions to §101.372(a) would specify that DERCs can be generated from a reduction of a criteria pollutant, excluding lead, or a precursor of a criteria pollutant instead of specifically listing the criteria pollutants and precursors. The provisions for the inter-pollutant use of DERCs is proposed to be moved to §101.376 where the other provisions for use are already covered.

The commission proposes to delete §101.372(b)(2) and (3) because the paragraphs would be obsolete due to the proposed removal of the option to generate DERCs from mobile sources and because referenced §101.30 no longer exists because it was made obsolete by 40 CFR Part 93. Therefore, subsection (b) is proposed to be rewritten to clarify that the owner or operator of a facility may generate a DERC if the emission reduction meets the criteria in this division. The proposed revisions to subsection (b) would also clarify that DERCs can be generated from any facility associated with federal actions under 40 CFR Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

The proposed revisions in §101.372(c)(1) would remove unnecessary language for conciseness, update the language to reflect the proposed definition of SIP emissions, and clarify that the requirement for the emission reduction to occur at a facility with SIP emissions only applies in a nonattainment area. Given the proposed definition of "SIP emissions" the commission is also requesting comments on whether it is necessary to retain the language in §101.372(c)(1)(C). The deletion of §101.372(c)(2) is proposed as part of removal of provisions for mobile sources, and the subsequent paragraph would be renumbered. The phrase "another division within this subchapter" is proposed to be changed to "Division 1 of this subchapter" to clarify that the limitation on recertification only applies to ERCs rather than allowances under the other divisions.

Changes are proposed throughout §101.372(d) to indicate that this subsection applies to both generators and users, including changing baseline emissions to emissions because users do not calculate baseline emissions. Non-substantive changes are also proposed throughout subsection (d) to remove redundant and obsolete language. In §101.372(d)(1), the phrase "if existing for the applicable facility or mobile source" is proposed to be deleted because all protocols must be submitted to the EPA by the executive director prior to use. Additionally, the phrase "executive director and" is proposed to be added before "EPA approval" to clarify that the executive director has discretion on whether a protocol that was not previously approved can be used. The decision by the executive director on use of such a protocol can be made at any time in the process of certifying a DERC. The provisions in §101.372(d)(1) are proposed to be expanded to apply to users of DERCs as well as generators. Protocols must be used to calculate emissions for both the generation and use of DERCs, so the current omission of users here could be interpreted as prohibiting use of an ERC if the protocol used to determine the credits needed had not already been submitted to the EPA. This limitation was not the commission's intent, so this change is proposed to clarify this issue. In §101.372(d)(1)(A) and (B), the addition of "the owner or operator of" is proposed to clarify that the person (rather than the facility) must quantify reductions and the addition of the pollutants covered in Chapters 115 and 117 is added for clarity. In §101.372(d)(1)(A), two rule citations are proposed to be deleted because these sections are in the process of being repealed from Chapter 117. A similar provision for other criteria pollutants is added as pro-

posed §101.372(d)(1)(C) to clarify that monitoring and testing required by commission rules must be used to quantify reductions, and the subsequent subparagraph is re-lettered. In current §101.372(d)(1)(C)(vi), which would be re-lettered as proposed §101.372(d)(1)(D)(vi), the word "proposes" is proposed to be changed to "adopts" because denial of the use of a protocol should only result from a final action by the EPA.

In §101.372(d)(2), the phrase "required under" is proposed to be changed to "specified in" because the referenced paragraph (1) does not itself require monitoring and testing data. For clarity, the provision in current §101.372(d)(3) requiring the use of the most conservative method is proposed to be moved to paragraph (2). In the last sentence of proposed §101.372(d)(2), the phrase "the data is missing or unavailable" would be inserted after the phrase "that period of time" to clarify that the data substitution can only be used for the period when the monitoring required by Chapter 115 or 117 is not available. Using the data replacement requirements in Chapters 115 and 117 when monitoring equipment is not functioning properly does not require the use of alternate data for DERC generation or use. However, for DERC generation, adjustments may be required (such as cases where data substitution requires the use of higher values) to ensure that the reductions are real. For DERC use, the replaced data would be used to determine the excess emissions to be covered.

The provisions in §101.372(e)(2) are proposed to be rewritten for clarity to specify that the executive director must review an application but has discretion on whether to certify a DERC. The proposed changes would also indicate that an identification number will be assigned to each DERC certified. Although not explicitly stated in the proposed rule, the commission plans to continue the current practice of assigning one identification number for several DERCs that are generated from the same site and expire on the same date. The proposed changes would also indicate that a new number will be assigned when a DERC is partly used or traded. Although not explicitly stated in the proposed rule, this provision would include separate identification numbers for the traded and retained credits if only part of a DERC is traded.

In §101.372(e)(3), the word "notification" is proposed to be changed to "certification" to clarify that, if appropriate, the executive director would deny the generation of a DERC rather than the Form DERC-1 that was submitted. For consistency, in proposed §101.372(e)(4) the phrase "its allowable emission limit" is proposed to be replaced with "any applicable local, state, or federal requirement." The generation of DERCs is not prohibited entirely if a requirement is exceeded, but the amount certified would be adjusted downward to account for the amount that the emissions exceeded the requirement. Section 101.372(e)(5) is proposed to clarify that a DERC cannot be certified until after the EPA's 45-day adequacy review period of the protocol if the protocol used had not previously been submitted to and approved by the EPA.

The commission proposes to revise §101.372(h) to make non-substantive wording changes and to clarify that the provisions apply to forms and backup materials submitted to the executive director. A provision would be added that indicates the records must be available to the commission, the EPA, and any local enforcement agency. In §101.372(h)(3), language is proposed to be changed to specify that the identification number be included in records because this number by itself is sufficient to identify a DERC.

In §101.372(i), the wording "may be obtained from the registry" is proposed to be changed to "will be made available to the public as soon as practicable" because all non-confidential information is added to the credit registry as the forms are processed, so complete information is not available until the processing is complete, although the information is available to the public upon request. The proposed revisions would not change the way EBT information is made available to the public and are only intended to more accurately reflect the process that has historically been used to disseminate this information. Non-substantive wording changes are proposed in §101.372(j).

Changes are proposed in §101.372(k) to clearly provide the executive director authority to prohibit, with cause as currently delineated, a person from participating in the DERC Program in any way. The term "person," as defined in §3.2(25), includes organizations, individuals, and other legal entities and is proposed to better describe all that can participate in the DERC Program. Similarly, the phrase "the DERC Program" is broader than "discrete emission credit trading," and this change shows that the executive director's authority includes all aspects of the program rather than only trading. Non-substantive wording changes are proposed in §101.372(l).

The provision in current §101.372(m) is not needed because of the removal of the provisions for generating DERCs from area and mobile sources. The determination of ownership of DERCs has always been based on ownership of the facility that generates the emission reductions at the time the emission reductions occur, which does not need to be stated in the rule. Subsection (b) already indicates it is the owner or operator of a facility that may generate a DERC if the emission reduction meets the criteria in this division. The commission is requesting comment on whether it is necessary to retain this provision.

Section 101.373, Discrete Emission Reduction Credit Generation and Certification

In §101.373(a), the catch line "methods of generation" is proposed to be changed to "emission reduction strategy" to have consistent use of the latter term throughout the division. In §101.373(a)(1)(A) and (B), a wording change is proposed to clarify that the emissions "level required of a facility" is any applicable local, state, or federal requirement. In §101.373(a)(1)(B), the phrase "other than a shutdown or curtailment" is proposed to be added after "a change in the manufacture process" because emission reductions from a shutdown or curtailment are not eligible for generating DERCs.

Non-substantive changes are proposed throughout §101.373(a)(2) for clarity and to update terms. In §101.373(a)(2)(A), wording changes are proposed to clarify that DERCs cannot be generated from temporary or permanent curtailments consistent with the EPA's *Improving Air Quality with Economic Incentive Programs* (EIP), January 2001. In §101.373(a)(2)(E), the term "emissions" is proposed to be changed to "activity" because emissions are not transferred between facilities but emissions from a facility will increase if the activity of another facility is transferred to it. Language changes are proposed in §101.373(a)(2)(H) to clarify that, for a facility under a flexible permit, the sum of the emission reduction and the emissions from all facilities in the group under the permit limit (including the facility with the reduction) does not exceed the permit limit for the entire group. For consistency among the divisions in this subchapter, in §101.373(a)(2)(J) the addition of "Division 2" and "Division 6" is proposed. The proposed revision is consistent with current practice and the EPA's EIP guidance that DERCs cannot be generated from facilities subject to a cap and trade program to avoid double-counting of the emission

reduction (since the allowance would still be available for use). In §101.373(a)(2)(K), the phrase "the shutdown of" is proposed to be deleted because the prohibition on shutdowns is already in subparagraph (A) and the phrase "located in a nonattainment area" would be added to clarify that the requirement for the facility to have SIP emissions only applies in nonattainment areas.

The catch line of §101.373(b) is proposed to have "emissions" added for clarity and consistency with the ERC rules. In §101.373(b)(1), language changes are proposed to specify that the SIP emissions set one possible upper limit for the baseline emissions used in certifying a DERC. Language pertaining to §116.170(b) would be removed from §101.373(b)(1) since the applicable deadlines specified in §116.170(b) have passed and the language is no longer relevant. The commission proposes to revise §101.373(b)(2) to specify that the two years selected must be the same for the activity and emission rate used to calculate historical adjusted emissions. The commission also proposes to limit the period available for selecting the historical baseline years to the ten years before the emission reduction occurred. The change is proposed to ensure consistency with the NNSR program by preventing the use of historical adjusted emissions from a period longer than ten years if the year used to determine the facility's SIP emissions is more than ten years old.

Non-substantive changes are proposed in §101.373(b)(3) to clarify that it is the historical adjusted emissions that are being determined. The commission proposes to revise §101.373(b)(4) to clarify that a new baseline must also be established if the commission adopts a revision to the SIP for the area where the facility is located to account for potential changes to the facility's SIP emissions. Because the emission reduction must be surplus to the SIP and former emission reductions are included in a new or revised SIP, continuing to use an emission reduction strategy that has since been incorporated into a SIP is not allowed. The proposed sentence would clarify that ongoing emission reduction strategies can only be used to generate DERCs until they are incorporated into a SIP.

Changes are proposed for §101.373(c) to reformat the equation and to update language. Because DERCs can no longer be generated from emission reductions from shutdowns, reference to shutdowns in current §101.373(c)(1) would be deleted, and current §101.373(c)(3) and (4) would be deleted. The existing equation was adopted to preclude generating DERCs from a curtailment, as prohibited by §101.373(a)(2)(A), and does not contemplate a scenario where the strategic activity is higher than the average actual activity used for calculating the historical adjusted emissions. However, if the strategic emission rate is sufficiently lower than the SIP emission rate, the existing equation could calculate an amount that exceeds the actual emission reduction, although certification of DERCs that are not real reductions is prohibited by §101.372(c)(1)(A). Additionally, the amount of emission reduction calculated using the equation must be adjusted using the provision in existing §101.373(c)(2) to determine the actual quantity of DERCs certified.

In §101.373(d)(1), the proposed changes include updating the form name and designation and changing "or" to "and" to simplify the requirement to submit a Form DERC-1 within 90 days after each 12-month generation period and 90 days after the generation period ends, regardless of length. This submission schedule is consistent with the definition of "generation period" in the current and revised rules because each generation period cannot exceed 12 months.

The provision at §101.373(d)(3)(C) is proposed to be deleted because generation from shutdowns has been prohibited for several years, and subsequent subparagraphs would be re-lettered. Current §101.373(d)(3)(D) is proposed to be re-lettered as §101.373(d)(3)(C). Current §101.373(d)(3)(F) and (G) are proposed to be re-lettered as §101.373(d)(3)(E) and (F) and amended to specifically add the newly defined terms "historical adjusted emissions" and "SIP emissions" to the list of required documentation. This proposed change however does not require the applicant to submit any information that is not currently required. Proposed revisions to re-lettered §101.373(d)(3)(E) also change the term "strategy emission rate" to "strategic emission rate." Amendments are proposed for §101.373(d)(3)(H), relettered as §101.373(d)(3)(G), to remove the redundant phrase "for the applicable facility" because §101.373(d)(3) already requires this information to be submitted for all facilities and pollutants or precursors. Current §101.373(d)(3)(I) and (J) are proposed to be re-lettered as §101.373(d)(3)(H) and (I) respectively with non-substantive updates to terminology.

Section 101.374, Mobile Discrete Emission Reduction Credit Generation and Certification

As part of the removal of provisions for generating DERCs from mobile sources, §101.374 is proposed to be repealed in its entirety.

Section 101.376, Discrete Emission Credit Use

The title of §101.376 is proposed to be changed to "Discrete Emission Reduction Credit Use." The catch line in §101.376(a) is proposed to be changed to "General requirements" to better describe the contents of this subsection and the word "only" would be added to clarify that all the listed requirements must be met. Non-substantive changes are proposed in §101.376(a)(1) - (4) to update terms. The commission proposes to revise §101.376(a)(1) - (3) to clarify that DERCs must be in the compliance account where the DERC will be used before the use period begins. For conciseness, §101.376(a)(5) is proposed to be rewritten and rule references would be updated. Current §101.376(a)(6) and (7) are proposed to be deleted because these requirements are already included in §101.376(f).

The catch line in §101.376(b) is proposed to be changed to "Uses for DERCs" for consistency with the corresponding provisions in the ERC Program and to better describe the contents of this subsection. In §101.376(b)(1), amendments are proposed for conciseness and clarity but would not alter the meaning of the provisions. In §101.376(b)(1)(B), the word "unclassified" is proposed to be changed to "unclassifiable" because the latter is the word used by EPA for designating these counties and "attainment/unclassifiable" would be added because EPA may use this designation also. Because the last two sentences are the same in current §101.376(b)(1)(A) and (B), these provisions are proposed to be moved from these subparagraphs into new subparagraphs (C) and (D).

Non-substantive changes are proposed in current §101.376(b)(2) to specify DERCs can be used to satisfy any part of the offset requirement in an NNSR permit and to reference Chapter 116, Subchapter B that regulates this use. In current §101.376(b)(2)(B), wording is proposed for the first sentence to clarify that it is the user's responsibility to obtain the amount of DERCs specified as offsets in the NNSR permit. The rest of current §101.376(b)(2)(B) is proposed to be deleted

and moved to a new subparagraph (C), with wording changes for conciseness. For consistency with NNSR requirements, the requirement in §101.376(b)(2)(C)(ii) for users to identify DERCs prior to NNSR permit issuance is proposed for removal because this is not a requirement in the commission's NNSR permit program in Chapter 116, Subchapter B. However, any facility using the DERCs as offsets could not start operation until the use of the DERC as an offset is approved by the executive director. The provisions in §101.376(b)(2)(C)(i) is proposed to be re-lettered as §101.376(b)(2)(D). Proposed revisions to re-lettered §101.376(b)(2)(D) include changing the word "facility" to "user" because a person (rather than a facility) must be responsible for obtaining DERCs as specified. Proposed §101.376(b)(2)(E) would replace §101.376(b)(2)(C)(iii) and require the user to submit an Application to Use DERCs as Offsets (Form DERC-O) at least 90 days before the start of operation and before continuing operation for any subsequent use period for which the offset requirement was not covered under the initial Form DERC-O. The commission is proposing to allow the user to submit one Form DERC-O to reduce the regulatory burden associated with the existing requirement to submit an application annually. The proposed submission deadline is consistent with corresponding provisions in the ERC Program. In §101.376(b)(3), the current citation of §101.356(g) is changed to §101.356(h) because of reformatting in that section. In §101.376(b)(4), the obsolete reference to Chapter 114 is proposed to be deleted.

Non-substantive changes are proposed in current §101.376(c) to update acronyms and references. For consistency with other provisions, proposed new language would be added to §101.376(c)(1) specifying that DERCs cannot be used before being acquired by the user in the compliance account for the site where the DERCs will be used. Proposed revisions to §101.376(c)(7) would update the reference to the DFW area for consistency with the new definition of this term and update the citation for the limit on NO_x DERC use in the DFW area.

An amendment is proposed in §101.376(d)(1)(A) to clarify that the required approval is for the use of DERCs to comply with the specified requirement during that use period. The submittal deadline for the Form DERC-2 in §101.376(d)(1)(B)(i) for NO_x DERC use in the DFW area is proposed to be changed from August 1 to October 1 of the year before the DERC is requested to be used as provided by §101.376(f)(4). The later date is proposed as part of the changes proposed to establish a fixed limit on NO_x DERC use in the DFW area because additional time is no longer needed to prepare the report. A deadline of three months before the start of the calendar year should provide sufficient time for the executive director to review the number of DERCs requested and notify companies by November 1 if the amount of DERCs requested is approved. However, because this reduced period would leave users less time to find an alternate means of compliance if the requested amount of DERCs is not approved, the commission specifically requests comment on whether the current August 1 deadline should be retained to allow more time for companies to arrange an alternative for compliance if the limit is ever exceeded.

In §101.376(d)(1)(B)(ii), the commission proposes to provide the later submission date for using DERCs for MECT compliance that is currently in §101.356(h). The provisions currently in clause (ii) would be moved to proposed clause (iii) with non-substantive changes. Changes proposed in §101.376(d)(1)(C) would clarify that it is the responsibility of the user to send the Form DERC-2 to the federal land manager for DERC use at a facility located within 100 kilometers of a Class 1 area.

A change is proposed in §101.376(d)(1)(D)(iii) to change the word "baseline" to "expected." In submitting a Form DERC-2, the baseline emission rate and activity are not appropriate for determining the amount to set aside, but the expected activity and emission rate are appropriate. Similarly, in §101.376(d)(1)(D)(iv) the actual emission rate and activity level would not be known before the use period has occurred so this provision is proposed to be deleted, and the subsequent clauses renumbered. Current §101.376(d)(1)(D)(vi) is proposed to be renumbered as §101.376(d)(1)(D)(v) and revised to remove the unnecessary parenthetical clause because it does not account for the use of alternate protocols with executive director and EPA approval. Current §101.376(d)(1)(D)(ix), which would be renumbered as §101.376(d)(1)(D)(viii), is proposed to be changed to just require records of the DERC identification number because this is sufficient to inform the executive director of the identity of the generator. Current §101.376(d)(1)(D)(x) would be deleted and the subsequent clauses renumbered. The requirement to provide on the Form DERC-2 the price for each DERC that has been or will be acquired is not needed because this information is provided on the Form DERC-4 when a DERC is traded and could be several years old before a Form DERC-2 is submitted.

The current language in §101.376(d)(2)(A) is proposed to be modified to remove references to §117.223 and §117.1120 because these sections are being proposed for repeal concurrent with this rulemaking. These citations are also proposed to be deleted where they appear in the definitions of variables in the equations in this subparagraph. Proposed revisions to the equations in clauses (i) and (ii) would update the figures to current formatting standards and define variables in the order that they appear in the equation.

In §101.376(d)(2)(B) and (C), the words "is" are proposed to be changed to "must be." Proposed revisions to the equations in paragraphs (B) and (C) update the figures to current formatting standards and define variables in the order that they appear in the equation. An amendment is proposed for §101.376(d)(2)(E) to clarify that it is the responsibility of the user to acquire the additional DERCs to be set aside as the 5% compliance margin if the use would exceed 10.0 tons.

For clarity, in §101.376(d)(3), the word "situation" is proposed to be changed to "emergency or exigent circumstances" to better describe what must be provided with a late Form DERC-2. If documentation of the emergency or exigent circumstances is not provided, the use period would not start until 45 days after the Form DERC-2 is submitted, which may result in a user being in violation of the requirement for which DERCs are requested to be used. The phrase "prior to use" is proposed to be changed to "before the start of the use period" because the start date may be adjusted by the executive director if the form is filed late.

In §101.376(d)(4), non-substantive amendments are proposed to update the formatting. The commission proposes to add §101.376(d)(6) to specify that the user is not required to submit a Form DERC-2 to use DERCs to satisfy an NNSR offset requirement if they submit a Form DERC-O as required by §101.376(b)(2)(E) at least 90 days before the affected facility starts operation.

The commission proposes §101.376(e)(1)(A) to require the user to submit a Form DERC-3 to the executive director no later than March 31 after the control period for which a DERC was

used for a facility subject to the MECT Program as provided by §101.356(i)(5). The provisions currently at §101.376(e)(3)(A) are proposed to be moved to §101.376(e)(1)(B) and to require that for any other DERC use the user submit a Form DERC-3 to the executive director no later than 90 days after the end of each use period, which may not exceed 12 months. The proposed revisions would specify that the Form DERC-3 must be submitted to the executive director rather than the commission for consistency. The commission proposes §101.376(e)(2) to specify that the user is not required to submit a Form DERC-3 to use DERCs to satisfy an NNSR offset requirement if the user submits a Form DERC-O as required by §101.376(b)(2)(E) at least 90 days before the start of operation of the affected facility.

The provisions in current §101.376(e)(3)(B) are proposed to be moved to §101.376(e)(3) with changes. In addition to changes described throughout the rules and Subchapter H, Division 4, in current §101.376(e)(3)(B)(ii), which would be renumbered as §101.376(e)(3)(B), the phrase "in the compliance account" would replace the word "possessed" for consistency with the changes proposed in §101.376(a). Additionally, the phrase "for volatile organic compounds and nitrogen oxides" is proposed to be deleted from current §101.376(e)(3)(B)(iii) when the provision is moved to §101.376(e)(1)(C) because the actual emissions of another criteria pollutant is also needed for DERCs used to comply with requirements for that pollutant.

Current §101.376(e)(1)(A) is proposed to be renumbered as §101.376(e)(4)(A) and revised to correct a citation referring to the environmental contribution to "subsection (d)(2)(D)." Current §101.376(e)(2)(A) and (B) are proposed to be renumbered as §101.376(e)(5)(A) and (B), and non-substantive revisions would be made to update the format of the figures for current formatting standards. Current §101.376(e)(4) is proposed to be renumbered as §101.376(e)(6) with non-substantive amendments to combine the sentences and to indicate that the retained portion of the environmental contribution that was set aside is the part attributed to the unused DERCs. For completeness, language is proposed to be added to specify that any unused part of the 5% compliance margin would also be retained.

Current §101.376(f) would be revised to "Dallas-Fort Worth area DERC use" for consistency. The NO_x DERC limits for the DFW area currently in §101.376(f) and §101.379(c) are proposed to be combined in §101.376(f), with significant changes as discussed in the Background and Summary of the Factual Basis for the Proposed Rules section of this preamble. Because the proposed rules would establish a fixed 17.0 tpd limit on NO_x DERC use in the DFW area, the report provisions in §101.379(c) related to the current calculation methodology are proposed to be deleted. Proposed §101.376(f)(1) would provide the limit of 42.8 tpd on NO_x DERC use in the DFW area for the 2015 calendar year, which was calculated using the exiting methodology. Proposed §101.376(f)(2) would provide the 17.0 tpd limit proposed for Calendar Year 2016 and beyond. The current §101.376(f)(1) would be renumbered as §101.376(f)(3) and revised to remove the phrase "determined by the annual review specified in §101.379(c) of this title, applicable to the control period specified in the DEC-2 Form." Additionally, the phrase "control period" would be changed to "calendar year" for clarity because the limit applies to annual DERC use. The current requirement in subparagraph (B) is proposed to be removed as part of the proposed fixed limit on DERC use in the DFW area. The current subparagraph (A) that the executive director consider the appropriate amount of DERCs allocated for each Form DERC-2 submitted on a case-by-case basis would be moved to subparagraph (B). In current §101.376(f)(2), which would be renumbered as §101.376(f)(4), wording would be added to specify that the provision applies to all DERCs for use in the upcoming calendar year that were submitted by the deadline for filing a Form DERC-2 and add subparagraphs (A) and (B). Proposed subparagraph (A) would contain the existing portion of §101.376(f)(2) that indicates the executive director may approve all requests for DERC usage provided that all other requirements of this section are met. Proposed subparagraph (B) would contain the existing portion of §101.379(c)(2)(C)(ii) that indicates the executive may consider any late DERC-2 Forms submitted as provided under §101.376(d)(3) that is not an Electric Reliability Council of Texas, Inc. (ERCOT)-declared emergency situation but will not otherwise approve a late submittal that would exceed the limit. Proposed paragraph (5) would include the existing requirement in §101.379(c)(2)(D) that specifies that, if the DERC-2 Forms are submitted in response to an ERCOT-declared emergency situation, the request will not be subject to the limit and may be approved provided all other requirements are met.

The commission proposes to move the specific provisions for the inter-pollutant use of DERCs (i.e., the substitution of a DERC certified for one ozone precursor for the other precursor) from §101.372(a) to §101.376(g) because this is the section dealing with DERC use. Proposed subsection (g) would revise the language moved from §101.372(a) to limit inter-pollutant use to NO_x and VOC DERCs used as NNSR offsets. The proposed changes are consistent with EBT guidance on inter-pollutant use of DERCs as offsets for NNSR permits. Proposed subsection (g) would also revise the language moved from §101.372(a) to require the user to provide a photochemical modeling demonstration to show that the substitution of one ozone precursor for the other will not adversely affect the overall air quality or regulatory design value in the nonattainment area of use. The term "photochemical modeling" is used in place of the current term "urban airshed modeling" since this older type of photochemical modeling software is no longer used extensively. The commission expects that demonstration will use the photochemical modeling system used by the commission for the area's AD SIP. The language moved to §101.376(g) would continue to require that the user receive approval from the executive director and the EPA before inter-pollutant use occurs.

Section 101.378, Discrete Emission Credit Banking and Trading

The title of §101.378, "Discrete Emission Credit Banking and Trading" is proposed to be changed to "Discrete Emission Reduction Credit Banking and Trading." Non-substantive changes are proposed in §101.378(a)(1) - (3) for clarity and to use the term " identification number" instead of "certificate." In §101.378(a)(1), the redundant statement regarding information posted to the credit registry would be removed because this requirement is already included in §101.372(i). Because DERCs can be generated statewide for any criteria pollutant or precursor, except lead, changes are proposed in §101.378(a)(3) to remove the reference to "ozone" and to add "and all counties designated as attainment, attainment/unclassifiable, or unclassifiable" to show that the credit registry reflects the history and availability of all DERCs. Because the registry is searchable in multiple ways, the last sentence regarding a combined listing for all attainment and nonattainment counties is proposed to be deleted.

In §101.378(b), non-substantive changes are proposed for clarity and conciseness. As discussed elsewhere in this preamble,

some information on DERCs is entered into the registry prior to certification, but a DERC is not available for use until certified. In the last sentence, the phrase "intended for use" would replace "withdrawn" because this term is commonly used to show that a DERC has been set aside for future use after a Form DERC-2 has been processed. Because the provisions are obsolete, paragraphs (1) and (2) are proposed to be deleted, and the prohibition on using a DERC from a shutdown is proposed to be moved to the end of §101.378(b).

An amendment is proposed in §101.378(c)(1) to clarify that it is the responsibility of the seller to submit an Application to Trade DERCs (Form DERC-4). In §101.378(c)(2), amendments are proposed to specify the information that will be provided by the executive director to the buyer and seller regarding a trade. The provision in §101.378(c)(3) is proposed to be rewritten to clarify that any discontinuation of trading would be taken to the commission before being implemented. The phrase "in whole or in part" would be deleted because it is included in the wording "in any manner."

Section 101.379, Program Audits and Reports

In §101.379, amendments are proposed for conciseness and conformity with other changes in Division 4. For §101.379(a), removal of "after the effective date of this section" is proposed to clarify that the current audit schedule would not be delayed by the new effective date for §101.379 for the amendments. In §101.379(a)(2), the same changes as in §101.378(c)(2) are proposed for the same reasons as discussed for §101.378(c)(2). Because the limit on the use of NO_x DERCs in the DFW area are proposed to be moved to §101.376(f), the reference in §101.379(b)(4) is proposed to be updated and all provisions in current §101.379(c) are proposed to be deleted.

Division 6: Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program

In the title and throughout the division, the hyphen is proposed to be removed from the term "highly reactive" to correct the grammar. Hyphens are generally not used between an adverb and the adjective that it modifies. Although the hyphen is used in the definition of the term at §115.10(18), the removal here does not indicate any difference in the term used in this division and the definition in §115.10.

Section 101.390, Definitions

Proposed §101.390(1) would define the term "affected facility" as a facility subject to §115.720 or §115.760 that is located at a site subject to this division, and the subsequent definitions would be renumbered. The definition of "banked allowance" at §101.390(3) is proposed to be renamed as "vintage allowance" in proposed paragraph (15) because this is the term commonly used. In §101.390(4), changes are proposed to the definition of "baseline emission period" to delete the words "calendar year" because they are unneeded with the proposed definition of "control period" and to update citations to be consistent with reformatting proposed for that section.

The definition of "broker" at §101.390(5) would be changed to specify that a broker is a person who opens an account only for the purpose of banking and trading allowances. In the definition of "broker account" at §101.390(6), the phrase "held in a broker account" is proposed to be moved and "while" added at the beginning to make it clearer that allowances can be used for compliance after being transferred from a broker account. The definition of "compliance account" at §101.390(7) is proposed to be revised to clarify that the owner or operator (rather than a site) holds allowances and that a compliance account must cover each affected facility at that site.

The term "control period" is proposed to be defined in §101.390(8), consistent with the same term in the MECT Program, as the 12-month period beginning January 1 and ending December 31 of each year and indicate that the initial control period began January 1, 2007. The definition of "highly reactive volatile organic compound" is proposed as §101.390(9), which would reference the definition of this term in §115.10; the lack of a hyphen in "highly reactive" does not change the meaning. A definition of "Houston-Galveston-Brazoria ozone nonattainment area" is proposed to be added as §101.390(10), which would list the counties as Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, and the subsequent definitions would be renumbered. A typographic error is proposed to be revised in the definition of "industry sector" at current §101.390(8), which would be renumbered as §101.390(11) by changing "carbon" to "compound."

In the definition of "level of activity" at current §101.390(9), which would be renumbered as §101.390(12), the reference to §115.10 is proposed to be deleted because of the proposed addition of a definition of the term "highly reactive volatile organic compound" that would include this citation. The definition of "site" is proposed as §101.390(13), which would reference the definition in 30 TAC §122.10 and be the same as the current definition in the MECT Program, and the subsequent definitions would be renumbered. The definition of "vintage allowance" is proposed as §101.390(15), which would replace the definition of "banked allowance" with wording changes for clarity and conciseness.

Section 101.391, Applicability

In §101.391, the current provisions are proposed to be designated as subsection (a) and two additional subsections are proposed. In proposed §101.391(a), the citations for the terms "site" and "highly reactive volatile organic compound" would be removed because they are no longer needed due to the proposed new definitions of these terms. The phrase "with one or more affected facilities" is proposed to be added after "site" to clarify the division applies to a site with only one facility as well as with multiple facilities if the applicability criteria are met. Because the proposed definition of "affected facility" references the HRVOC provisions in Chapter 115, the references to Chapter 115 in this section are proposed to be deleted. For consistency with the proposed definition, the phrase "applicable facility" in the second sentence would be changed to "affected facility." Brokers use broker accounts for holding HECT allowances for trading purposes, but neither is currently covered in §101.391; therefore, §101.391(c) is proposed to explain that the banking and trading provisions apply to brokers and broker accounts.

Section 101.392, Exemptions

Non-substantive changes are proposed in §101.392(a) to update terms and correct rule references. The word "ten" is proposed to be changed to "10" for clarity only and is not intended to expand applicability to any sites not currently subject to Division 6. Non-substantive changes are also proposed in §101.392(b) to clarify the counties that qualify for the exemption, to specify the owner or operator (rather than the site itself) is responsible for compliance, and to remove the obsolete January 1, 2007 deadline.

Section 101.393, General Provisions

Proposed revisions in §101.393(a) would clarify that an allowance can only be used by an affected facility and can only be used for a purpose described in Division 6. Proposed amendments in §101.393(b) would remove language made obsolete by the proposed definition of "control period," incorporate the newly defined term "affected facility," and clarify that allowances must be in the appropriate compliance account because an owner or operator may have different accounts for multiple sites.

The provision for using allowances for offsets in §101.393(d) is proposed to be substantially rewritten for clarity and completeness. The current provision only addresses using allowances for the one-to-one portion of the offset requirement. This language would be replaced with new provisions that are more complete and specific on the requirements for using HECT allowances for offset purposes in NNSR permits. The changes would specify that allowances can be used for any part of the offset requirement if the use is authorized in the NNSR permit for an affected facility that is subject to the HECT Program.

Proposed §101.393(d)(1) would require the owner or operator to use a permanent allowance allocation stream equal to the amount specified in the NNSR permit to offset VOC emissions from an affected facility. Only current allowances may be used for VOC offsets. Proposed §101.393(d)(1) would clarify that a vintage allowance or an allowance allocated based on permit allowable emissions, as described under §101.394, cannot be used as an offset. Vintage allowances may not be used to satisfy offsets since the amount of available vintage allowances cannot be determined until after the end of a control period. The VOC emission increase from the affected facilities must be offset at all times. The use of vintage allowances would result in a time lapse in compliance. Proposed paragraph (1) would clarify that an allowance used for offsets may not be banked or traded. Proposed paragraph (1) would also indicate that allowances used for offsets may be used simultaneously for compliance with the HECT Program as allowed in §101.396(e), which is consistent with the existing requirements in this subsection. Proposed §101.393(d)(1) would require the user to permanently set aside allowances for offsets by submitting an Application to Use Allowances for Offsets (Form HECT-O) at least 30 days before the start of operation of the affected facility. Proposed paragraph (1) would also specify that, at the end of each control period, the executive director will deduct from the site's compliance account all allowances set aside as offsets regardless of whether the actual VOC emissions from the affected facility are less than this amount. Proposed §101.393(d)(2) would allow HECT allowances to be used simultaneously to comply with the one-to-one portion of an offset requirement and the requirements of Division 6. If the actual VOC emission from the affected facility is less than the one-to-one portion of the offset requirement, the user would not be allowed to bank or transfer the difference or to use the allowances for any other purpose.

Proposed §101.393(d)(3) would require the user to have sufficient allowances set aside in the site's compliance account to cover the one-to-one offset requirement for the affected facility at all times. If allowances set aside for the one-to-one portion of the offset requirement devalue for any reason, submit a Form HECT-O at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. The owner or operator can either set aside additional allowances equal to the amount of the devaluation or, if the NNSR permit authorizes the use of ERCs or DERCs for offsets, the owner or operator can revise the amount of allowances set aside for offsets. The owner or operator would also need to submit the appropriate form for the credit use in accordance with the requirements in §101.306 or §101.376. Proposed §101.393(d)(4) would require an allowance set aside to comply with any portion of a VOC offset requirement other than the one-to-one portion to be permanently transferred to the executive director and would prohibit that allowance from being used to comply with the requirements of Division 6. Allowances set aside for this purpose would not devalue because this portion of the offset requirement is met when the allowances are permanently retired prior to the start of operation.

Proposed §101.393(e)(5)(A) would allow the user to submit a request to the executive director to release allowances set aside for offsets if the user receives authorization in the NNSR permit for the affected facility to use an alternative means of compliance for the VOC offset requirement. Proposed subparagraph (B) would allow the user to submit a request to the executive director to release allowances set aside for offsets if the user permanently shuts down the affected facility. If a request submitted under subparagraph (A) or (B) is approved, the release would become effective in the control period following the date that the alternative means takes effect, and allowances would not be released retroactively for any previous control periods. Under proposed subparagraph (A), the future allocations set aside for the entire portion of the offset requirement could be released but under proposed subparagraph (B) only the future allocations set aside for the one-to-one portion of the offset requirement could be released.

Proposed §101.393(i) would allow the owner or operator of a facility subject to the HECT Program to generate VOC ERCs from the reduction of HRVOC emissions if one tpy of HECT allowances is surrendered for each tpy of ERCs generated from HRVOC emissions. The proposal is intended to provide greater flexibility to owners and operators in the generation of ERCs. An owner or operator would not be required to retire an allocation of HECT allowances when generating VOC ERCs, except to generate ERCs from HRVOC reductions by affected facilities. If this provision is used, permanent ownership of the HECT allowances would be transferred to the commission retirement account so that 1.0 tpy of HECT allowances would be surrendered for each 1.0 tpy of ERCs generated from reducing HRVOC emissions. Because excessive use of this provision could substantially reduce the total HECT allowances available for compliance, the executive director is given discretion on whether to approve the retirement of allowances.

An amendment is proposed in current §101.393(f) the phrase "allocated, transferred, deducted, or used" is proposed to be changed to "allocated, traded, and used" because "traded" is a more encompassing term and because all of these actions (not just one) are conducted in increments of a tenth of a ton. Current §101.393(g) is proposed to be amended to specify that it is the responsibility of the owner or operator to use one compliance account for all affected facilities at a site. Amendments proposed to §101.393(h) specify that the executive director rather than the commission will maintain a registry of the allowances in each compliance account and broker account.

Proposed §101.393(j) specifies that if there is a change in ownership of a site subject to the HECT Program, the new owner of the site is responsible for complying with the requirements of Division 6 beginning with the control period during which the site was purchased. Proposed subsection (j) also clarifies that the new owner must acquire allowances in accordance with the banking and trading provisions in §101.399.

Section 101.394, Allocation of Allowances

In §101.394(a), obsolete language for the allocation of allowances for the 2007-2010 control periods is proposed to be deleted. The obsolete equation in §101.394(a)(1)(A) and the introductory sentences for paragraph (1)(A) and (B) are proposed to be deleted. In §101.394(a)(1), the citation to §115.10 for HRVOCs, which is proposed in the definition for HRVOCs in §101.390(9), would be removed, and the reference to two equations would be changed to a reference to the one equation proposed to be retained. In the equation in §101.394(a)(1)(A), which would be redesignated as §101.394(a)(1), the format is proposed to be made consistent with other figures in the rules: the equation would be put in a more accessible format; the spelled-out factors would be changed to acronyms; and the factors would be defined in the order that they appear in the equation. In the definition of factor AC^1, a citation would be changed for a proposed re-lettering of a subsection, and the tons of HRVOC allowances for 2011-2013 would be deleted because this information is obsolete (the value for 2014 would be retained in case it is needed after the effective date of this rule for processing annual compliance reports for the 2014 control period).

Because of the proposed restructuring of the rule, current §101.394(a)(1)(C) is proposed to be redesignated as §101.394(a)(2) and clauses (i) - (iii) as subparagraphs (A) - (C). The subsequent paragraphs would be renumbered. The provision is proposed to be amended to allow the owner or operator of a qualifying site (rather than the site itself) to request the use of acquired allowance streams. The provisions in current §101.394(a)(1)(D) are obsolete because the request for the alternate baseline was required by July 1, 2010, per §101.394(a)(1)(D)(iv). However, because subparagraph (D) is referenced in the definition of "baseline emission period" at §101.390(4), the provision is retained.

In current §101.394(a)(2), which is proposed to be renumbered as §101.394(a)(3), the equation is proposed in a more accessible format. Factor AC, which is currently shown as "AC^2" in the definitions under the current equation, is proposed to be defined as "AC" so it appears in the equation the same as in the definition. The alternative of using "AC^2" in the equation is not proposed to avoid any confusion that the superscripted "2" means that the factor is squared in the calculation. Because the two equations are separate in the rules and §101.394(a)(2) would use "AC^1" as the factor, this change is not expected to cause any confusion.

For consistency with the proposed definition of "affected facility" in current §101.394(a)(3) and (3)(D), which would be renumbered as §101.394(a)(4) and (4)(D), respectively, "applicable facility" is proposed to be changed to "affected facility." In §101.394(a)(3)(E), the reference to §101.394(a)(1), which is proposed to be deleted, is proposed to be changed to "the previous allocation methodology." Additionally, the owner or operator is proposed to be made responsible for the addition covered, rather than leaving the person doing the addition unspecified.

Because the allocation methodology in current §101.394(a)(1)(A) is obsolete, the provision at current §101.394(c) for augmenting allocations under that allocation methodology is also obsolete. Therefore, §101.394(c) is proposed to be deleted, and the subsequent subsections re-lettered. The proposed deletion of §101.394(a)(1)(A) would leave current §101.394(a)(1)(B) as the only allocation methodology. Therefore, the two references to §101.394(a)(1)(B) in current §101.394(d), which would be re-lettered as §101.394(c), are no longer needed and are proposed to be deleted. For clarity, a sentence is proposed to be added to the end of re-lettered §101.394(c) to specify that the provisions do not apply if a site's allocation is below 5.0 tons because of transfer of part of the site's original allocation. The intent of this provision has always been that only sites that received original allocations below five tons could be raised to five tons.

Deletion of §101.394(e) is proposed with moving the current provisions with changes to §101.394(e) and (f) because these provisions are more appropriate in the rule section covering allowance deductions. Subsequent subsections would be re-lettered.

The provision in current §101.394(f)(1) that allowances will first be allocated in 2007 is obsolete. Therefore, the January 1 deadline in §101.394(f)(2) is proposed to be moved to current §101.394(f), which would be re-lettered as §101.394(d), and paragraphs (1) and (2) deleted. For conciseness the clause "who will deposit allowances" is proposed to be changed to "and deposited."

Section 101.396, Allowance Deductions

In §101.396(a), amendments are proposed for clarity, grammar, and consistency. The deductions of allowances would be specified as the responsibility of the executive director, and, consistent with current §101.393(f), which would be re-lettered as §101.393(h), the amount would be specified as being deducted in tenths of a ton. The first sentence would be reformatted to improve the grammar and readability. In the second sentence, the HRVOC emissions would be required to be based on monitoring and testing protocols in §115.725 and §115.764, but an introductory clause would provide exceptions for this requirement for subsections (b) and (c) because the HRVOC emissions covered in subsection (b) are based on other sections of Chapter 115 and because subsection (c) provides for alternative calculation methods if the monitoring required in subsection (a) is not available.

Section 101.396(b) requires HRVOC emissions to be calculated for each hour of the year and summed to determine the annual emissions for compliance. During rulemaking in 2010, the TCEQ inadvertently deleted the portion of §101.396(b) that specified for emissions from emissions events subject to the requirements of §101.201, the hourly emissions included in the calculation must not exceed the short-term limits in §115.722(c) and §115.761(c). The revision to §101.396(b) was initially proposed for deletion as part of an attempt to create an emissions event set-aside pool for affected facilities. In response to public comments, the rule revisions adopted by the commission did not include the emissions event set-aside. The preamble to the adopted rulemaking indicates that the commission's intent was to continue to treat emissions events in the same manner for purposes of the HECT Program and only deduct allowances for emissions during emissions events up to the short-term limits in §115.722(c) and §115.761(c) (35 TexReg 2537). The proposed revision would replace the existing language in §101.396(b) with the version of the rule that existed before the revision.

In §101.396(c), amendments are proposed for clarity and consistency. In the first sentence "referenced in subsection (a)" would be changed to "required under subsection (a)" because the proposed subsection would require certain monitoring; "does not exist" is proposed to be changed to "is missing" and "is not required for a period of time" would be added; the proposal would make the owner or operator of the site responsible for using the first available specified method in the order listed to determine emissions; and in the listed methods, "data from manufacturers" is

proposed to be changed to "manufacturer's data" to specify that the data must come from the manufacturer of the facility rather than any manufacturer of similar facilities. The last sentence in current subsection (c) is proposed to be deleted and moved to §101.396(c)(1) with changes to make the provision more similar to the comparable provision §101.354(b) in the MECT rules, as well as the following changes: "determining" is proposed to be changed to "reporting" because the submission would be made with the Form HECT-1; the owner or operator is proposed to be specified as responsible for providing the justifications; and a requirement to provide justification of the method used is proposed to be added for consistency with §101.354(b) and because explanation of why the method used is appropriate would allow better evaluation of the emissions reported.

Proposed §101.396(c)(2) would specify that the executive director would deduct allowances equal to the HRVOC emissions quantified under this subsection plus an additional 10% if emissions are quantified under subsection (c) due to non-compliance with the Chapter 115 monitoring and testing requirements. This additional amount of allowances is proposed to ensure that the emissions reported using alternate data are at least the amount that would have been deducted if required monitoring data had been used to calculate emissions. The temporary failure of a monitoring device is not considered noncompliance for the purpose of this subsection if the owner or operator repairs or replaces it in a reasonable time. In such cases, the additional 10% deduction would not apply, and any applicable Chapter 115 data substitution provisions would be used to calculate emissions. If no data substitution provisions are specified in Chapter 115 for a monitoring device that failed, the substitute data in §101.396(c) would be used to quantify the HRVOC emissions for the period of time the required data is missing.

Proposed §101.396(e) would specify that the amount of allowances deducted from a site's compliance account under §101.396(a) would be reduced by the amount of allowances deducted in accordance with §101.393(d)(2)(A). Consistent with the existing provisions in §101.393(d), proposed subsection (e) would provide for the simultaneous use of allowances for the one-to-one portion of the NNSR offset requirement and compliance with the HECT Program.

The existing provisions in §101.394(e) are proposed to be moved to §101.396(f) because this section contains provisions related to allowance deductions. As in the current rule, proposed subsection (f) specifies that, if the total actual HRVOC emissions from the affected facilities at a site during a control period exceed the amount of allowances in the compliance account for the site on March 1 following the control period, allowances for the next control period will be reduced by an amount equal to the emissions exceeding the allowances in the compliance account plus an additional 10%. Proposed paragraph (1) specifies that if the site's compliance account does not hold sufficient allowances to accommodate this reduction, the executive director will issue a Notice of Deficiency and require the owner or operator to obtain sufficient allowances within 30 days of the notice. Proposed paragraph (2) clarifies that these actions do not preclude additional enforcement action by the executive director.

Section 101.399, Allowance Banking and Trading

Non-substantive changes are proposed in §101.399(a) and (b) to update the formatting. Proposed changes in §101.399(a) also include the use of the proposed new term vintage allowance. The provisions in current §101.399(b) - (d) are proposed to be consolidated to minimize repetition and shorten the rules. The provisions in current §101.399(b)(2), (c)(2), and (d)(2) are proposed to be combined in §101.399(c). Proposed subsection (c) would require the seller to submit the appropriate trade application to the executive director at least 30 days before the allowances are deposited into the buyer's account and specify that the completed application must show the amount of allowances traded and, except for trades between sites under common ownership or control, the purchase price per ton of allowances traded.

The provisions in current §101.399(b)(1), (c)(1), and (d)(1) are proposed to be combined into §101.399(c)(1) - (3) respectively. Proposed paragraph (1) would require the seller to submit an Application to Trade Allowances (Form HECT-2) to trade a current allowance or vintage allowance for a single year and specify that trades involving allowances needed for compliance with a control period must be submitted on or before January 30 of the following control period. Although the current rule does not specify a deadline for submitting the Form HECT-2, the form must be submitted 60 days before the deadline of March 1 for having allowances in the compliance account in order to allow time for the transfer to be processed. Proposed paragraph (2) would require the seller to submit an Application for Stream Trade (Form HECT-4) to permanently trade ownership of any portion of the allowances allocated annually to an individual facility. Proposed paragraph (3) would require the seller to submit an Application for Future Trade (Form HECT-5) to trade any portion of the individual future year allowances to be allocated to an individual facility.

The provisions in current §101.399(b)(3), (c)(3), and (d)(3) would be combined in §101.399(d) and revised to indicate that information regarding the quantity and sales price of allowances will be made available to the public as soon as practicable because time is needed for the submitted forms to reach the EBT and to be processed before information is posted on the HECT website. However, the information will be available to the public as well as in the registry. The proposed revisions would not change the way EBT information is made available to the public and are only intended to more accurately reflect the process that has historically been used to disseminate this information. The provisions in current §101.399(b)(4), (c)(4), and (d)(4) would be combined in §101.399(e) and revised to indicate that the executive director will send letters to the seller and buyer if the trade is approved or denied. If approved, the trade would be final upon the date of the letter from the executive director.

Although no more allowances based on permit allowable emissions rather than historical emissions will be certified, the provisions limiting trading are still needed until those allowances are recertified or voided. Therefore, the provision that allowable allowances cannot be banked or traded in current §101.399(e) are proposed to be re-lettered as §101.399(f). Non-substantive changes are proposed to the provisions in §101.399(f), (g), and (h) which would re-lettered as in §101.399(g), (h), and (i) respectively.

Deletion of current §101.399(i) is proposed because the provision has only been used once and, because of the cost of VOC ERCs compared to HECT allowances and the great reduction in allowances from the ERCs that are converted, is unlikely to be used in the future. The commission is requesting public comment on whether this provision is needed for future flexibility in providing additional HECT allowances. The deletion would also address a stakeholder comment to eliminate the limit of 5% of the initial allocation for allowances at a site that have already been converted. The deletion of this limit would not adversely affect

the HECT Program because there are only 1.7 tpy of HECT allowances from an ERC conversion (converted from 22.5 tpy of VOC ERCs). If the provision for converting ERCs to HECT allowances is retained because the regulated community sees a need to retain this flexibility, the limit of 5% of the initial allocation for allowances at a site would also need to be retained because the additional HECT allowances could impact the program if the provision is ever used extensively.

Section 101.400, Reporting

In §101.400(a), amendments are proposed for clarity. The responsibility of filing a Form HECT-1 annually would be made the responsibility of the owner or operator of a site, rather than the site itself. The Form HECT-1 would also be required to have the listed information to be complete. Current §101.400(a)(4) is proposed to be deleted. It requires that information about the total amounts of HRVOCs released in emission events be provided with an annual compliance report, but it is not needed because the agency already receives this information.

In §101.400(b), a change is proposed to clarify that the executive director may suspend the trading by an owner or operator of a site (rather than the site itself) if the Form HECT-1 is not filed. Proposed §101.400(c) would allow the owner or operator of a site that is no longer subject to the HECT Program to send the executive director a letter detailing why the site is no longer subject and would specify that, after the executive director acknowledges that the site is no longer subject, a Form HECT-1 would no longer be required until a new facility subject to the HECT rules is brought to the site.

Proposed §101.400(c) would allow the owner or operator to request a waiver from the reporting requirements in this section if a site subject to Division 6 no longer has authorization to operate any affected facilities. If approved, the Form HECT-1 will not be required until a new affected facility is authorized at the site.

Fiscal Note: Costs to State and Local Government

Jeff Horvath, Analyst in the Chief Financial Officer's Division, 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 for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rulemaking would update the EBT rules in Chapter 101, Subchapter H, Divisions 1, 3, 4, and 6. The EBT provides flexibility for complying with certain federal and state air quality requirements, while creating a net reduction in total air emissions. The current rules provide a market-based framework for trading reductions in VOC, NO_x, and certain other criteria pollutant emissions from stationary, area, and mobile sources. The rules are an integral part of the SIP under the FCAA.

Division 1, ERC Program

ERCs are generated from voluntary, enforceable, and permanent reductions of a criteria pollutant (other than lead) or its precursors in an area designated nonattainment for that pollutant. To certify an ERC, the reductions must be real, permanent, surplus, quantifiable, and federally enforceable. ERCs can be used as offsets for NNSR permits or for compliance with other certain air quality rules as a tpy amount. ERCs can be traded freely and have values that vary greatly over time, among areas, and by pollutant.

Over the last five years, the average prices in the HGB area were $131,151 per tpy for NO_x ERCs and $163,220 per tpy for VOC ERCs. In the DFW area, the average prices were $907 per tpy for VOC, while no NO_x ERCs were traded. There are currently 168.6 tpy of NO_x and 937.6 tpy of VOC available in the HGB area, and 66.4 tpy of NO_x ERCs and 200.9 tpy of VOC ERCs available in the DFW area.

There are four changes in the ERC Program rules that may have fiscal implications for entities that choose to participate in this voluntary program. To date, 237 entities have participated in the program. Because this is a free-market program and market conditions vary so widely, fiscal implications are extremely difficult to predict and would be different for various entities. The four proposed changes to the ERC Program include the following revisions.

The proposed rules would remove the option to generate ERCs by reducing emissions from area and mobile sources. No ERCs have ever been generated from a mobile source and no ERCs have been generated from an area source since 2005. It is no longer possible for an area or mobile source to generate ERCs because these sources cannot demonstrate that the emission reduction is a surplus to the area's most recent AD SIP. Therefore, removing these options is not expected to have a fiscal impact.

The proposed rules would revise the modeling requirement for the inter-pollutant use of ERCs from the urban airshed model to photochemical model. The proposed change is necessary as urban airshed modeling uses outdated software (developed in the 1970s) that is no longer available. There are newer software programs available that are more effective and economical. The proposed rules provide flexibility to use the newer modeling that is currently available. Some of the newer software can be downloaded at no cost, but the required computer hardware to use the software may have a significant cost. The TCEQ uses six servers to provide the needed data storage and processing for its modeling, so the cost would be significant for a company to set up such a system on its own. However, there are consulting companies that do this work, so they may provide a more cost-effective option. Costs would vary by the consultant and the specific modeling required. However, since urban airshed modeling requires considerably more time for input and processing and provides less data, in most cases it would cost more to have the modeling done under the software specified in the current rules than with the options that are proposed. Therefore, it is anticipated that this proposed change would provide additional flexibility and not result in additional costs overall but could result in cost savings.

The proposed rules would revise the deadline to submit the application to use ERCs as NNSR offsets to ensure consistency with the commission's NNSR permitting program requirements. Extending the application deadline allows more time to purchase or generate ERCs, which may help reduce costs for buyers.

The proposed rule extends the application deadline to certify ERCs from 180 days to two years after achieving the emission reduction. In the past, applications submitted after the 180-day deadline have been denied even though the emission reduction may have been fully creditable if the deadline was met, so this revision may increase the number of ERCs generated.

Division 4, DERC Program

DERCs are generated by reducing emissions of a criteria pollutant (other than lead) or its precursors. DERCs are similar to ERCs except that DERCs can be generated for temporary reductions, do not need to be enforceable, and can be generated in attainment, attainment/unclassifiable, unclassifiable, and nonat-

tainment areas. DERCs can be used to comply with NNSR offset requirements or other requirements.

Over the last five years, the average prices in the HGB area were $8,104 per ton for NO_x DERCs, $8,497 per ton for VOC DERCs, and $15,000 per ton for hazardous air pollutant DERCs; in the DFW area, VOC DERCs were $1,250 per ton and NO_x DERCs were $21,023 per ton. There are currently 168.6 tons of NO_x DERCs and 937.6 tons of VOC DERCs available in the HGB area, and 66.4 tons of NO_x DERCs and 200.9 tons of VOC DERCs available in the DFW area.

There are three changes in the DERC Program that may have fiscal implications, but these will only arise for entities that choose to participate in this voluntary program. To date, there have been a total of 266 participants in this program. Because this is a free-market program and market conditions vary so widely, fiscal implications are extremely difficult to predict and would be different for various entities.

The proposed rules would revise the limit on DERC use in the DFW area from an annually calculated value to a fixed value of 17.0 tpd. The proposed revisions will allow greater certainty in planning for the use of NO_x DERCs in the DFW area. However, the limit has not been exceeded in the last five years, so the impact from the change should not be significant. Because additional time is no longer needed to perform the calculation, the proposed rulemaking would extend the deadline for submitting the application to use NO_x DERCs in the DFW area. Companies will still receive approval in time to find an alternate method of compliance if the total amount of NO_x DERCs requested for use exceeds 17.0 tpd.

The proposed rulemaking would remove the option to generate DERCs by reducing emissions from area and mobile sources. No DERCs have ever been generated from an area source and no DERCs have been generated from a mobile source since 2010. It is extremely challenging for an area or mobile source to generate DERCs because these sources cannot demonstrate that the emission reduction is surplus to the SIP. Therefore, removing these options is not expected to have fiscal implications.

The proposed rulemaking would revise the modeling requirement for the inter-pollutant use of DERCs from urban airshed to photochemical modeling. The proposed change is necessary as urban airshed modeling uses outdated software (developed in the 1970s) that is no longer available. There are newer software programs available that are more effective and economical. The proposed rules provide flexibility to use the newer modeling that is currently available. Some of the newer software can be downloaded at no cost, but the required computer hardware to use the software may have a significant cost. The TCEQ uses six servers to provide the needed data storage and processing for its modeling, so the cost would be significant for a company to set up such a system on its own. However, there are consulting companies that do this work, so they may provide a more cost-effective option. Costs would vary by the consultant and the specific modeling required. However, since urban airshed modeling requires considerably more time for input and processing and provides less data, in most cases it would cost more to have the modeling done under the software specified in the current rule than with the options that are proposed. Therefore, it is anticipated that this proposed change would provide additional flexibility and not result in additional costs overall, but could result in cost savings.

Division 3, MECT Program

The MECT Program provides for the use of NO_x allowances certified from emissions based on historical operations in the HGB area. The annually allocated allowances can be used for compliance for two years (called "vintage allowances" in the second year). Allowances can be traded freely, and the average price over the last five years was $514 per allowance, $219 per vintage allowance, and $77,225 per tpy for a permanent allocation of allowances. Unlike ERCs and DERCs, participation in the MECT Program is mandatory for a site in the HGB area with facilities subject to an emission standard in Chapter 117 that is a major source of NO_x, an electric generating site, or a minor source of NO_x with a collective uncontrolled design capacity to emit 10.0 tpy or more of NO_x.

There are three rule changes proposed that may have fiscal implications for entities in the MECT Program. A total of 414 entities have participated in this program to date. Because of volatility in the market for allowances, the impact can only be estimated from average prices and may be different for specific entities. Specifying that brokers are covered by the rules may be initially perceived as having an impact, but brokers must already follow the trading provisions (i.e., the only part of the rules that applies to them) to conduct their business.

The proposed rulemaking would expand the use of MECT allowances for NNSR offset requirements to allow greater flexibility for entities. In the current rules, allowances can be used for the one-to-one portion of the NNSR offset requirement, and the amendment would expand this to the environmental contribution portion (currently 0.3-to-one in the HGB area).

The existing MECT rules require emissions to be quantified using the monitoring and testing required under Chapter 117. The MECT rules provide alternatives if the required data is missing or not available. However, use of the required Chapter 117 data results in a more accurate accounting of emissions from sites subject to the MECT Program. The proposed rules imposes a 10% additional deduction on sources using the alternative emission quantification protocols due to non-compliance with the monitoring and testing required in Chapter 117. The proposed rulemaking would require non-compliant sources to surrender allowances equivalent to the emissions quantified using the alternative protocols plus an additional 10%. The additional deduction would not apply to a facility that is in compliance with Chapter 117. The proposed rulemaking helps ensure that the number of MECT allowances surrendered at the end of each control period is sufficient to cover the actual NO_x emissions from affected sources. Based on data for the last three years, 8% of 414 sites that have reported to the MECT Program may be subject to this penalty if they do not achieve compliance with Chapter 117 by the time these rules are effective.

The proposed rulemaking would require the owner or operator of a site that does not have enough allowances in the next year to cover a deficit and the associated 10% penalty, to transfer in the deficit amount within 30 days if the EBT Program sends a notice of deficiency. There would be minimal impact from this proposed change because the owner or operator is already required to transfer sufficient allowances by the following January 30. Moving up the deadline if a notice of deficiency is issued may result in the owner or operator paying a higher cost for allowances than they would otherwise because they would not have as much time to find a better price. However, the potential cost difference from having to purchase allowances more quickly cannot be estimated because of the variability in prices in the market.

Division 6, HECT Program

The HECT Program is similar to MECT, but currently only applies in Harris County (in the HGB area) to sites with 10.0 tpy or more of HRVOC emissions from applicable facilities. Additionally, the HECT Program is based on a fixed cap of emissions, unlike the MECT Program. Like MECT, the annually allocated allowances can be used for compliance for two years. Allowances can be traded freely, and the average price over the last five years was $1,879 per ton for current, $2,725 per ton for vintage, and $130,207 per tpy for a permanent allocation.

There are two rule changes proposed that may have a fiscal impact for entities in the HECT Program. A total of 55 entities have participated in this program to date. Because of volatility in the market for allowances, the impact can only be estimated from average prices and may be different for specific entities. Specifying that brokers are covered by the trading provisions in the rules may be initially perceived as having an impact, but brokers must already follow the trading provisions (i.e., the only part of the rules that applies to them) to conduct their business.

The proposed rulemaking would expand the use of HECT allowances for NNSR offset requirements to allow greater flexibility for entities. In the current rule, allowances can be used for the one-to-one portion of the NNSR offset requirement, and the amendment would expand this to the environmental contribution portion (currently 0.3-to-one in Harris County).

The existing HECT rules require emissions to be quantified using the monitoring and testing required under Chapter 115. The HECT rules provide alternatives if the required data is missing or not available. However, use of the required Chapter 115 data results in a more accurate accounting of emissions from sites subject to the HECT Program. The proposed rule imposes a 10% additional deduction on sources using the alternative emission quantification protocols due to non-compliance with the monitoring and testing required in Chapter 115. The proposed rulemaking would require non-compliant sources to surrender allowances equivalent to the emissions quantified using the alternative protocols plus an additional 10%. The additional deduction would not apply to a facility that is in compliance with Chapter 115. The proposed rulemaking helps ensure that the number of HECT allowances surrendered at the end of each control period is sufficient to cover the actual HRVOC emissions from affected sources. Based on data for the last three years, few of 49 sites that have reported to the HECT Program may be subject to this penalty if they do not achieve compliance with Chapter 115 by the time these rules are effective.

These proposed changes are not expected to have a significant effect on agency operations or workload. The proposed rulemaking would reduce the time available for processing requests for some specific actions, but the EBT staff routinely process the forms within the times proposed in the rules. One goal of the proposed rulemaking is to provide additional flexibility for sources to generate ERCs and DERCs. As a result, there is a chance that the generation of ERCs and DERCs may increase, but this possibility is not expected to significantly increase workloads.

A few agencies in the state, such as the Lower Colorado River Authority, MD Anderson Cancer Center, and the University of Houston, operate facilities that are subject to the MECT Program or have participated in the ERC or DERC Programs. A few local government entities operate facilities that are subject to MECT (three City of Houston airports and Harris County Central Plant) or have participated in the ERC Program (Cleburne Resource Recovery Center and Houston Almeda Sims Wastewater Treatment Plant) or DERC Program (Harris County Municipal Utility District 16). No sites are affected by the proposed revisions to the HECT Program.

The proposed rules may have fiscal implications for these agencies or institutions owned or operated by the state or units of local government, but they are not anticipated to be significant. The proposed rulemaking is expected to provide additional flexibility under the EBT Program and some of the proposed revisions to the ERC and DERC rules could make it easier for government-owned facilities to generate credits, which could be used for NNSR offset requirements or sold on the open market.

Public Benefits and Costs

Mr. Horvath has 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 would be more participation in the ERC and DERC Programs as a result of the increased flexibility from the proposed rule revisions. The proposed changes are also anticipated to provide emission sources more flexibility for compliance and allow for expansion of the EBT in nonattainment areas by increasing the credits available. Because of the environmental benefits associated with credit use, any increased generation and use of credits will reduce emissions in the airshed, thereby improving air quality.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rules.

Participation in the ERC and DERC Programs is voluntary for companies that choose to generate or use credits for compliance. Participation in the MECT Program is mandatory for sites with an uncontrolled capacity to emit at least 10.0 tpy of NO_x. Companies with certified historical emissions receive an annual allocation of NO_x allowances. Similarly, the HECT Program is mandatory for certain sites in Harris County, and HRVOC allowances are allocated from a capped amount of HRVOC emissions.

The proposed rulemaking is not expected to expand agency authority over any additional emission sources. Because the ERC and DERC Programs are voluntary, it is impossible to predict how many sites may choose to participate as generators or users. Historically, 237 entities have participated in the ERC Program and 266 in the DERC Program. There is no limit on program participation, but the number of participants over the next five years is not expected to exceed the historical participation. Approximately 200 companies or sources are currently subject to the MECT Program, and approximately 40 companies or sources are currently subject to the HECT Program. The proposed rulemaking is not expected to increase or decrease the number of sources subject to the MECT or HECT programs.

Any fiscal implications for businesses affected by the proposed rules are dependent upon discretionary actions taken by the program participants, and therefore would be difficult to predict.

In the voluntary ERC Program, cost savings may result from updating the photochemical modeling requirement. The elimination of area and mobile sources from generating ERCs would not incur any costs, but may prevent someone from generating an ERC (although this has not occurred for emission reductions made in the last five years). The extensions of the deadlines for submitting a certification or an offset use would not have costs but may allow the generation of an ERC that would not have been eligible or provide more time to find lower-cost ERCs. If the amount of emissions an ERC generates increases or de-

creases as a result of the rule changes, the market price might be affected, but this would be from the mechanisms of the marketplace, rather than the rules themselves.

In the DERC Program, similar savings or costs are expected for inter-pollutant use, elimination of area and mobile source generation, and later submission of offsets. Later submission of forms for NO_x DERCs in the DFW area may also allow less expensive DERCs to be identified and acquired.

In the MECT and HECT Programs, there is the potential of an increase in the use of allowances as offsets, which may affect the price of allowances in the area. Because there is a fixed cap in the HECT Program, this factor may be of more consequence. The costs associated with site ownership changes will be dependent on how many sites are sold during a year, but it is expected that the costs will be minimal for most companies. The additional penalties for noncompliance with Chapter 115 or 117 would require the use of more of an account's existing allowance allocation or the acquisition of more allowances, which may incur costs, but the amounts would vary with the cost of allowances and could be avoided by achieving compliance.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation or administration of the proposed rules. The ERC and DERC Programs are completely voluntary, so any fiscal implications to small or micro-businesses that participate in these programs would result from their decisions and not from this rulemaking. At this time, there are approximately 85 small businesses and 34 micro-businesses participating in the ERC Program, and five small businesses and five in micro-businesses in the DERC Program. Any fiscal implications due to change in ownership of MECT and HECT sites for small or micro-businesses are not expected to be significant. Historically there have been 164 small businesses and 70 micro-businesses in MECT, and six small businesses and two micro-businesses in HECT. Because there is some change in ownership of MECT and HECT sites over time, the number of micro-businesses subject to those programs each year may vary. Since the ERC and DERC Programs are completely voluntary, the number of micro-businesses affected by those rules is expected to vary even more annually.

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 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 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 EBT rules in Chapter 101, Subchapter H define several market-based programs that provide sites with additional flexibility for complying with air regulations, such as the offset requirements in NNSR permits or the unit-specific emission limits in various state rules. These programs include the ERC Program rules in Division 1 that allow sources in nonattainment areas to generate, bank, trade, and use credits from permanent reductions in emissions; the MECT Program rules in Division 3 to provide additional flexibility in the implementation of the SIP strategy to reduce NO_x emissions in the HGB area; the DERC Program rules in Division 4 to allow sources statewide to generate, bank, trade, and use credits from reductions in emissions below regulatory requirements; and the HECT Program rules in Division 6 to provide additional flexibility in the implementation of the SIP strategy to reduce HRVOC emissions in the HGB area.

Because these programs are market-based, the costs associated with trades of credits and allowances are not controlled. In recent years, the cost of credits has risen substantially. In response, there has been significant interest in the regulated community for alternatives that facilitate generation and for flexibility in use. This increased interest has uncovered several implementation issues in the existing EBT rules. This rulemaking proposes to revise the EBT rules in Chapter 101 to respond to these issues and improve the workability and functionality of the rules.

Additionally, the commission is proposing changes to the NO_x DERC limits in Division 4 as part of the AD for the DFW 2008 eight-hour ozone nonattainment area. In 2008, the commission adopted the NOx DERC limit for the DFW area to ensure that DERC use does not interfere with the attainment and maintenance of the 1997 eight-hour ozone standard. On July 20, 2012, the ten-county DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) was designated a moderate nonattainment area for the 2008 eight-hour ozone standard. The FCAA requires states to submit plans to demonstrate attainment of the NAAQS for nonattainment areas within the state. As part of the AD SIP revision for the 2008 eight-hour ozone NAAQS for the DFW area, the commission evaluated the provisions setting the DERC flow control limit, and determined that a hard-capped limit was more feasible than the current provisions, which require the limit to change on a yearly basis based on an equation in the rules. Because of variation in the amount allowed each year, companies cannot effectively plan their long-term usage of NO_x DERCs in the DFW area, and the allowed amount is expected to drop to zero at some time in the future. The proposed rules make changes to

the DERC flow control provisions to replace the current equation for setting the flow control limit with a hard cap of 17 tpd.

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. The proposed rulemaking will revise the EBT rules in Chapter 101 to respond to issues with flexibility and use of the rules, and to improve the workability and functionality of the rules. Additionally, the proposed rulemaking includes changes to the technical basis of DERC limit as part of the SIP revision for the 2008 eight-hour ozone standard for the DFW 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 federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially 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 revise the EBT rules in Chapter 101 to respond to issues with flexibility and use of the rules and to improve the workability and functionality of the rules. Additionally, the proposed rulemaking includes changes to the technical basis of DERC limit as part of the SIP revision for the 2008 eight-hour ozone standard for the DFW area. 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 completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043. The primary purpose of the rulemaking is to revise the emissions banking and trading rules in Chapter 101 to respond to issues with flexibility and use of the rules, and to improve the workability and functionality of the rules. Additionally, the proposed rulemaking includes changes to the technical basis of DERC flow control provisions as part of the SIP revision for the 2008 eight-hour ozone standard for the DFW nonattainment area. Promulgation and enforcement of the amendments will not burden private real property. The rules do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Additionally, the allowances and credits that would be affected by these rules are not property rights *(see* §§101.302(i), 101.332(f), 101.352(f), 101.372(j), and 101.393(e)). Because these allowances and credits are not property, limiting the use of DERCs does not constitute a taking. Consequently, this rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

Additionally, Texas Government Code, §2007.003(b)(4) provides that Texas Government Code, Chapter 2007 does not apply to this rulemaking action because it is reasonably taken to fulfill an obligation mandated by federal law. The changes to the use of DERCs within the DFW area that are proposed by these rules were developed to ensure that the use of DERCs would not interfere with attainment and maintenance of NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. However, this rulemaking is only one step among many necessary for attaining the ozone NAAQS.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission reviewed this proposed rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the proposed amendments are consistent with CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and the revisions will maintain the same level of emissions control as previous rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. 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

The requirements of 42 USC, §7410 are applicable requirements of 30 TAC Chapter 122. Facilities that are subject to the Federal Operating Permit Program will be required to obtain, revise, reopen, and renew their federal operating permits as appropriate in order to include the proposed rules.

Announcement of Hearing

The commission will hold public hearings on this proposal in Arlington on January 15, 2015, at 6:30 p.m. in the City of Arlington Council Chamber, at 101 West Abram Street, Arlington, Texas 76010, and in Houston on January 20, 2015, at 2:00 p.m. in the auditorium, at the Texas Department of Transportation, 7600 Washington Avenue, Houston, Texas 77007. 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 each hearing.

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 Kris Hogan, 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.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2014-007-101-AI. The comment period closes January 30, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Joseph Thomas, Air Quality Planning Section, at (512) 239-0012.

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 1. EMISSION REDUCTION CREDIT PROGRAM

30 TAC §§101.300 - 101.303, 101.306, 101.309

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§101.300. Definitions.

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

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

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

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

[~~(4) Baseline activity--The facility's level of activity based on the facility's actual daily operating hours, production rates, or types of materials processed, stored, or combusted averaged over two consecutive calendar years.~~]

[~~(5) Baseline emission rate--The facility's rate of emissions per unit of activity during the baseline activity period.~~]

(3) [~~(6)~~] Baseline emissions--The facility's [~~actual~~] emissions, in tons per year, occurring before implementation of [~~prior to~~] an emission reduction strategy calculated as the lowest of the facility's historical adjusted emissions or state implementation plan emissions [~~the product of baseline activity and baseline emission rate not to exceed all limitations required by applicable local, state, and federal rules and regulations~~].

(4) [~~(7)~~] Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(5) Compliance account--The account where emission reduction credits held for a facility or multiple facilities at a single site are recorded. The executive director may create one compliance account for multiple sites when a company is using credits to comply with an area-wide emission limit instead of a facility-specific or site-specific emission limit.

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

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

[~~(9) Emission credit--An emission reduction credit or mobile emission reduction credit.~~]

(8) [~~(10)~~] Emission reduction--An actual reduction in emissions from a facility [~~or mobile source~~].

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

(10) [~~(12)~~] Emission reduction strategy--The method implemented to reduce the facility's [~~or mobile source's~~] emissions below the baseline emissions [~~beyond that required by state or federal law, regulation, or agreed order~~].

(11) [~~(13)~~] Facility--As defined in §116.10 of this title (relating to General Definitions). In this division, this term only applies to a facility included in the agency's point source emissions inventory.

(12) [~~(14)~~] Generator--The owner or operator of a facility [~~or mobile source~~] that creates an emission reduction.

(13) Historical adjusted emissions--The facility's emissions occurring before implementation of an emission reduction strategy and adjusted for any local, state, or federal requirement, calculated using the following equation.
Figure: 30 TAC §101.300(13)

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

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

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

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

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

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

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

[~~(18) Mobile source baseline emissions--The mobile source's actual emissions, in tons per year, occurring prior to a mo-~~

bile emission reduction strategy calculated as the product of mobile source activity and the mobile source emissions rate not to exceed all limitations required by applicable local, state, and federal rules and regulations.]

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

[(20) Most stringent allowable emissions rate--The emission rate of a facility or mobile source, considering all limitations required by applicable local, state, and federal rules and regulations.]

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

(15) [(22)] Protocol--A replicable and workable method of determining the [estimating] emission rate [rates] or activity level [levels] used to calculate the amount of emission reduction generated or credits required for a facility [facilities or mobile sources].

(16) [(23)] Quantifiable--An emission reduction that can be measured or estimated with confidence using the replicable methodology in an approved protocol.

(17) [(24)] Real [reduction]--A reduction in [which] actual emissions. An emission reduction based solely on reducing a facility's allowable emissions is not considered real [are reduced].

(18) [(25)] Shutdown--The [permanent] cessation of an activity producing emissions at a facility [or mobile source].

(19) [(26)] Site--As defined in §122.10 of this title (relating to General Definitions).

[(27) Source--As defined in §101.1 of this title (relating to Definitions).]

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

(21) State implementation plan emissions--A facility's annual emissions as reported in the state's point source emissions inventory (EI) for the year in which that facility's emissions are specifically identified in the state implementation plan (SIP) revision submitted to the United States Environmental Protection Agency (EPA) for the area where the facility is located. The SIP emissions may not exceed any applicable local, state, or federal requirement. The SIP emissions are determined for the calendar year used to represent the facility's emissions in:

(A) the projection-base year inventory used in the modeling included in the most recent attainment demonstration (AD) SIP revision or attainment inventory used in the maintenance plan SIP revision that was most recently submitted to the EPA for the current national ambient air quality standard (NAAQS) for the area where the facility is located;

(B) if a SIP revision for the current NAAQS has not been submitted to EPA for the area in which the facility is located, the projection-base year inventory used in the modeling included in the AD SIP revision or the attainment inventory used in the most recent maintenance plan SIP revision submitted to the EPA for an earlier NAAQS for the same pollutant; or

(C) the point source inventory used in the most recent EI SIP revision submitted to the EPA for the area where the facility is located if no AD or maintenance plan SIP revisions have been submitted to the EPA for the area where the facility is located.

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

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

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

§101.301. Purpose.

The purpose of this division is to allow the owner or operator of a facility[, as defined in §116.10 of this title (relating to Definitions), or mobile source] to generate an emission reduction credit (ERC) [credits] by reducing emissions beyond [the level required by] any applicable local, state, or [and] federal requirement; to allow a person to buy and sell an ERC; [regulation] and to allow the owner or operator of a [another] facility [or mobile source] to use an ERC [these credits]. Participation under this division is strictly voluntary.

§101.302. General Provisions.

(a) Applicable pollutants. An emission reduction credit (ERC) may be generated from a reduction [Reductions] of a criteria pollutant [pollutants], excluding lead, or a precursor [precursors] of a criteria pollutant [pollutants] for which an area is designated nonattainment[, may qualify as emission credits]. An ERC generated from the reduction [Reductions] of one pollutant or precursor may not be used to meet the requirements for another pollutant or precursor, except as provided by §101.306(d) of this title (relating to Emission Reduction Credit Use) [unless urban airshed modeling demonstrates that one ozone precursor may be substituted for another, subject to executive director and United States Environmental Protection Agency (EPA) approval].

(b) Eligible generators. The owner or operator of a facility located in a nonattainment area may generate an ERC if the emission reduction meets the criteria in this division. This includes any facility associated with federal actions under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

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

[(1) facilities, including area sources;]

[(2) mobile sources; and]

[(3) any facility, including area sources, or mobile source associated with actions by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).]

(c) ERC [Emission credit] requirements.

(1) An ERC is a [Emission reduction credits are] certified emission reduction [reductions] that [meet the following requirements]:

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

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

(C) [in order to become certified, the reduction] must occur [have occurred] after the [most recent] year [of emissions inventory] used to determine [in] the state implementation plan (SIP) emissions for the facility; and

(D) must occur at a facility with SIP [the facility's annual] emissions reported prior to implementation of the emission reduction strategy [must have been reported or represented in the emissions inventory used in the SIP].

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

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

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

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

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

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

(2) [(3)] An emission reduction [Emission reductions] from a facility [or mobile source] that is [are] certified as an ERC [emission credits] under this division cannot be recertified [in whole or in part] as credits under Division 4 of [another division within] this subchapter (relating to Discrete Emission Reduction Credit Program).

(d) Protocol.

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

(A) The owner or operator of a facility [Facilities] subject to the emission specifications under §§117.110, [117.210,] 117.310, 117.410, 117.1010, [117.1110,] 117.1210, 117.1310, 117.2010, or 117.2110 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall use [quantify reductions in nitrogen oxide emissions using] the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) The owner or operator of a facility [Facilities] subject to the requirements under Chapter 115 [§§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542] of this title (relating to Control of Air Pollution from Volatile Organic Compounds [Requirements; and Emission Specifications]) shall use [quantify volatile organic compound reductions using] the testing and monitoring methodologies identified to show compliance with the applicable [emission specifications or] requirements.

(C) If the executive director has not submitted a protocol for the applicable facility [or mobile source] to the EPA for approval, the following requirements apply:

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

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

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

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

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

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

(2) If [In the event that] the monitoring and testing data specified in [required under] paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine [facility may report actual] emissions for the [that] period of time the data is missing or unavailable using the most conservative method for replacing the data and these listed methods in the following order [of preference to determine actual emissions]:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

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

(F) material balance.

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

(e) ERC [Credit] certification.

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

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

(3) The applicant will be notified in writing if the executive director denies the ERC generation [~~emission credit application~~]. The applicant may submit a revised application in accordance with the requirements of this division.

(4) If a facility's [~~or mobile source's actual~~] emissions exceed any applicable local, state, or federal requirement [~~its allowable emission limit~~], reductions of emissions exceeding the requirement [~~limit~~] may not be certified as an ERC [~~emission credits~~].

(5) An application [~~Applications~~] for certification of ERCs [~~emission credit~~] from reductions quantified under subsection (d)(1)(C) of this section may only be approved after the EPA's 45-day adequacy review of the protocol [~~upon completion of the public comment period~~].

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

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

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

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

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

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

(3) the identification [~~specific~~] number[~~, name, or other identification~~] of each ERC [~~emission credits~~] used for each facility [~~or mobile source~~].

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

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

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

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

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

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

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

§101.303. Emission Reduction Credit Generation and Certification.

(a) Emission reduction strategy. [~~Methods of generation.~~]

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

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

(B) the installation and operation of pollution control equipment that reduces emissions below baseline emissions for [~~the level required of~~] the facility;

(C) a change in a manufacturing process that reduces emissions below baseline emissions for [~~the level required of~~] the facility;

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

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

(2) An ERC [~~ERCs~~] may not be generated from the following strategies:

(A) reductions from the shifting of activity from one facility to another facility at the same site[~~, as defined in §122.10 of this title (relating to General Definitions)~~];

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

(C) reductions [~~in emissions~~] from [~~the shutdown of~~] a facility without state implementation plan (SIP) emissions [~~that was not~~

reported or represented in the most recent emissions inventory used in the state implementation plan (SIP)].

(b) ERC baseline emissions.

(1) The baseline emissions may not exceed the facility's SIP [quantity of] emissions [reported in the most recent year of emissions inventory used in the SIP. For reductions being certified in accordance with §116.170(b) of this title (Applicability of Emission Reductions as Offsets), the baseline emissions may not exceed the quantity of emissions reported in the emissions inventory used in the SIP in place at the time the reduction strategy was implemented].

(2) The [two consecutive calendar years for the baseline] activity and emission [emissions] rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years selected from [either a period including or following the most recent year of emission inventory used in the SIP or, if that period is less than ten years,] the ten consecutive years immediately before [preceding] the emission reduction is achieved.

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

(c) ERC calculation. The quantity of ERCs is determined by subtracting the facility's strategic emissions from the facility's baseline emissions, as calculated in the following equation. [The facility's strategic emissions equal the enforceable emission limit for the applicable facilities after the emission reduction strategy has been implemented.]

Figure: 30 TAC §101.303(c)
[Figure: 30 TAC §101.303(c)]

(d) ERC certification.

(1) The owner or operator of a facility [Facilities] with potential ERCs shall [must] submit[,] to the executive director[,] an Application to Generate ERCs (Form ERC-1) no more than two years after [EC-1 Form, Application for Certification of Emission Credits, within 180 days of] the implementation of the emission reduction strategy. Applications will be reviewed to determine the credibility of the reductions. Reductions determined to be creditable will be certified by the executive director and an ERC [certificate] will be issued to the owner.

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

(3) An application for ERCs must include, but is not limited to, a completed Form ERC-1 [EC-1 Form] signed by an authorized representative of the applicant along with the following information for each pollutant reduced at each applicable facility:

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

(B) the amount of ERCs [emission credits] generated;

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

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

(E) emissions inventory data for each of the years [from the most recent year of emissions inventory] used to determine [in] the SIP emissions and historical adjusted emissions [inventory data for the two consecutive years used to determine baseline activity for each applicable pollutant and facility];

(F) the most stringent emission rate and the most stringent emission level [for the applicable facility], considering all applicable [the] local, state, and federal [applicable regulatory and statutory] requirements;

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

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

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

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

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

(C) for any facility without a new source review permit that is otherwise authorized by commission [standard permit, standard exemption, or permit by] rule, certifying the emission reduction and the new maximum emission limit [emissions] on a Certification of Emission Limits (Form APD-CERT) [PI-8 Form, Special Certification Form for Exemptions and Standard Permits,] or other form considered equivalent by the executive director or an agreed order. [, the emission reduction and the new maximum allowable emission limit;]

[(D) for any facility that is not required to have authorization by permit, standard permit, standard exemption, or permit by rule, certifying emissions on an OPC-RE1 Form, Certified Registration of Emissions Form for Potential to Emit, or other form considered equivalent by the executive director, the emission reduction and the new maximum allowable emission limit; or]

[(E) for any facility that is not required to have authorization by permit, standard permit, standard exemption, or permit by rule, obtaining an agreed order that sets a new maximum allowable emission limit.]

§101.306. Emission Reduction Credit Use.

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

(1) an offset in a nonattainment new source review (NNSR) permit in accordance with Chapter 116, Subchapter B of this title (relating to New Source Review Permits);

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

(2) mitigation offsets for action by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans [§101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans)];

(3) an alternative means of compliance with volatile organic compound and nitrogen oxides reduction requirements to the extent allowed in Chapters [114,] 115[,] and 117 of this title (relating to [Control of Air Pollution from Motor Vehicles;] Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds);

(4) [reductions certified as emission credits may be used] in netting by the original applicant, if the reduction certified as an ERC is not used, sold, reserved for use, or otherwise relied upon, as provided by Chapter 116, Subchapter B [in §116.150] of this title [(relating to New Major Source or Major Modification in Ozone Nonattainment Areas)]; or

[(5) an annual allocation of allowances as provided in §101.356 and §101.399 of this title (relating to Allowance Banking and Trading);]

[(6) compliance with motor vehicle fleet requirements to the extent allowed by §114.201 of this title (relating to Mobile Emission Reduction Credit Program); or]

(5) [(7)] an alternative means of compliance with other requirements as allowed in any applicable [allowable within the guidelines of] local, state, and federal requirement [laws].

(b) ERC [Credit] use calculation.

(1) The number of ERCs [emission credits] needed by the user for NNSR offsets should [shall] be determined as provided by Chapter 116, Subchapter B [in §116.150] of this title.

(2) The number of ERCs needed for [For emission credits used in] compliance with Chapter [Chapters 114,] 115[,] or 117 of this title[, the number of emission credits needed] should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.

Figure: 30 TAC §101.306(b)(2)

[Figure: 30 TAC §101.306(b)(2)]

(3) The number of ERCs needed to increase the 30-day rolling average emission cap or maximum daily cap for compliance [For emission credits used to comply] with §§117.123, [117.223,] 117.320, 117.323, 117.423, 117.1020, [117.1120,] or 117.1220 of this title (relating to Source Cap; and System Cap)[, the number of emission credits needed for increasing the 30-day rolling average emission cap or maximum daily cap] should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.

Figure: 30 TAC §101.306(b)(3)

[Figure: 30 TAC §101.306(b)(3)]

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

(c) Applying [Notice of intent] to use ERCs [emission credits].

(1) The executive director will not accept an Application to Use ERCs (Form ERC-3) before the ERC is available in the compliance account for the site where it will be used. If the ERC will be used for NNSR offsets, the executive director will not accept the Form ERC-3 before the applicable NNSR permit application is administratively complete.

(2) The user shall submit a completed Form ERC-3 at least 90 days before:

(A) the start of operation for an ERC used as offsets in an NNSR permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or

[(1) For emission credits which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), the emission credits must be identified prior to permit issuance. Prior to construction, the offsets must be provided through submittal of a completed EC-3 Form, Notice of Intent to Use Emission Credits, along with the original emission credit certificate.]

(B) [(2)] the planned use of an ERC [For emission credits that are to be used] for compliance with the requirements of Chapter 115 [Chapters 114, 115,] or 117 of this title or other programs[, the user must submit a completed EC-3 Form along with the original emission credit certificate, at least 90 days prior to the planned use of the emission credit. Emission credits may be used only after the executive director grants approval of the notice of intent to use. The user must also keep a copy of the emission credit certificate, the notice, and all backup in accordance with §101.302(g) of this title (relating to General Provisions)].

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

(4) If the executive director approves the ERC use, the date the Form ERC-3 is submitted will be considered the date the ERC is used.

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

§101.309. Emission Reduction Credit Banking and Trading.

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

(1) The credit registry will contain all applications for ERC [All notices of] generation, use, and trade [transfer will be posted to the credit registry].

(2) The credit registry will assign an identification [a unique] number to each ERC and [certificate which] will include the amount of emission reductions generated.

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

(b) Life of an ERC [emission credit].

(1) If an ERC [emission credit] is used before [prior to] its expiration date, the ERC [emission credit] is effective for the life of the [applicable user] facility for which the ERC was used [or mobile source].

[(2) Emission credits certified as part of an administratively complete application received prior to January 2, 2001 shall be available for use for 120 months from the date of the emission reduction.]

(2) [(3)] An ERC expires if not used within [Emission credits certified as part of an administratively complete EC-1 Form, Application for Certification of Emission Credits, received after January 2, 2001 shall be available for use for] 60 months from the date [of] the emission reduction is achieved.

(3) [(4)] Notwithstanding paragraph (2) [paragraphs (2) and (3)] of this subsection, the executive director may invalidate an ERC [a certificate] or portion of an ERC [a certificate] if local, state, or federal regulatory changes occur after the certification of the ERC that [emission credit which would or] would have affected the generating facility [or mobile source].

(c) Creditability review of ERCs. The value of an ERC [emission credits. Emission credits] may be reviewed [for creditability] at any time during its [their] banked life to ensure [insure] the emission reductions used to generate the ERC [generating the emission credit] are surplus to all current local, state, and federal requirements that [state and/or federal rules, regulations, or requirements which] would have affected [been applicable to] the generating facility [or mobile source].

(1) A request for a creditability review may be made by any interested person by submitting [party through the submittal of] a completed ERC Creditability Review Request (Form ERC-2) [EC-2 Form, Re-review of Emission Credits].

(2) If [In the event] a creditability review identifies a regulatory change invalidating an ERC [a certificate] or portion of an ERC [a certificate], the executive director shall void the ERC [emission credit certificate] and, if any credit remains, issue to the owner a new ERC identification [certificate with a unique] number [to the certificate owner] in the amount of remaining surplus credit.

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

(1) Before [Prior to] the transfer, the seller shall submit [executive director must be notified by means of] a completed Application to Trade ERCs (Form ERC-4) [EC-4 Form, Application for Transfer of Emission Credits, accompanied by the original certificate to be transferred].

(2) The executive director will issue a new ERC identification [certificate with a unique certificate] number to the [emission credit] purchaser reflecting the ERCs [emission credits] purchased [by the new owner], and a new ERC identification number [revised certificate] to the [emission credit] seller reflecting [showing] any remaining ERCs [emission credits] available [to the original owner]. An ERC trade is [Emission credits will be] considered final [transferred] only after the executive director grants [final] approval of the transaction.

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

(e) ERC [Emission credit] voidance. An ERC [Emission credits] may be voided [from the credit registry] by the owner at any time prior to the expiration date [of the credit and may be held by the owner]. A reduction [Reductions] certified as an ERC [emission credits] may still be used by the original owner as an emission reduction for netting purposes after the ERC has been voided [emission credits have expired], as provided by Chapter 116, Subchapter B [in §116.150] of this title (relating to New [Major] Source Review Permits [or Major Modification in Ozone Nonattainment Areas]).

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406025
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-6812

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DIVISION 1. EMISSION CREDIT BANKING AND TRADING

30 TAC §101.304

(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, 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; 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 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 repealed section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§101.304. Mobile Emission Reduction Credit Generation and Certification.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406027
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-6812

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DIVISION 3. MASS EMISSIONS CAP AND TRADE PROGRAM

30 TAC §§101.350 - 101.354, 101.356, 101.359, 101.360

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§101.350. Definitions.

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

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

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

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

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

[~~(4) Banked allowance--An allowance that is not used to reconcile emissions in the designated year of allocation, but that is carried forward for up to one year and noted in the compliance or broker account as "banked."~~]

(5) Broker--A person not required to participate in the requirements of this division [~~(relating to Mass Emissions Cap and Trade Program)~~] who opens an account under this division for the purpose of banking and trading allowances.

(6) Broker account--The account where allowances held by a broker are recorded. Allowances [~~held in a broker account~~] may not be used to satisfy compliance requirements for this division while held in a broker account [~~(relating to Mass Emissions Cap and Trade Program)~~].

(7) Compliance account--The account where allowances held by the owner or operator of a [~~facility or multiple facilities at a single~~] site subject to this division are recorded for the purposes of meeting the requirements of this division for an affected facility at that site [~~(relating to Mass Emissions Cap and Trade Program)~~].

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

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

(10) Houston-Galveston-Brazoria (HGB) ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. [~~As defined in §101.1 of this title (relating to Definitions).~~]

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

[~~(12) Person--For the purpose of issuance of allowances under this division (relating to Mass Emissions Cap and Trade Program), a person includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation.~~]

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

(13) [~~(14)~~] Uncontrolled design capacity to emit--The maximum capacity of a facility to emit nitrogen oxides without consideration for post-combustion pollution control equipment, enforceable limitations, or operational limitations. The owner or operator of a stationary diesel engine may use the lower of 876 hours or a federally enforceable limitation on total hours of operation to calculate uncontrolled design capacity to emit if the engine would otherwise

be exempt [from Chapter 117, Subchapter D, Division 1 of this title (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources)] under §117.2003(a)(2)(I) of this title (relating to Exemptions) except that the engine does not meet the emission standard requirements of §117.2003(a)(2)(I)(ii) of this title.

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

§101.351. Applicability.

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

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

(2) is not a major source [do not meet the definition of a major source of NO_x], as defined in §117.10 of this title, and has one or more affected [have] facilities subject to §117.2010 of this title (relating to Emission Specifications) with a collective uncontrolled design capacity to emit from these facilities of 10.0 [ten] tons or more per year of nitrogen oxides [NO_x].

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

(c) Once a site becomes subject to [the requirements of] this division, the site will remain subject to this division until the site is [has been] permanently shut down.

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

§101.352. General Provisions.

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

(b) No [Beginning March 1, 2003, and no] later than March 1 after each [following the end of every] control period, the [each site shall hold a] quantity of allowances in a site's [its] compliance account must be [that is] equal to or greater than the total tons [emissions] of nitrogen oxides (NO_x) emitted from all affected facilities at the site during the control period [just ending. Compliance with this division will begin with the initial control period beginning January 1, 2002].

(c) The [An] owner or operator of an affected facility [a facility subject to this division] may certify reductions from the facility as NO_x emission reduction credits (ERCs), provided that:

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

(2) all applicable requirements of Division 1 of this subchapter (relating to Emission Reduction Credit Program [Banking and Trading]) are met.

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

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

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

(2) At least 30 days before the start of operation of an affected facility using allowances as offsets, the owner or operator shall submit an Application to Use Allowances for Offsets (Form MECT-O).

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

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

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

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

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

[(e) Allowances may be used simultaneously to satisfy the correlating one to one portion of offset requirements for new or modified facilities which do not meet the definition of an existing facility, as defined in §101.350 of this title (relating to Definitions), subject to federal nonattainment new source review requirements as provided in Chapter 116, Subchapter B, Division 7 of this title (relating to Emission Reductions: Offsets).]

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

(g) An allowance [~~All allowances~~] will be allocated, traded, and [~~transferred, or~~] used in tenths of a ton [~~tons~~]. The [~~To determine the number of allowances, the~~] number of allowances will be rounded [~~down to the nearest tenth when determining excess allowances and rounded~~] up to the nearest tenth of a ton when determining allowances used.

(h) The owner or operator shall use one [~~One~~] compliance account [~~shall be used~~] for all affected [~~multiple~~] facilities [~~required to participate under this division and~~] located at the same site and under common ownership or control.

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

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

§101.353. Allocation of Allowances.

(a) The executive director shall deposit allowances [~~Allowances will be deposited~~] into a compliance account [~~accounts~~] according to the following equation except as provided by [~~in~~] subsection (b) or (g) [~~(h)~~] of this section.

Figure: 30 TAC §101.353(a)

[~~Figure: 30 TAC §101.353(a)~~]

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

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

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

(3) a facility [~~facilities~~] in operation before [~~prior to~~] January 1, 1997[~~,~~] located at a site defined on or before December 31, 2000[~~,~~] as a major source [~~of nitrogen oxides (NO_x)~~], as defined in §117.10 of this title (relating to Definitions), for which the owner or operator did not submit a MECT [~~that have not submitted an ECT-3 Form,~~] Level of Activity Certification (Form MECT-3)[~~,~~] in accordance with §101.360(a)(1) of this title (relating to Level of Activity Certification) by March 30, 2010; and

(4) an existing facility [~~new and/or modified facilities~~] located at a site defined [~~on or~~] before January 1, 2001 [~~December 31, 2000~~], as a major source [~~of NO_x~~], as defined in §117.10 of this title, for which the owner or operator did not submit a Form MECT-3 [~~that submitted a permit application that was determined administratively complete before January 2, 2001, but have not submitted an ECT-3 Form~~] in accordance with §101.360(a)(2) of this title by March 30, 2010. [~~; and~~]

[~~(5) new and/or modified facilities located at a site defined on or before December 31, 2000, as a major source of NO_x, as defined in §117.10 of this title, that qualified for a permit by rule and commenced construction before January 2, 2001, but have not submitted an ECT-3 Form in accordance with §101.360(a)(2) of this title by March 30, 2010.~~]

[~~(c) If actual emissions of NO_x during a control period exceed the amount of allowances held in a compliance account on March 1 following the control period, allowances for the next control period will be reduced by an amount equal to the emissions exceeding the allowances in the compliance account plus an additional 10%. This does not preclude additional enforcement action by the executive director.~~]

(c) [~~(d)~~] The [~~Allowances will be allocated by the~~] executive director will allocate and[~~, who will~~] deposit allowances into each compliance account by January 1 of each year.[~~:~~]

[~~(1) initially, by January 1, 2002; and~~]

[~~(2) subsequently, by January 1 of each following year.~~]

(d) [~~(e)~~] The executive director [~~annual deposit for any control period~~] may adjust the deposits for any control period [~~be adjusted by the executive director~~] to reflect new or existing state implementation plan requirements.

(e) [~~(f)~~] The executive director [~~Allowances~~] may add [~~be added~~] or deduct allowances [~~deducted by the executive director~~] from compliance accounts based on [~~following~~] the review of reports required under §101.359 of this title (relating to Reporting).

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

[~~(1) no later than June 30, 2001, to request an alternative three consecutive calendar year period for facilities in operation prior to January 1, 1997;~~]

(1) [~~(2)~~] no later than 90 days after completion of the baseline period to request up to two additional calendar years to establish a baseline period for a facility [~~facilities~~] whose baseline as described by variable (B)(i) [~~(2)(C)~~] listed in the figure [~~contained~~] in subsection (a) of this section is not complete by June 30, 2001; or

(2) [~~(3)~~] at any time as authorized by the executive director.

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

§101.354. Allowance Deductions.

(a) The executive director shall deduct allowances [~~Allowances will be deducted~~] in tenths of a ton from a site's compliance account in an amount equal to the nitrogen oxides (NO_x) emissions from each affected facility during the previous [~~for a~~] control period. The amount of NO_x emissions must be quantified using [~~based upon~~] the monitoring and testing protocols established in §§117.335, 117.340, 117.1235, 117.1240, and 117.2035 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Monitoring and Testing Requirements).

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

(1) When quantifying NO_x emissions [When reporting actual emissions as required] under this subsection, the owner or operator of the affected facility shall [the facility must also] submit the justification for not using the methods in subsection (a) of this section and the justification for the method used.
[Figure: 30 TAC §101.354(b)]

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

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

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

(e) The executive director shall deduct allowances [Allowances shall be deducted] from a site's compliance account in an amount equal to the NO_x [nitrogen oxides (NO_x)] emissions increases from a facility [facilities] not subject to an emission specification under §117.310 or §117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) that [which] result from changes made after December 31, 2000, to a facility [facilities] subject to this division and §117.310(e)(3) or §117.2010(f) of this title. The owner or operator shall submit detailed documentation on [Documentation detailing] these increases in NO_x emissions [shall be included] with the [submittal of the ECT-1 Form,] Annual Compliance Report (Form MECT-1).

(f) An allowance allocated based on allowable emissions [Allowances allocated] in accordance with variable (B)(i) [the variables in (a)(2)(B) listed] in the figure [contained] in §101.353(a) of this title may only be used by the facility for which it was [they were] allocated and may not be used by any other facility [facilities at the same site during the same control period].

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

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

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

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

[(g) On March 1 after every control period, a site shall hold a quantity of allowances in its compliance account that is equal to or greater than the total NO_x emissions emitted during the prior control period.]

§101.356. Allowance Banking and Trading.

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

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

(c) Only an authorized account representative [representatives] may trade an allowance [allowances].

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

(1) To trade a current allowance or vintage allowance for a single year, the seller shall submit an Application to Trade Allowances (Form MECT-2). Trades involving allowances needed for compliance with a control period must be submitted on or before January 30 of the following control period.

(2) To permanently trade ownership of any portion of the allowances allocated annually to an individual facility, the seller shall submit an Application for Stream Trade (Form MECT-4).

(3) To trade any portion of the individual future year allowances to be allocated annually to an individual facility, the seller shall submit an Application for Future Trade (Form MECT-5).

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

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

[(d) Trades involving individual allowances may be made in accordance with the following.]

[(1) Submit a completed ECT-2 Form, Application for Transfer of Allowances.]

[(2) The completed ECT-2 Form must include the price paid per allowance, except for transfers between sites under common ownership or control, and shall be submitted to the executive director at least 30 days prior to the allowances being deposited into the transferee's broker or compliance account.]

[(3) ECT-2 Forms involving the transfer of allowances needed for compliance with a control period must be submitted on or before January 30 of the following control period.]

[(4) All information regarding the quantity and sales price of allowances not exempt from reporting under paragraph (2) of this subsection must be immediately made available to the public.]

[(5) The executive director will issue a letter to the purchaser and seller reflecting this trade. The trade is final upon issuance of this letter.]

[(e) The owner or operator of a site receiving allowances on an annual basis may permanently transfer ownership of the allowances allocated to individual facilities at that site to any person in accordance with the following requirements.]

[(1) A request for transfer of ownership shall be reviewed for approval by the executive director following the submission of a completed ECT-4 Form, Application for Permanent Transfer of Allowance Ownership.]

[(2) The ECT-4 Form must include the price paid per allowance, except for transfers between sites under common ownership or control, and shall be submitted to executive director at least 30 days prior to the allowances being deposited into the transferee's broker or compliance account.]

[(3) All information regarding the quantity and sales price of allowances not exempt from reporting under paragraph (2) of this subsection must be immediately made available to the public.]

[(4) The executive director will issue a letter to the purchaser and seller reflecting this transaction. The transfer is final upon issuance of this letter.]

[(f) Trades involving the transfer of individual future year allowances to be allocated to individual facilities at a site must be made in accordance with the following.]

[(1) The application for trade shall be reviewed for approval by the executive director following the submission of a completed ECT-5 Form, Application for Transfer of Individual Future Year Allowances.]

[(2) The completed ECT-5 Form must include the price paid per allowance, except for transfers between sites under common ownership or control.]

[(3) All information regarding the quantity and sales price of allowances not exempt from reporting under paragraph (2) of this subsection must be immediately made available to the public.]

[(4) The executive director will issue a letter to the purchaser and seller reflecting this trade. The transfer is final upon issuance of this letter.]

[(g) The banking for future use or trading of allowances not used for compliance during a control period shall be restricted in accordance with the following.]

(g) [(1)] Allowances that were allocated based on allowable emissions in accordance with the variable (B)(i) [variables in (2)(B) listed] in the figure [contained] in §101.353(a) of this title (relating to Allocation of Allowances) may not be banked for future use or traded.

[(2) Allowances that were allocated prior to January 1, 2005 in accordance with the variables in (3)(D) listed in the figure contained in §101.353(a) of this title may not be banked for future use or traded.]

(h) Nitrogen [Sites may use nitrogen] oxides (NO_x) discrete emission reduction credits (DERCs) [(DERC) or mobile discrete emission reduction credits (MDERC) that have been] generated and acquired in accordance with Division 4 of this subchapter (relating to Discrete Emission Reduction Credit Program [Credit Banding and Trading]) may be used in place of allowances for compliance with this division in accordance with [paragraphs (1) - (9) of] this subsection. Volatile [Sites may use volatile] organic compound (VOC) DERCs [or MDERCs that have been] generated and acquired in accordance with Division 4 of this subchapter may be used [,] in place of allowances for compliance with this division in accordance with [paragraphs (1) - (9) of] this subsection if the user satisfies the inter-pollutant requirements in §101.376(g) of this title (relating to Discrete Emission Reduction Credit Use). [provided that demonstration has been made and approved by the executive director and the United States Environmental Protection Agency to show that the use of VOC DERCs or MDERCs is equivalent, on a one to one basis or other ratio, to the use of NOx allowances in reducing ozone.]

(1) DERCs generated by a mobile source [MDERCs] may be used in lieu of allowances at a ratio of one ton of DERCs [MDERC] for one ton of allowances [allowance].

[(2) Prior to January 1, 2005, DERCs generated prior to January 1, 2005 may be used at a ratio of one DERC for one allowance.]

[(3) DERCs generated prior to January 1, 2005 may be used in lieu of allowances for compliance with this division for the control period beginning January 1, 2005 through December 31, 2005 at a ratio of four DERCs for one allowance.]

[(4) DERCs generated prior to January 1, 2005 may be used in lieu of allowances for compliance with this division for the control period beginning January 1, 2006 through December 31, 2006 at a ratio of seven DERCs for one allowance.]

(2) [(5)] DERCs generated by a stationary source before [prior to] January 1, 2005 may be used in lieu of allowances [for compliance with this division for the control period beginning January 1, 2007 and all subsequent control periods] at a ratio of ten tons of DERCs for one ton of allowances [allowance].

(3) [(6)] DERCs generated by a stationary source after December 31, 2004 [on or after January 1, 2005] may be used in lieu of allowances at a ratio of one ton of DERCs [DERC] for one ton of allowances [allowance].

[(7) Beginning January 1, 2005, no more than 10,000 DERCs may be used in any combination totaled over all sites in the Houston/Galveston ozone nonattainment area during a single calendar year in accordance with paragraph (10) of this subsection. This restriction does not apply to MDERCs.]

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

(5) [(9)] To use DERCs for [DERCs or MDERCs submitted with a DEC-2 Form, Notice of Intent to Use Discrete Emission Credits, for the purpose of] compliance with this division, the Notice of Intent to Use DERCs (Form DERC-2) must [section, shall] be submitted to the executive director on or before October 1 of the control period for which the DERCs [or MDERCs] will be used [and must be accompanied by an original DERC or MDERC certificate]. In addition, the Application to Use DERCs (Form DERC-3) [a DEC-3 Form, Notice of Use of Discrete Emission Credits,] must be submitted by March 31 [along] with the site's [ECT-1 Form,] Annual Compliance Report (Form MECT-1).

(6) [(10)] No more than 10,000 tons of DERCs generated from stationary sources may be used for compliance with this division in any combination totaled over all sites in the Houston-Galveston-Brazoria area during a single calendar year. [Beginning January 1, 2005,] DERCs may [shall] be approved for use with this division according to the following.

(A) The executive director may approve the use of 250 tons or less of [~~Approval will be given to use 250 or less~~] DERCs per site, per control period, unless the 10,000 ton per year limit has been reached.

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

~~[(i) Emission reduction credits (ERC) may be converted into a yearly allocation of allowances at the rate of one ERC to one allowance per year only if they were generated prior to December 1, 2000 and provided that:]~~

~~[(1) the ERC is quantifiable, real, surplus, enforceable, and permanent as required in §101.302 of this title (relating to General Provisions) at the time the ERC is converted;]~~

~~[(2) the ERC was generated in the Houston/Galveston area;]~~

~~[(3) the ERC was generated from a reduction in NOx;]~~

~~[(4) the ERC has not expired; and]~~

~~[(5) the owner of the ERC has prior approval from the executive director.]~~

§101.359. Reporting.

(a) No later than March 31 after [~~Beginning March 31, 2003, for~~] each control period, the owner or operator of a site subject to this division [~~facilities under each compliance account~~] shall submit a completed [~~ECT-1 Form,~~] Annual Compliance Report (Form MECT-1)[~~,~~] to the executive director, which must include [~~by March 31 of each year detailing~~] the following:

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

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

(3) a summary of all final trades for the preceding control period; [~~and~~]

(4) detailed documentation supporting the reported level of activity [~~level~~] and emission factor for each affected facility [~~equivalent in kind and detail to that submitted with an ECT-3 Form, Level of Activity Certification~~]. It is acceptable to reference documentation supporting a level of activity or an emission factor if previously submitted with a Form MECT-1 [~~an ECT-1 Form~~] or a Level of Activity Certification (Form MECT-3); and [~~an ECT-3 Form.~~]

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

(b) For the owner or operator of a site [~~sites~~] failing to submit a [~~an ECT-1~~] Form MECT-1 by the required deadline in subsection (a) of this section, the executive director may withhold approval of any proposed trades from that site involving allowances allocated for the control period for which the Form MECT-1 [~~ECT-1 Form~~] is due or to be allocated in subsequent control periods.

(c) The owner or operator of a site subject to this division that no longer has authorization to operate any affected facilities may request a waiver from the reporting requirements in this section. If approved, the Form MECT-1 will not be required until a new affected facility is authorized at the site.

§101.360. Level of Activity Certification.

(a) The owner or operator of any site [~~facility~~] subject to this division shall certify the[~~, no later than June 30, 2001, its~~] historical level of activity for each affected facility by submitting to the executive director a completed [~~ECT-3 Form,~~] Level of Activity Certification (Form MECT-3)[~~,~~] along with any supporting information such as usage records, testing or monitoring data, emission factors, and production records. The historical level of activity must be determined as follows:

(1) for a facility in operation before [~~facilities in operation prior to~~] January 1, 1997, the level of activity averaged over 1997, 1998, and 1999;

(2) for an existing facility [~~new and modified facilities not in operation prior to January 1, 1997 and either have submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), an application which the executive director has determined to be administratively complete before January 2, 2001, or have qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and have commenced construction before January 2, 2001,~~] the level of activity authorized by the executive director; and

(3) for a new or modified facility [~~new and modified facilities~~] not in operation before [~~prior to~~] January 1, 1997, that is [~~are~~] subject to an emission specification [~~emission specifications~~] under §§117.310, 117.1210, or 117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) [~~that were~~] first adopted after April 1, 2001, and either has [~~have~~] submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) an application [~~which the executive director has~~] determined by the executive director to be administratively complete within 90 days of the effective date of this emission specification, or has [~~have~~] qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and [~~have~~] commenced construction within 90 days of the effective date of the emission specification, the level of activity authorized by the executive director.

(b) The owner or operator that [~~of any facility subject to this division who has~~] certified a facility's allowable level of activity under subsection (a)(2) of this section shall:

(1) [~~certify~~] no later than 90 days after [~~from~~] the end of the fifth year of operation, certify the actual level of activity and actual emission factors for the two complete consecutive calendar years chosen as a baseline by submitting to the executive director a completed Form MECT-3 [~~ECT-3 Form, Level of Activity Certification~~], along with any supporting information such as usage records, testing or monitoring data, and production records; and

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

(c) The owner or operator [~~Owners or operators~~] of a site or facility that becomes subject to this division [~~on or~~] after March 31, 2001 [~~April 1, 2001~~] shall certify the level of activity, as determined by the executive director, in accordance with subsections (a) and (b) of

this section. The [~~Such~~] certification must [~~shall~~] be submitted no later than 90 days after [~~from~~] the date the site or facility becomes subject to this division [~~or no later than 90 days from the effective date of this rule, whichever is later~~].

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406028
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-6812

♦ ♦ ♦

30 TAC §101.358

(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, 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; 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 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 repealed section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§101.358. Emission Monitoring and Compliance Demonstration.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406030
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
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DIVISION 4. DISCRETE EMISSION REDUCTION CREDIT PROGRAM

30 TAC §§101.370 - 101.373, 101.376, 101.378, 101.379

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§101.370. Definitions.

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

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

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

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

[~~(4) Baseline activity--The facility's actual level of activity based on the facility's actual daily operating hours, production rates, or types of materials processed, stored, or combusted averaged over two consecutive calendar years.~~]

[~~(5) Baseline emission rate--The facility's rate of emissions per unit of activity during the baseline activity period.~~]

(3) [~~(6)~~] Baseline emissions--The facility's actual emissions, in tons per year, occurring before implementation of [~~prior to~~] an emission reduction strategy and calculated as the lowest of the facility's historical adjusted emissions or state implementation plan emissions [~~the product of baseline activity and baseline emission rate not to exceed all limitations required by applicable local, state, and federal rules and regulations~~].

(4) [~~(7)~~] Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(5) Compliance account--The account where discrete emission reduction credits held for a facility or multiple facilities at a single site are recorded for the purposes of meeting the requirements of this division. The executive director may create one compliance account for multiple sites when a company is using credits to comply with an area-wide emission limitation instead of a facility or site specific emission limitation.

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

(7) Dallas-Fort Worth area--The 1997 eight-hour ozone nonattainment area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

[~~(9) Discrete emission credit--A discrete emission reduction credit or mobile discrete emission reduction credit.~~]

(8) [~~(10)~~] Discrete emission reduction credit--A certified emission reduction that is created by reducing emissions from a facility during a generation period, quantified after the generation period [~~in which emissions reductions are made~~], and expressed in tenths of a ton. With respect to the use and trading of credits, this term includes a discrete emission reduction credit generated from mobile sources certified before June 1, 2015 [~~tons~~].

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

(10) [~~(11)~~] Emission reduction--An actual reduction in emissions from a facility [~~or mobile source~~].

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

(12) [~~(13)~~] Facility--As defined in §116.10 of this title (relating to General Definitions). In this division, this term only applies to a facility included in the agency's point source emissions inventory.

(13) [~~(14)~~] Generation period--The discrete period of time, not exceeding 12 months, over which a discrete emission reduction credit is created.

(14) [~~(15)~~] Generator--The owner or operator of a facility [~~or mobile source~~] that creates an emission reduction.

(15) Historical adjusted emissions--The facility's emissions occurring before implementation of an emission reduction strategy and adjusted for any local, state, or federal requirement, calculated using the following equation.
Figure: 30 TAC §101.370(15)

[~~(16) Mobile discrete emission reduction credit or discrete mobile credit--A certified emission reduction from a mobile source that is created during a generation period, quantified after the period in which emissions reductions are made, and expressed in tons.~~]

[~~(17) Mobile source--On-road (highway) vehicles (e.g., automobiles, trucks, and motorcycles) and non-road vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).~~]

[~~(18) Mobile source baseline activity--The level of activity of a mobile source during the applicable mobile source baseline emissions period.~~]

[~~(19) Mobile source baseline emissions--The mobile source's actual emissions, in tons per year, occurring prior to a mobile emission reduction strategy calculated as the product of mobile source baseline activity and mobile source baseline emission rate not to exceed all limitations required by applicable local, state, and federal rules and regulations.~~]

[~~(20) Mobile source baseline emissions rate--The mobile source's rate of emissions per unit of mobile source baseline activity during the mobile source baseline emissions period.~~]

[~~(21) Most stringent allowable emissions rate--The emissions rate of a facility or mobile source, considering all limitations required by applicable local, state, and federal rules and regulations.~~]

(16) [~~(22)~~] Ozone season--The portion of the year when ozone monitoring is federally required to occur in a specific geographic area, as defined in 40 Code of Federal Regulations Part 58, Appendix D, §2.5.

[~~(23) Permanent--An emission reduction that is long-lasting and unchanging for the remaining life of the facility or mobile source. Such a time period must be enforceable.~~]

(17) [~~(24)~~] Protocol--A replicable and workable method of determining the [~~estimating~~] emission rate [~~rates~~] or activity level [~~levels~~] used to calculate the amount of emission reduction generated or credits required for a facility [~~facilities or mobile sources~~].

(18) [~~(25)~~] Quantifiable--An emission reduction that can be measured or estimated with confidence using the replicable methodology in an approved protocol.

(19) [~~(26)~~] Real [~~reduction~~]--A reduction in [~~which~~] actual emissions. An emission reduction based solely on reducing a facility's allowable emissions is not considered real [~~are reduced~~].

(20) [~~(27)~~] Shutdown--The [~~permanent~~] cessation of an activity producing emissions at a facility [~~or mobile source~~].

(21) [~~(28)~~] Site--As defined in §122.10 of this title (relating to General Definitions).

~~[(29) Source--As defined in §101.1 of this title (relating to Definitions).]~~

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

(23) State implementation plan emissions--A facility's annual emissions as reported in the state's point source emissions inventory (EI) for the year in which that facility's emissions are specifically identified in the state implementation plan (SIP) revision submitted to the United States Environmental Protection Agency (EPA) for the area where the facility is located. The SIP emissions may not exceed any applicable local, state, or federal requirement. The SIP emissions are determined for the calendar year used to represent the facility's emissions in:

(A) the projection-base year inventory used in the modeling included in the attainment demonstration (AD) SIP revision or attainment inventory used in the maintenance plan SIP revision that was most recently submitted to the EPA for the current national ambient air quality standard (NAAQS) for the area where the facility is located;

(B) if a SIP revision for the current NAAQS has not been submitted to EPA for the area in which the facility is located, the projection-base year inventory used in the modeling included in the AD SIP revision or the attainment inventory used in the maintenance plan SIP revision that was most recently submitted to the EPA for an earlier NAAQS for the same pollutant; or

(C) the point source inventory used in the most recent EI SIP revision submitted to the EPA for the area where the facility is located if no AD or maintenance plan SIP revisions have been submitted to the EPA for the area where the facility is located.

(24) [~~(31)~~] Strategic [~~Strategy~~] activity--The facility's [~~or mobile source's~~] level of activity during the discrete emission reduction credit generation period.

(25) [~~(32)~~] Strategic [~~Strategy~~] emission rate--The facility's [~~or mobile source's~~] emission rate during the discrete emission reduction credit generation period.

(26) [~~(33)~~] Surplus--An emission reduction that is not otherwise required of a facility [~~or mobile source~~] by any applicable local, [a] state, or federal requirement [~~law, regulation, or agreed order~~] and has not been otherwise relied upon in the state implementation plan.

(27) [~~(34)~~] Use period--The period of time, not exceeding 12 months, over which the user applies discrete emission reduction credits to an applicable emission reduction requirement.

(28) [~~(35)~~] User--The owner or operator of a facility [~~or mobile source~~] that acquires and uses a discrete emission reduction credit [~~credits~~] to meet a regulatory requirement, demonstrate compliance, or offset an emission increase.

(29) [~~(36)~~] Use strategy--The compliance requirement for which discrete emission reduction credits are being used.

§101.371. Purpose.

The purpose of this division is to allow the owner or operator of a facility [~~or mobile source~~] to generate a discrete emission reduction credit (DERC) [~~credits~~] by reducing emissions beyond [~~the level required by~~] any applicable local, state, or [~~and~~] federal requirement; to allow a person to buy or sell a DERC; [~~regulation,~~] and to allow the owner or operator of a facility [~~another source~~] to use a DERC [~~these credits~~]. Participation under this division is strictly voluntary.

§101.372. General Provisions.

(a) Applicable pollutants. A discrete emission reduction credit (DERC) may be generated from a reduction of a criteria pollutant, excluding lead, or a precursor of a criteria pollutant. A DERC generated from the reduction of one pollutant or precursor may not be used to meet the requirements for another pollutant or precursor, except as provided in §101.376 of this title (relating to Discrete Emission Reduction Credit Use). [~~Reductions of volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO_2) and particulate matter with an aerodynamic diameter of less than or equal to a nominal ten microns (PM_{10}) may qualify as discrete emission credits as appropriate. Reductions of other criteria pollutants are not creditable. Reductions of one pollutant may not be used to meet the reduction requirements for another pollutant, unless urban airshed modeling demonstrates that one may be substituted for another subject to approval by the executive director and the United States Environmental Protection Agency (EPA).~~]

(b) Eligible generators. The owner or operator of a facility may generate a DERC if the emission reduction meets the criteria in this division. This includes any facility associated with federal actions under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans. [~~generator categories. Eligible categories include the following:~~]

~~[(1) facilities (including area sources);]~~

~~[(2) mobile sources; or]~~

~~[(3) any facility, including area sources, or mobile source associated with actions by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).]~~

(c) DERC [~~Discrete emission credit~~] requirements.

(1) A DERC is a certified emission reduction that [~~To be creditable as a discrete emission reduction credit (DERC), an emission reduction must meet the following~~]:

(A) must [~~the reduction~~] be real, quantifiable, and surplus at the time the DERC [~~discrete emission credit~~] is generated;

(B) [~~the reduction~~] must occur after the year [~~have occurred after the most recent year of emissions inventory~~] used to determine [~~in~~] the state implementation plan (SIP) emissions for a facility in a nonattainment area [~~for all applicable pollutants~~]; and

(C) must occur at a facility with SIP emissions reported before implementation of [~~the facility's annual emissions prior to~~] the emission reduction strategy for a facility in a nonattainment area [~~must have been reported or represented in the emissions inventory used for the SIP~~].

~~[(2) To be creditable as a mobile discrete emission reduction credit (MDERC), an emission reduction must meet the following:]~~

~~[(A) the reduction must be real, quantifiable, and surplus at the time it is created;]~~

~~[(B) the reduction must have occurred after the most recent year of emissions inventory used in the SIP for all applicable pollutants;]~~

~~[(C) the mobile source's emissions must have been represented in the emissions inventory used for the SIP; and]~~

[(D) the mobile sources must have been included in the attainment demonstration baseline emissions inventory. If a mobile reduction implemented is not in the baseline for emissions, this reduction does not constitute a discrete emission reduction.]

(2) [(3)] An emission reduction from a facility that is [Emission reductions from a facility or mobile source which are] certified as a DERC [discrete emission credits] under this division cannot be recertified as an emission reduction credit under Division 1 of this subchapter (relating to Emission Reduction Credit Program). [in whole or in part as emission credits under another division within this subchapter.]

(d) Protocol.

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

(A) The owner or operator of a facility [Facilities] subject to the emission specifications for nitrogen oxides (NO_x) or a criteria pollutant under §§117.110, [117.210,] 117.310, 117.410, 117.1010, [117.1110,] 117.1210, 117.1310, 117.2010, 117.2110, or 117.3310 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall use [quantify reductions in NO_x using] the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) The owner or operator of a facility [Facilities] subject to the volatile organic compounds (VOC) control requirements or emission specifications under Chapter 115 [§§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542] of this title (relating to Control of Air Pollution from Volatile Organic Compounds [Requirements; and Emission Specifications]) shall use [quantify VOC reductions using] the testing and monitoring methodologies identified to show compliance with the applicable [emission specifications or the] requirements.

(C) The owner or operator of a facility subject to an emission specification or control requirement for carbon monoxide (CO), sulfur dioxide (SO_2), particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) or 2.5 micrometers ($PM_{2.5}$) shall use the testing and monitoring methodologies in commission rules, if available, to show compliance with the applicable requirements.

(D) [(C)] If the executive director has not submitted a protocol for the applicable facility [or mobile source] to the EPA for approval, the following applies:

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

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

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

(iv) if approved by the executive director, the chosen quantification protocol must [shall] be made available for public comment for a period of 30 days and must [shall] be viewable on the commission's website [Web site];

(v) the chosen quantification protocol and any comments received during the public comment period must [shall], upon approval by the executive director, be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols may [shall] not be accepted for use with this division [(relating to Discrete Emission Credit Banking and Trading)] if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA adopts [proposes] disapproval of the protocol in the *Federal Register*.

(2) If [In the event that] the monitoring and testing data specified in [required under] paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine [facility may report actual] emissions for that period of time the data is missing or unavailable using the most conservative method for replacing the data and [using] these listed methods in the following order [of preference to determine actual emissions]:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

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

(F) material balance.

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

(e) DERC [Credit] certification.

(1) The amount of a DERC must [discrete emission credits shall] be rounded down to the nearest tenth of a ton when certified [generated] and must [shall] be rounded up to the nearest tenth of a ton when used.

(2) The executive director shall review an application for certification [Applications for certification will be reviewed in order] to determine the credibility of the reductions and may certify reductions. Each DERC certified will be assigned an identification number. [Reductions determined to be creditable will be certified by the executive director.]

(3) The applicant will be notified in writing if the executive director denies the DERC certification [discrete emission credit notification]. The applicant may submit a revised Application to Generate DERCs (Form DERC-1) [discrete emission credit notification] in accordance with the requirements of this division.

(4) If a facility's [or mobile source's] emissions exceed any applicable local, state, or federal requirement, reductions [its allowable

~~emission limit, the amount~~] of emissions exceeding the requirement [~~limit~~] may not be certified as a DERC [~~discrete emission credits~~].

(5) Certification of DERCs from reductions quantified under subsection (d)(1)(D) of this section may only be approved after the EPA's 45-day adequacy review of the protocol.

(f) Geographic scope. Except as provided in paragraph (7) of this subsection and §101.375 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in the State of Texas may be creditable and used in the state with the following limitations.

(1) VOC and NO_x discrete emission credits generated in an ozone attainment area may be used in any county or portion of a county designated as attainment or unclassified, except as specified in paragraphs (4) and (5) of this subsection and may not be used in an ozone nonattainment area.

(2) VOC and NO_x discrete emission credits generated in an ozone nonattainment area may be used either in the same ozone nonattainment area in which they were generated, or in any county or portion of a county designated as attainment or unclassified.

(3) VOC and NO_x discrete emission credits generated in an ozone nonattainment area may not be used in any other ozone nonattainment area, except as provided in this subsection.

(4) VOC discrete emission credits are prohibited from use within the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), if generated outside of the covered attainment counties. VOC and NO_x discrete emission credits generated in a nonattainment area may be used in the covered attainment counties, except those generated in El Paso.

(5) NO_x discrete emission credits are prohibited from use within the covered attainment counties, as defined in §115.10 of this title, if generated outside of the covered attainment counties. NO_x discrete emission credits generated in a nonattainment area, except those generated in El Paso, may be used in the covered attainment counties.

(6) CO, SO_2, and PM_{10} discrete emission credits must be used in the same metropolitan statistical area (as defined in Office of Management and Budget Bulletin Number 93-17 entitled "Revised Statistical Definitions for Metropolitan Areas" dated June 30, 1993) in which the reduction was generated.

(7) VOC and NO_x discrete emission credits generated in other counties, states, or emission reductions in other nations may be used in any attainment or nonattainment county provided a demonstration has been made and approved by the executive director and the EPA, to show that the emission reductions achieved in the other county, state, or nation improve the air quality in the county where the credit is being used.

(g) Ozone season. In areas having an ozone season of less than 12 months (as defined in 40 Code of Federal Regulations Part 58, Appendix D), a VOC or NO_x DERC [~~VOC and NO_x discrete emission credits~~] generated outside the ozone season may not be used during the ozone season.

(h) Recordkeeping. The generator shall [~~must~~] maintain a copy of all forms [~~notices~~] and backup information submitted to the executive director [~~registry~~] for a minimum of five years after the date of the DERC is generated[~~, following the completion of the generation period~~]. The user shall [~~must~~] maintain a copy of all forms [~~notices~~] and backup information submitted to the executive director [~~registry~~] for a minimum of five years, following the completion of the use period. Other relevant reference material or raw data must also be maintained on-site by the participating facilities [~~or mobile sources~~]. The generator or user shall make the records available upon request to representatives of the executive director, EPA, and any local enforcement agency. The user must also maintain a copy of the generator's notice and backup information for a minimum of five years after the use is completed. The records must [~~shall~~] include, but not necessarily be limited to:

(1) the name, emission point number, and facility identification number of each facility [~~or any other identifying number for mobile sources~~] using DERCs [~~discrete emission credits~~];

(2) the amount of DERCs [~~discrete emission credits~~] being used by each facility [~~or mobile source~~]; and

(3) the identification number of each DERC used by each facility [~~specific number, name, or other identification of discrete emission credits used for each facility or mobile source~~].

(i) Public information. All information submitted [~~with notices, reports, and trades~~] regarding the nature, quantity of emissions, and sales price associated with the use, [~~or~~] generation, or trade of a DERC [~~of discrete emission credits~~] is public information and may not be submitted as confidential. Any claim of confidentiality for this type of information[~~,~~] or failure to submit all information may result in the rejection of the DERC [~~discrete emission reduction~~] application. All nonconfidential [~~notices and~~] information will be made available to the public as soon as practicable [~~regarding the generation, use, and availability of discrete emission credits may be obtained from the registry~~].

(j) Authorization to emit. A DERC [~~discrete emission credit~~] created under this division is a limited authorization to emit the specified pollutants in accordance with the provisions of this section, the Federal Clean Air Act, and the Texas Clean Air Act, as well as regulations promulgated thereunder. A DERC [~~discrete emission credit~~] does not constitute a property right. Nothing in this division should be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

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

(l) Compliance burden and enforcement.

(1) The user is responsible for assuring that a sufficient quantity of DERCs [~~discrete emission credits~~] are acquired to cover the applicable facility's [~~facility or mobile source's~~] emissions for the entire use period.

(2) The user is in violation of this section if the user does not possess enough DERCs [~~discrete emission credits~~] to cover the compliance need for the use period. If the user possesses an insufficient quantity of DERCs [~~discrete emission credits~~] to cover its compliance need, the user will be out of compliance for the entire use period. Each day the user is out of compliance may be considered a violation.

(3) A user [~~Users~~] may not transfer its [~~their~~] compliance burden and legal responsibilities to a third-party participant. A third-party participant [~~Third-party participants~~] may only act in an advisory capacity to the user.

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

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

[(2) whether the owner or operator of the facility or mobile source lacks the potential to generate one tenth of a ton of credit.]

§101.373. Discrete Emission Reduction Credit Generation and Certification.

(a) Emission reduction strategy. [Methods of generation.]

(1) A discrete [Discrete] emission reduction credit [credits] (DERC) may be generated using one of the following strategies [methods] or any other method that is approved by the executive director:

(A) the installation and operation of pollution control equipment that reduces emissions below any applicable local, state, or federal requirement for [the level required of] the facility; or

(B) a change in the manufacturing process, other than a shutdown or curtailment, that reduces emissions below any applicable local, state, or federal requirement for [the level required of] the facility.

(2) A DERC [DERCs] may not be generated using [by] the following strategies:

(A) a shutdown [permanent or temporary shutdowns] or [permanent] curtailment of an activity at a facility, either permanent or temporary;

(B) a modification or discontinuation of any activity that is otherwise in violation of a local, state, or federal requirement [federal, state, or local law];

(C) an emission reduction [emission reductions] required to comply with any provision under 42 United States Code (USC), Subchapter I regarding tropospheric ozone, or 42 USC, Subchapter IV-A regarding acid deposition control;

(D) an emission reduction [emission reductions] of hazardous air pollutants, as defined in 42 USC, §7412, from application of a standard promulgated under 42 USC, §7412;

(E) an emission reduction [emission reductions] that occurred as a result of transferring activity [the emissions] to another facility at the same site;

(F) an emission reduction [emission reductions] credited or used under any other emissions trading program;

(G) an emission reduction [emission reductions] occurring at a facility that received an alternative emission limitation to meet a state reasonably available control technology requirement, except to the extent that the emissions are reduced below the level that would have been required had the alternative emission limitation not been issued;

(H) an emission reduction from a facility authorized in [emission reductions at a site facility with] a flexible permit, unless the reduction is [reductions are made] permanent and enforceable or the generator can demonstrate that the emission reduction was [reductions were] not used to satisfy the conditions for the facilities under the flexible permit;

(I) that portion of an emission reduction [emission reductions] funded through a state or federal program, unless specifically allowed under that program;

(J) an emission reduction [emission reductions] from a facility subject to Division 2, 3, or 6 [3] of this subchapter (relating to Emissions Banking and Trading Allowances; Mass Emissions Cap and Trade Program; and Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program); or

(K) an emission reduction from a facility without [emission reductions from the shutdown of a facility that was not included in the] state implementation plan (SIP) emissions if the facility is located in a nonattainment area.

(b) DERC baseline emissions.

(1) For a facility located in an area in which a SIP is required for a criteria pollutant, the [The] baseline emissions may not exceed the facility's SIP [quantity of] emissions [reported in the most recent year of emissions inventory used in the SIP. For reductions being certified in accordance with §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets), the baseline emissions may not exceed the quantity of emissions reported in the emissions inventory used in the SIP in place at the time the reduction strategy was implemented].

(2) The [two consecutive calendar years for the baseline] activity and emissions rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years, selected from [either a period including or following the most recent year of emission inventory used in the SIP or, if that period is less than ten years,] the ten consecutive years immediately before [preceding] the emission reduction is achieved.

(3) For a facility located [facilities] in an area in which a SIP [demonstration] is not required for a criteria pollutant, the historical adjusted emissions must be determined from two consecutive calendar years that [must] include or follow the 1990 emission inventory.

(4) For emission reduction strategies that exceed 12 months, the baseline emissions [and SIP emissions inventory] are established after the first year of generation and are fixed for the life of [the strategy. A new baseline is established for] each unique emission reduction strategy. A new baseline must be established if the commission adopts a SIP revision for the area where the facility is located.

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

(c) DERC calculation.

(1) DERCs[, except for shutdowns,] are calculated according to the following equation.
Figure: 30 TAC §101.373(c)(1)
[Figure: 30 TAC §101.373(c)(1)]

(2) The sum of the reduction generated under paragraph (1) of this subsection and the total strategy emissions must not be greater than the facility's historical adjusted emissions or SIP emissions [quantity of emissions reported or represented in the emissions inventory used for SIP determination or the two-year average baseline emissions,] whichever is less.

[(3) For shutdown emission reduction strategies, the quantity of emission reduction generated is equivalent to the baseline emissions.]

[(4) The generation period for a shutdown is five years. Shutdown DERCs must be generated and noticed to the registry on an annual basis.]

(d) DERC certification.

(1) An Application to Generate DERCs (Form DERC-1) must [A ~~DEC-1 Form, Notice of Generation and Generator Certification of Discrete Emission Credits, shall~~] be submitted to the executive director no later than 90 days after the end of the generation period and[~~, or~~] no later than 90 days after completing each [~~the completion of the first~~] 12 months of generation. [~~Submission of the DEC-1 Form should continue every 12 months thereafter for each subsequent year of generation.~~]

(2) A DERC [~~DERCs~~] must be quantified in accordance with §101.372(d) of this title (relating to General Provisions). The executive director shall have the authority to inspect and request information to assure that the emission reductions have actually been achieved.

(3) An application for DERCs must include, but is not limited to, a completed Form DERC-1 [~~DEC-1 Form~~] signed by an authorized representative of the applicant along with the following information for each pollutant reduced at each applicable facility:

(A) the generation period;

(B) a complete description of the generation activity;

[~~(C) for shutdown emission reduction strategies, an explanation as to whether production shifted from the shutdown facility to another facility at the same site;~~]

(C) [~~(D)~~] the amount of DERCs [~~discrete emission credits~~] generated;

(D) [~~(E)~~] for volatile organic compound reductions, a list of the specific compounds reduced;

(E) [~~(F)~~] documentation supporting the baseline activity, baseline emission rate, historical adjusted emissions, SIP emissions, strategic [~~strategy~~] emission rate, and strategic [~~strategy~~] activity;

(F) [~~(G)~~] emissions inventory data for each of the years [~~from the most recent year of emissions inventory~~] used to determine the SIP emissions and historical adjusted emissions [~~in the SIP and emissions inventory data for the two consecutive years used to determine the baseline activity for each applicable pollutant and emission point~~];

(G) [~~(H)~~] the most stringent emission rate for the [~~applicable~~] facility, considering all applicable [~~the~~] local, state, and federal [~~applicable regulatory and statutory~~] requirements;

(H) [~~(I)~~] a complete description of the protocol used to calculate the DERC [~~emission reduction~~] generated; and

(I) [~~(J)~~] the actual calculations performed by the generator to determine the amount of DERCs [~~discrete emission credits~~] generated.

§101.376. Discrete Emission Reduction Credit Use.

(a) General requirements. A discrete emission reduction credit (DERC) [~~Requirements to use discrete emission credits. Discrete emission credits~~] may be used only if the following requirements are met.

(1) The user shall have [~~ownership of~~] a sufficient amount of DERCs in the site's compliance account [~~discrete emission credits~~] before the use period for which the specific DERCs [~~discrete emission credits~~] are to be used.

(2) The user shall have a sufficient amount of DERCs in the site's compliance account [~~hold sufficient discrete emission credits~~] to cover the user's compliance obligation at all times.

(3) The user shall acquire additional DERCs [~~discrete emission credits~~] during the use period if it is determined the site's compliance account does not have [~~user does not possess~~] enough DERCs [~~discrete emission credits~~] to cover the entire use period. The user shall acquire additional DERCs [~~credits~~] as allowed under this section prior to the shortfall, or be in violation of this section.

(4) The user [~~Facility or mobile source operators~~] may acquire and use only DERCs [~~discrete emission credits~~] listed in [~~on~~] the registry.

(5) The user shall obtain executive director approval to use nitrogen oxides (NO_x) DERCs in the Dallas-Fort Worth area as provided by subsection (f) of this section.

[~~(5) In the Dallas-Fort Worth (DFW) eight-hour ozone nonattainment area as defined in §101.1 of this title (relating to Definitions), a user may only apply to use discrete emission reduction credits (DERCs) under the provision in subsection (d)(3) of this section if the amount to be used would not cause the flow control limit to be exceeded as established in §101.379(c)(2)(A) of this title (relating to Program Audits and Reports).~~]

[~~(6) If a late Notice of Intent to Use Discrete Emission Credits (DEC-2 Form) is submitted in response to an Electric Reliability Council of Texas, Inc. (ERCOT)-declared emergency situation, as defined in §101.379(c)(2)(D) of this title, the request will not be subject to the flow control limit and may be approved.~~]

[~~(7) For DERC use in the DFW eight-hour ozone nonattainment area, the executive director has approved the intent to use as prescribed in subsection (f)(1) of this section.~~]

(b) Uses for DERCs [~~Use of discrete emission credits~~]. With the exception of uses prohibited in subsection (c) of this section or precluded by a commission order or a condition within an authorization under the same commission account number, a DERC [~~discrete emission credits~~] may be used to meet or demonstrate compliance with any facility [~~or mobile~~] regulatory requirement including the following:

(1) to exceed any permit allowable emission level, if the following conditions are met:

(A) in an ozone nonattainment area, the use is limited to [~~areas, permitted facilities may use discrete emission credits to exceed permit allowables by~~] no more than 10 tons for NO_x [~~nitrogen oxides~~] or 5 tons for volatile organic compounds in a 12-month period as approved by the executive director; [~~. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested; or~~]

(B) in a county or portion of a county [~~at permitted facilities in counties or portions of counties~~] designated as attainment or, attainment/unclassifiable, or unclassifiable [~~unclassified~~], the use is limited to no more than [~~discrete emission credits may be used to exceed permit allowables by values not to exceed~~] the prevention of significant deterioration significance levels [~~as provided~~] in 40 Code of Federal Regulations (CFR) §52.21(b)(23), as approved by the executive director before [~~prior to~~] use;[~~.~~]

(C) the [~~This~~] use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy; and[~~.~~]

(D) the user demonstrates [~~The user shall demonstrate~~] that there will be no adverse impacts from the use of DERCs [~~discrete emission credits~~] at the level [~~levels~~] requested;

(2) to satisfy any part of the offset requirement in a nonattainment [~~as~~] new source review (NNSR) [~~(NSR)~~] permit in accordance with Chapter 116, Subchapter B of this title (relating to New Source Review Permits) [~~offsets~~], if the following requirements are met:

(A) the user shall obtain the executive director's approval before [~~prior to~~] the use of specific DERCs [~~discrete emission credits~~] to cover, at a minimum, one year of operation of the new or modified facility in the NNSR [~~NSR~~] permit;

(B) the user shall obtain the amount of DERCs specified for NNSR offsets in the user's NNSR permit;

(C) the user shall obtain enough DERCs to meet the offset ratio requirement in the user's ozone nonattainment area or an environmental contribution of 10%, whichever is higher;

[~~(B) the amount of discrete emission credits needed for NSR offsets equals the quantity of tons needed to achieve the maximum allowable emission level set in the user's NSR permit. The user shall also purchase and retire enough discrete emission credits to meet the offset ratio requirement in the user's ozone nonattainment area. The user shall purchase and retire either the environmental contribution of 10% or the offset ratio, whichever is higher; and~~]

[~~(C) the NSR permit must meet the following requirements:~~]

(D) [~~(i)~~] the NNSR permit must contain an enforceable requirement that the user [~~facility~~] obtain at least one additional year of offsets before continuing operation in each subsequent year; and

(E) at least 90 days before the start of operation and before continuing operation for any subsequent use period, the user shall submit a completed Application to Use DERCs for Offsets (Form DERC-O);

~~*(ii)* prior to issuance of the permit, the user shall identify the discrete emission credits; and~~]

~~*(iii)* prior to start of operation, the user shall submit a completed DEC-2 Form;~~]

(3) to comply with the Mass Emissions Cap and Trade Program requirements as provided by §101.356(h) [~~in §101.356(g)~~] of this title (relating to Allowance Banking and Trading); or

(4) to comply with Chapter 115 or [~~Chapters 114, 115, and~~] 117 of this title (relating to [~~Control of Air Pollution from Motor Vehicles;~~] Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds), as allowed.

(c) DERC [~~Discrete emission credit~~] use prohibitions. A DERC [~~discrete emission credit~~] may not be used under this division:

(1) before it has been acquired by the user in the compliance account for the site where the credits will be used;

(2) for netting to avoid the applicability of federal and state NNSR [~~NSR~~] requirements;

(3) to meet (as codified in 42 United States Code (USC), Federal Clean Air Act (FCAA)) requirements for:

(A) new source performance standards under FCAA, §111 (42 USC, §7411);

(B) lowest achievable emission rate standards under FCAA, §173(a)(2) (42 USC, §7503(a)(2));

(C) best available control technology standards under FCAA, §165(a)(4) (42 USC, §7475(a)(4)) or Texas Health and Safety Code, §382.0518(b)(1);

(D) hazardous air pollutants standards under FCAA, §112 (42 USC, §7412), including the requirements for maximum achievable control technology;

(E) standards for solid waste combustion under FCAA, §129 (42 USC, §7429);

(F) requirements for a vehicle inspection and maintenance program under FCAA, §182(b)(4) or (c)(3) (42 USC, §7511a(b)(4) or (c)(3));

(G) ozone control standards set under FCAA, §183(e) and (f) (42 USC, §7511b(e) and (f));

(H) clean-fueled vehicle requirements under FCAA, §246 (42 USC, §7586);

(I) motor vehicle emissions standards under FCAA, §202 (42 USC, §7521);

(J) standards for non-road vehicles under FCAA, §213 (42 USC, §7547);

(K) requirements for reformulated gasoline under FCAA, §211(k) (42 USC, §7545); or

(L) requirements for Reid vapor pressure standards under FCAA, §211(h) and (i) (42 USC, §7545(h) and (i));

(4) to allow an emissions increase of an air contaminant above a level authorized in a permit or other authorization that exceeds the limitations of §106.261 or §106.262 of this title (relating to Facilities (Emission Limitations); and Facilities (Emission and Distance Limitations)) except as approved by the executive director and the United States Environmental Protection Agency (EPA). This paragraph does not apply to limit the use of DERCs [~~DERC or mobile DERC~~] in lieu of allowances under §101.356 [~~§101.356(h)~~] of this title;

(5) to authorize a facility whose emissions are enforceably limited to below applicable major source threshold levels, as defined in §122.10 of this title (relating to General Definitions), to operate with actual emissions above those levels without triggering applicable requirements that would otherwise be triggered by [~~such~~] major source status;

(6) to exceed an allowable emission level where the exceedance would cause or contribute to a condition of air pollution as determined by the executive director; or

(7) in the Dallas-Fort Worth [~~DFW eight-hour ozone nonattainment~~] area, if the NO_x DERC usage requested exceeds the flow control limit [~~for a particular year determined by the annual review as~~] specified in subsection (f) [~~§101.379(c)~~] of this section [~~title~~].

(d) Notice of intent to use.

(1) A completed Notice of Intent to Use DERCs (Form DERC-2) [~~DEC-2 Form~~], signed by an authorized representative of the user [~~applicant~~], must be submitted to the executive director in accordance with the following requirements.

(A) A DERC [~~Discrete emission credits~~] may be used only after the applicant has submitted the Form DERC-2 [~~notice~~] and received executive director approval to use DERCs to comply with the specified requirement during that use period.

(B) The Form DERC-2 [~~application~~] must be submitted:

(i) except as provided in subsection (f)(4) of this section, for NO_x DERC use in the Dallas-Fort Worth [~~DFW eight-hour ozone nonattainment~~] area, by October 1 before [~~no later than August 1 prior to~~] the beginning of the calendar year in which [~~that~~] the DERCs are intended for use; [~~and~~]

(ii) for DERC use for the Mass Emissions Cap and Trade Program in accordance with §101.356 of this title, by October 1 of the control period in which the DERC are intended for use; or

(iii) [~~(ii)~~] for all other DERC [~~discrete emission credit~~] use, at least 45 days before [~~prior to~~] the first day of the use period [~~if the discrete emission credits were generated from a facility, 90 days if the discrete emission credits were generated from a mobile source,~~] and every 12 months thereafter for each subsequent year if the use period exceeds 12 months.

(C) The user shall send a copy of the application to the federal land manager 30 days before use of a DERC if the facility for which the DERC will be used [~~A copy of the application must also be sent to the federal land manager 30 days prior to use if the user~~] is located within 100 kilometers of a Class I area, as listed in 40 CFR Part 81 (2001).

(D) The Form DERC-2 [~~application~~] must include, but is not limited to, the following information for each use:

(i) the applicable state and federal requirements that the DERC [~~discrete emission credits~~] will be used to comply with and the intended use period;

(ii) the amount of DERCs [~~discrete emission credits~~] needed;

(iii) the expected [~~baseline~~] emission rate, activity level, and total emissions for the applicable facility [~~or mobile source~~];

~~*(iv)* the actual emission rate, activity level, and total emissions for the applicable facility or mobile source;~~

(iv) [~~(v)~~] the most stringent emission rate and the most stringent emission level for the applicable facility [~~or mobile source~~], considering all applicable local, state, and federal [~~regulatory~~] requirements;

(v) [~~(vi)~~] a complete description of the protocol[~~, as submitted by the executive director to the United States Environmental Protection Agency for approval,~~] used to calculate the amount of DERCs [~~discrete emission credits~~] needed;

(vi) [~~(vii)~~] the actual calculations performed by the user to determine the amount of DERCs [~~discrete emission credits~~] needed;

(vii) [~~(viii)~~] the date that each DERC was [~~the discrete emission credits were~~] acquired or will be acquired;

(viii) [~~(ix)~~] the identification number of each DERC [~~discrete emission credit generator and the original certificate of the discrete emission credits~~] acquired or to be acquired;

~~*(x)* the price of the discrete emission credits acquired or the expected price of the discrete emission credits to be acquired, except for transfers between sites under common ownership or control;~~

(ix) [~~(xi)~~] a statement that due diligence was taken to verify that each DERC was [~~the discrete emission credits were~~] not previously used, the DERCs [~~discrete emission credits~~] were not generated as a result of actions prohibited under this regulation, and the DERCs [~~discrete emission credits~~] will not be used in a manner prohibited under this regulation; and

(x) [~~(xii)~~] a certification of use[~~,~~] that must contain certification under penalty of law by a responsible official of the user of truth, accuracy, and completeness. This certification must state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(2) DERC use calculation.

(A) To calculate the amount of DERCs [~~discrete emission credits~~] necessary to comply with §§117.123, [~~117.223,~~] 117.320, 117.323, 117.423, 117.1020, [~~117.1120,~~] 117.1220, or 117.3020 of this title (relating to Source Cap; and System Cap), a user may use the equations listed in those sections[~~,~~] or the following equations.

(i) For the rolling average cap:
Figure: 30 TAC §101.376(d)(2)(A)(i)
[~~Figure: 30 TAC §101.376(d)(2)(A)(i)~~]

(ii) For maximum daily cap:
Figure: 30 TAC §101.376(d)(2)(A)(ii)
[~~Figure: 30 TAC §101.376(d)(2)(A)(ii)~~]

(B) The amount of DERCs [~~discrete emission credits~~] needed to demonstrate compliance or meet a regulatory requirement must be [~~is~~] calculated as follows.
Figure: 30 TAC §101.376(d)(2)(B)
[~~Figure: 30 TAC §101.376(d)(2)(B)~~]

(C) The amount of DERCs [~~discrete emission credits~~] needed to exceed an allowable emissions level must be [~~is~~] calculated as follows.
Figure: 30 TAC §101.376(d)(2)(C)
[~~Figure: 30 TAC 101.376(d)(2)(C)~~]

(D) The user shall retire 10% more DERCs [~~discrete emission credits~~] than are needed, as calculated in this paragraph, to ensure that the facility [~~or mobile source~~] environmental contribution retirement obligation will be met.

(E) If the amount of DERCs [~~discrete emission credits~~] needed to meet a regulatory requirement or to demonstrate compliance is greater than 10 tons, the user shall acquire an additional 5.0% of the [~~discrete emission~~] credits needed, as calculated in this paragraph, [~~must be acquired~~] to ensure that sufficient [~~discrete emission~~] credits are available to the user with an adequate compliance margin.

(3) A user may submit a late Form DERC-2 [~~DEC-2 Form~~] in the case of an emergency, or other exigent circumstances, but the form [~~notice~~] must be submitted before the DERCs [~~discrete emission credits~~] can be used. When using this provision, the [~~The~~] user shall include a complete description of the emergency or exigent circumstances with the Form DERC-2 [~~situation in the notice of intent to use~~]. All other forms [~~notices~~] submitted less than 45 days before the start of the use period [~~prior to use, or 90 days prior to use for a mobile source,~~] will be considered late and in violation.

(4) The user shall determine the credits to purchase and shall notify [~~is responsible for determining the credits it will purchase and notifying~~] the executive director of the selected generating facility [~~or mobile source~~] in the Form DERC-2 [~~notice of intent to use~~]. If the generator's credits are rejected or the Application to Generated DERCs (Form DERC-1) [~~notice of generation~~] is incomplete, the use of DERCs [~~discrete emission credits~~] by the user may be delayed by the executive director. The user may not use any DERCs [~~cannot use any discrete emission credits~~] that have not been certified by the executive director. The executive director may reject the use of a DERC by a facility [~~discrete emission credits by a facility or mobile source~~] if the credit and use are not demonstrated by the user [~~cannot be demonstrated~~] to meet the requirements of this section.

(5) If the facility is in an area with an ozone season less than 12 months, the user shall calculate the amount of DERCs [~~discrete~~

~~emission credits~~] needed for the ozone season separately from the non-ozone season.

(6) The user is not required to submit a Form DERC-2 to use DERCs to satisfy a NNSR offset requirement if the user submits a Form DERC-O as required by subsection (b)(2)(E) of this section at least 90 days before the start of operation of the affected facility.

(e) Notice of use.

(1) The user shall submit an Application to Use DERCs (Form DERC-3) to the executive director no later than:

(A) March 31 after the control period for which a DERC was used for a facility subject to the Mass Emissions Cap and Trade Program as provided by §101.356(h)(5) of this title; and

(B) within 90 days after the end of each use period, which each may not exceed 12 months in length, for any other DERC use.

(2) The user is not required to submit a Form DERC-3 to use DERCs to satisfy a NNSR offset requirement if the user submits a Form DERC-O as required by subsection (b)(2)(E) of this section at least 90 days before the start of operation of the affected facility.

(3) The Form DERC-3 is to be used as the mechanism to update or amend the Form DERC-2 and must include any information different from that reported in the corresponding Form DERC-2, including, but not limited to, the following items:

(A) purchase price of the DERCs obtained, except for transfers between sites under common ownership or control;

(B) the actual amount of DERCs in the compliance account during the use period;

(C) the actual emissions during the use period;

(D) the actual amount of DERCs used;

(E) the actual environmental contribution; and

(F) the amount of DERCs available for future use.

(4) [~~(1)~~] The user shall calculate:

(A) the amount of DERCs [~~discrete emission credits~~] used, including the amount of [~~discrete emission~~] credits retired to cover the environmental contribution, as described in subsection (d)(2)(D) [~~(d)(2)(C)~~] of this section, associated with actual use; and

(B) the amount of DERCs [~~discrete emission credits~~] not used, including the amount of excess [~~discrete emission~~] credits that were purchased to cover the environmental contribution, as described in subsection (d)(2)(D) [~~(d)(2)(C)~~] of this section, but not associated with the actual use, and available for future use.

(5) [~~(2)~~] DERC use is calculated by the following equations.

(A) The amount of DERCs [~~discrete emission credits~~] used to demonstrate compliance or meet a regulatory requirement is calculated as follows.

Figure: 30 TAC §101.376(e)(5)(A)

[~~Figure: 30 TAC §101.376(e)(2)(A)~~]

(B) The amount of DERCs [~~discrete emission credits~~] used to comply with permit allowables is calculated as follows.

Figure: 30 TAC §101.376(e)(5)(B)

[~~Figure: 30 TAC §101.376(e)(2)(B)~~]

[~~(3) A DEC-3 Form, Notice of Use of Discrete Emission Credits, must be submitted to the commission in accordance with the following requirements.~~]

[~~(A) The notice must be submitted within 90 days after the end of the use period. Each use period must not exceed 12 months.~~]

[~~(B) The notice is to be used as the mechanism to update or amend the notice of intent to use and must include any information different from that reported in the notice of intent to use, including, but not limited to, the following items:~~]

~~*(i)* purchase price of the discrete emission credits obtained prior to the current use period, except for transfers between sites under common ownership or control;~~]

~~*(ii)* the actual amount of discrete emission credits possessed during the use period;~~]

~~*(iii)* the actual emissions during the use period for volatile organic compounds and nitrogen oxides;~~]

~~*(iv)* the actual amount of discrete emission credits used;~~]

~~*(v)* the actual environmental contribution; and~~]

~~*(vi)* the amount of discrete emission credits available for future use.~~]

(6) [~~(4)~~] DERCs [~~Discrete emission credits~~] that are not used during the use period are surplus and remain available for trade [~~transfer~~] or use by the holder, as well as[~~. In addition,~~] any portion of the calculated environmental contribution [~~not~~] attributed to those credits and any portion of the 5% compliance margin, if required, that is not used [~~actual use is also available~~].

(7) [~~(5)~~] The user is in violation of this section if the user submits the report of use later than the allowed 90 days following the conclusion of the use period.

(f) Dallas-Fort Worth [~~DFW eight-hour ozone nonattainment~~] area DERC use [~~usage~~].

(1) For the 2015 calendar year, the use of NO_x DERCs in the Dallas-Fort Worth area may not exceed 42.8 tons per day.

(2) Beginning in the 2016 calendar year, the use of NO_x DERCs in the Dallas-Fort Worth area may not exceed 17.0 tons per day.

(3) [~~(1)~~] If the total number of DERCs submitted for the upcoming calendar year [~~control period~~] in all [~~DEC-2~~] Forms DERC-2 received by the deadline in subsection (d)(1)(B)(i) of this section is greater than the limit [~~flow control limit determined by the annual review specified in §101.379(c) of this title, applicable to the control period specified in the DEC-2 Form~~], the executive director shall apportion the number of DERCs for use.

(A) [~~The executive director shall consider the appropriate amount of DERCs allocated for each DEC-2 application submitted on a case-by-case basis.~~] In determining the amount of DERC use to approve for each Form DERC-2 [~~DEC-2 application~~], the executive director may take into consideration:

(i) the total number of DERCs existing in the nonattainment area bank;

(ii) the total number of DERCs submitted for use in the upcoming control period;

(iii) the proportion of DERCs requested for use to the total amount requested;

(iv) the amount of DERCs required by the applicant for compliance;

(v) the technological and economic aspects of other compliance options available to the applicant; and

(vi) the location of the facilities for which owners or operators are requesting use of DERCs.

(B) The executive director shall consider the appropriate amount of DERCs allocated for each Form DERC-2 submitted on a case-by-case basis.

[(B) Any credits requested for use by the applicant in the DEC-2 Form that were generated after March 1, 2009, will be applied to the flow control limit determined by the annual review as specified in §101.379(c) of this title.]

(4) [(2)] If the total number of DERCs submitted for use during the upcoming calendar year in all Forms DERC-2 received by the deadline in subsection (d)(1)(B)(i) of this section is less than the limit [is less than the flow control limit for that particular year determined according to the annual review specified in §101.379(c) of this title], the executive director may:

(A) approve all requests for DERC usage provided that all other requirements of this section are met; and [.]

(B) consider any late DERC-2 Forms submitted as provided under subsection (d)(3) of this section that is not an Electric Reliability Council of Texas, Inc. (ERCOT)-declared emergency situation as defined in paragraph (5) of this subsection, but will not otherwise approve a late submittal that would exceed the limit established in this subsection.

(5) If the DERC-2 Forms are submitted in response to an ERCOT-declared emergency situation, the request will not be subject to the limit established in this subsection and may be approved provided all other requirements are met. For the purposes of this paragraph, an ERCOT-declared emergency situation is defined as the period of time that an ERCOT-issued emergency notice or energy emergency alert (EEA) (as defined in ERCOT Nodal Protocols, Section 2: Definitions and Acronyms (June 1, 2012) and issued as specified in ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations (June 1, 2012)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT.

(g) Inter-pollutant use. With prior approval from the executive director and the EPA, a NO_x or VOC DERC may be used to meet the NNSR offset requirements for the other ozone precursor if photochemical modeling demonstrates that the substitution will not adversely affect the overall air quality or regulatory design value in the nonattainment area of use.

§101.378. Discrete Emission Reduction Credit Banking and Trading.

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

(1) The credit registry will contain all notices of generation, use, and transfer. [All notices submitted by a generator, holder, or user will be reviewed for credibility; and when deemed certified, posted to the credit registry.]

(2) The credit registry will assign an identification number to each DERC and [a unique number to each certificate which] will include the amount of emission reductions generated [to the tenth of a ton].

(3) The credit registry will maintain a listing of all credits available or used for each [ozone] nonattainment area and all counties designated as attainment, attainment/unclassifiable, or unclassifiable. [One combined listing for all the counties or portions of counties designated as attainment or unclassified will be provided by the credit registry.]

(4) The credit registry will [registry shall] not contain proprietary information.

(b) Life of a DERC [discrete emission credit]. A DERC [discrete emission credit] is available for use after it is certified [the DEC-1 Form, Notice of Generation and Generator Certification of Discrete Emission Credits, has been received, deemed creditable] by the executive director[, and deposited in the commission credit registry in accordance with subsection (a) of this section,] and may be used anytime thereafter except as stated in this subsection. All credits are deposited in the credit registry [and reported] as available credits until they are intended for use or used [or withdrawn]. A DERC generated from a shutdown may not be used.

[(1) Discrete emission credits generated from shutdown strategies prior to September 30, 2002, will be available for use until September 8, 2010.]

[(2) Discrete emission credits certified from facility shutdowns after September 30, 2002, may not be used.]

(c) Trading. A DERC is [Discrete emission credits are] freely transferable in whole or in part, and may be traded or sold to a new owner at any time after certification in accordance with the following.

(1) Before the transfer, the seller shall submit to [Prior to the transfer,] the executive director [must be notified by means of] a completed Application to Trade DERCs (Form DERC-4) [DEC-4 Form, Application for Transfer of Discrete Emission Credits].

(2) The executive director will issue a new DERC identification number [letter] to the [discrete emission credit] purchaser reflecting the DERCs [discrete emission credits] purchased [by the new owner], and a new DERC identification number [letter] to the [discrete emission credit] seller reflecting [showing] any remaining DERCs [discrete emission credits] available [to the original owner]. A DERC trade is [Discrete emission credits are] considered final [transferred] only after the executive director grants approval of the transaction.

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

§101.379. Program Audits and Reports.

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

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

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

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

(b) No later than February 1 of each calendar year, the executive director shall develop and make available to the general public and the EPA [United States Environmental Protection Agency] a report that includes the following information for the previous calendar year:

(1) the amount of DERCs for each pollutant [emission credits] generated under this division;

(2) the amount of DERCs for each pollutant [emission credits] used under this division;

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

(4) the amount of DERCs [discrete emission reduction credits (DERC)] approved for use under §101.376(f) of this title (relating to Discrete Emission Reduction Credit Use) [subsection (c) of this section].

[(c) No later than October 1 of each year, the executive director will complete, and make available to the general public and the United States Environmental Protection Agency, an annual review to determine the number of DERCs available for potential use in the upcoming calendar year for the Dallas-Fort Worth (DFW) eight-hour ozone nonattainment area. The annual review will include the calculation of the flow control limit as specified in subsection (c)(2)(A) of this section to ensure noninterference with attainment and maintenance of the ozone National Ambient Air Quality Standard (NAAQS) and the apportionment of approved DERCs.]

[(1) For the 2009 control period, the flow control limit for DERCs available for use is the number prescribed in the DFW Eight-Hour Ozone Attainment Demonstration SIP Revision for the 1997 eight-hour ozone standard, in tons per day, not to be exceeded in any day, where a day is a 24-hour period from midnight to midnight.]

[(2) For any control period after 2009, the annual review will establish a flow control limit for that year, in tons per day, not to be exceeded in any day, where a day is a 24-hour period from midnight to midnight.]

[(A) The flow control limit for a particular year will be determined using the following equation:]
[Figure: 30 TAC §101.379(c)(2)(A)]

[(B) If use of the entire DERC bank would not interfere with attainment and maintenance of the 1997 eight-hour ozone NAAQS in the DFW eight-hour ozone nonattainment area, then the number of DERCs potentially available for use is the total number of DERCs in the bank.]

[(C) If the flow control limit, as calculated in the equation in subparagraph (A) of this paragraph, is greater than the total number of DERCs requested for use in accordance with §101.376(d) of this title (relating to Discrete Emission Credit Use) the executive director:]

[(i) may approve all requested Notice of Intent to Use Discrete Emission Credits (DEC-2 Form) submittals; and]

[(ii) will consider any late DEC-2 Forms submitted as provided under §101.376(d)(3) of this title that is not an Electric Reliability Council of Texas, Inc. (ERCOT)-declared emergency situation as defined in subparagraph (D) of this paragraph, but will not otherwise approve a late submittal that would exceed the flow control limit established by the equation under subsection (c)(2)(A) of this section.]

[(D) If the DEC-2 Forms are submitted in response to an ERCOT-declared emergency situation, the request will not be subject to the flow control limit and may be approved provided all other requirements are met. For the purposes of this subparagraph, an ERCOT-declared emergency situation is defined as the period of time that an ERCOT-issued emergency notice or energy emergency alert (EEA) (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (June 1, 2012) and issued as specified in *ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations* (June 1, 2012)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT.]

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406032
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-6812

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DIVISION 4. DISCRETE EMISSION CREDIT BANKING AND TRADING

30 TAC §101.374

(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, 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; 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 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 repealed section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§101.374. Mobile Discrete Emission Reduction Credit Generation and Certification.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406033
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-6812

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

30 TAC §§101.390 - 101.394, 101.396, 101.399, 101.400

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§101.390. Definitions.

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

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

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

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

[~~(3) Banked allowance--An allowance that is not used to reconcile emissions in the designated year of allocation, but is carried forward for up to one year and noted as banked in the compliance account or broker account.~~]

(4) Baseline emissions period--The two consecutive [~~calendar-year~~] control periods from 2006 - 2009 with the highest monitored average actual highly reactive volatile organic compound [~~HRVOC~~] emissions for the purpose of establishing baseline emissions used for the allocation of allowances, except as allowed under §101.394(a)(2) and (3) [~~§101.394(a)(1)(C) and (D)~~] of this title (relating to Allocation of Allowances).

(5) Broker--A person [~~that is~~] not required to participate in the requirements of this division who [~~, but that~~] opens an account under this division only for the purpose of banking and trading allowances.

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

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

(8) Control period--The 12-month period beginning January 1 and ending December 31 of each year. The initial control period began January 1, 2007.

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

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

(11) [~~(8)~~] Industry sector--One of the following sectors of industry in which participants of the Highly Reactive Volatile Organic Compounds [~~Carbons~~] (HRVOC) Emissions Cap and Trade program are [~~to be~~] assigned, according to the process type and products from which the largest share of HRVOC emissions is associated, for the purpose of assigning an industry sector share under the allocation equation located in §101.394(a)(1) [~~§101.394(a)(1)(B)~~] of this title (relating to

Allocation of Allowances): petroleum refining, non-polymer chemical producers, polymer producers, and storage/loading/other.

(12) [(9)] Level of activity--The amount of highly reactive [highly-reactive] volatile organic compounds (HRVOCs) [, as defined in §115.10 of this title (relating to Definitions),] in pounds produced as an intermediate, by-product, or final product or used by a process unit during a given period of time, but excluding any recycled HRVOCs [highly-reactive volatile organic compounds] internal to the process unit.

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

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

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

§101.391. Applicability.

(a) This division applies to each site[, as defined in §122.10 of this title (relating to General Definitions),] in the Houston-Galveston-Brazoria ozone nonattainment area with one or more affected facilities[, as defined in §115.10 of this title (relating to Definitions), that is subject to Chapter 115, Subchapter H, Division 1 of this title (relating to Vent Gas Control) or Division 2 of this title (relating to Cooling Tower Heat Exchange Systems)]. Affected [Applicable] facilities include vent gas streams, flares, and cooling tower heat exchange systems that emit or have the potential to emit highly reactive [highly-reactive] volatile organic compounds[, as defined in §115.10 of this title, and that are located at a site subject to Chapter 115, Subchapter H of this title (relating to Highly-Reactive Volatile Organic Compounds)].

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

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

§101.392. Exemptions.

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

(b) A site in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller County is [All sites in the Houston-Galveston-Brazoria ozone nonattainment area, excluding Harris County, are] exempt from the requirements of this division except for §101.401(a) - (e) of this title (relating to Level of Activity Certification). The commission may revoke this exemption upon public notice of this revocation. If the exemption is revoked, the owner or operator of a site [sites] subject to this division located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller County shall [the Houston-Galveston-Brazoria ozone nonattainment area, excluding Harris County, will] comply [by January 1, 2007, or] within 180 days of public notice[, whichever is later].

§101.393. General Provisions.

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

(b) [The initial control period is January 1, 2007, through December 31, 2007. Each control period after December 31, 2007, shall begin January 1 and end December 31 of each year.] No later than March 1 after each control period, the [a site subject to this division must hold a] quantity of allowances in a site's [its] compliance account must be [that is] equal to or greater than the total highly reactive [highly-reactive] volatile organic compound (HRVOC) emissions from each affected facility [the applicable facilities located] at the site during the control period.

(c) An allowance [Allowances] may not be used to satisfy netting requirements under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review).

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

(1) The owner or operator shall use a permanent allowance allocation stream equal to the amount specified in the NNSR permit to offset VOC emissions from an affected facility. A vintage allowance or an allowance allocated based on permit allowable emissions, as described under §101.394 of this title (relating to Allocation of Allowances), cannot be used as an offset. An allowance used for offsets may not be banked, traded, or used for any other purpose except as allowed in §101.396(e) of this title (relating to Allowance Deductions).

(2) At least 30 days before the start of operation of an affected facility using allowances as offsets, the owner or operator shall submit an Application to Use Allowances for Offsets (Form HECT-O).

(A) Except as provided in paragraph (3) of this subsection, the executive director shall permanently set aside in the site's compliance account an allowance used for the one-to-one portion of the offset ratio. If an allowance set aside for offsets devalues in accordance with §101.394(a)(1) or (f) of this title, the owner or operator shall submit a Form HECT-O at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. At the end of each control period, the executive director shall deduct from the site's compliance account all allowances set aside as offsets.

(B) The executive director shall permanently retain an allowance used for the environmental contribution portion of the offset ratio. An allowance used for this purpose cannot be used for compliance with this division or devalued due to future regulatory changes except as required in §101.394(a)(1) of this title.

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

(A) receives authorization in the NNSR permit for the affected facility to use an alternative means of compliance for any portion of the VOC offset requirement equivalent to the amount of al-

lowances the owner or operator requests to have released for the affected facility; or

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

[(d) Allowances may be used simultaneously to satisfy the requirements of this division and the one-to-one portion of the offset requirements for new or modified covered facilities, subject to federal nonattainment new source review requirements as provided in Chapter 116, Subchapter B, Division 7 of this title (relating to Emission Reductions: Offsets).]

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

(f) An allowance will be allocated, traded, and [All allowances will be allocated, transferred, deducted, or] used in tenths of tons. The number of allowances will be rounded [down to the nearest tenth of a ton when determining excess allowances and rounded] up to the nearest tenth of a ton when determining allowances used.

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

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

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

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

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

(j) If there is a change in ownership of a site subject to this division, the new owner of the site is responsible for complying with the requirements of this division beginning with the control period during which the site was purchased. The new owner shall contact the executive director to request a compliance account for the site. The new owner must acquire allowances in accordance with §101.399 of this title (relating to Allowance Banking and Trading).

§101.394. Allocation of Allowances.

(a) The executive director shall [will] deposit allowances into a compliance account [accounts] as follows.

(1) For a site [sites] located in Harris County, allowances [for the emissions of one or more of the highly-reactive volatile organic compounds (HRVOC) as defined in §115.10 of this title (relating to Definitions),] will be determined using the following equation: [equations in subparagraphs (A) and (B) of this paragraph.]
Figure: 30 TAC §101.394(a)(1)

[(A) For calendar-year control periods 2007 - 2010, the following equation will be used to determine the allocation for each site:]
[Figure: 30 TAC §101.394(a)(1)(A)]

[(B) For calendar-year control periods 2011 and later the following allocation methodology will apply:]
[Figure: 30 TAC §101.394(a)(1)(B)]

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

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

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

(C) [(iii)] beginning with the 2014 [calendar-year] control period, all sites will receive an allocation in accordance with the methodology under paragraph (1) of this subsection [subparagraph (B) of this paragraph].

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

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

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

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

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

(4) [(2)] For a site [sites] located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, allowances [for emissions of ethylene and propylene for each site] will be determined using the following equation [in the following figure].
Figure: 30 TAC §101.394(a)(4)
[Figure: 30 TAC §101.394(a)(2)]

(5) [(3)] Uncontrolled emissions for affected [applicable] facility types for use in determining site allocations under paragraph (1) [(1)(B)] of this subsection must [shall] be calculated as follows. [:]

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

(B) For heaters, boilers, furnaces, thermal and catalytic oxidizers, and other combustion control devices combusting HRVOC streams, the uncontrolled emissions must [shall] be calculated by di-

viding actual average emissions from routine normal operation during the baseline emissions period for each facility by one minus 99%, or by one minus the actual monitored HRVOC control efficiency for the facility, not to exceed 99.9%, if that facility has demonstrated the actual monitored HRVOC control efficiency through stack performance testing.

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

(D) For a site that employs a [sites that employ] flare or vent gas recovery or flare minimization control strategy that is [strategies that are] not requesting the use of an alternative baseline emissions period under paragraph (3) [(1)(D)] of this subsection, the owner or operator may request to include the amount of any quantifiable reduction in actual HRVOC emissions attributable to the use of flare or vent gas recovery as uncontrolled emissions, subject to approval by the executive director. The amount of quantified reductions is equal to the difference of the average actual HRVOC emissions from routine normal operation during a consecutive 12-month period before [prior to] the 2006 - 2009 baseline emissions period and the implementation of the HRVOC gas recovery or flare minimization control strategy and the enforceable allowable HRVOC permit limit for the affected facility [applicable facilities] after the recovery-based emissions reduction strategy implementation. The average actual HRVOC emissions used for quantifying the reductions under this subparagraph must be determined through continuous flow rate monitoring and HRVOC speciation testing. This allowable emissions limit must be made enforceable through a permit application submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) to the executive director no later than April 1, 2010. Credit allocated for reductions due to flare or vent gas recovery cannot also be creditable if the HRVOC stream is sent to another control device. The creditable emissions from flare gas recovery calculated in this subparagraph are then converted to uncontrolled emissions through the use of the average control efficiency specifications under §115.725(d) of this title.

(E) For a site that has [sites that have] purchased HRVOC allowance streams, uncontrolled emissions must [shall] be the greater of the [their] uncontrolled emissions calculated under subparagraphs (A) - (C) of this paragraph, or the sum of the [their] original existing HRVOC allowance allocated according to the previous allocation methodology [paragraph (1) of this subsection] and the amount of the allowance stream in tons. If [In the event that] a site's actual two-high year emissions is less than the sum of its original existing HRVOC allowance and the amount of the allowance stream in tons, the owner or operator shall add the difference [shall be added] to the uncontrolled emissions as actual emissions.

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

[(c) Sites subject to the requirements of this division or electing to opt-in to the requirements of this division that receive an HRVOC allocation of less than 5.0 tons based on the allocation methodologies under subsection (a)(1)(A) of this section will be eligible to receive a minimum allocation of 5.0 tons of HRVOC allowances per year.]

(c) [(d)] A site in Harris County [Sites] subject to the requirements of this division that receives [receive] an HRVOC allocation of less than 5.0 tons [based on the allocation methodology under subsection (a)(1)(B) of this section] will be eligible to receive a minimum allocation of 5.0 tons of HRVOC allowances per year. A site [Sites] subject to the requirements of this division that receives [receive] an HRVOC allocation of greater than or equal to 5.0 tons but less than 10.0 tons [based on the allocation methodology under subsection (a)(1)(B) of this section] will be eligible to receive a minimum allocation of 10.0 tons of HRVOC allowances per year. This provision does not apply if the site's allocation falls below a minimum allocation only because of a transfer of part or all of the site's allocation.

[(e) If the total actual HRVOC emissions from the covered facilities at a site during a control period exceed the amount of allowances in the compliance account for the site on March 1 following the control period, allowances for the next control period will be reduced by an amount equal to the emissions exceeding the allowances in the compliance account plus 10% of the exceedance. This allocation reduction does not preclude the executive director from initiating an enforcement action. If a compliance account does not hold sufficient allowances to accommodate the reduction, the executive director may issue a notice of deficiency to the owner or operator. The owner or operator will purchase or transfer allowances sufficient to accommodate the reduction within 30 days of issuance of the notice of deficiency from the executive director.]

(d) [(f)] The [Allowances will be allocated by the] executive director[, who] will deposit allowances into each compliance account by January 1 of each year. [:]

[(1) initially, by January 1, 2007; and]

[(2) subsequently, by January 1 of each following year.]

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

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

§101.396. Allowance Deductions.

(a) The executive director shall deduct from a site's compliance account an amount of [On March 31 of each year after a control period,] allowances equal to [representing] the total highly reactive [highly-reactive] volatile organic compounds (HRVOC) emissions from each affected facility [the applicable facilities] at the [a] site during the previous control period [will be deducted from the compliance account for the site]. The amount of HRVOC emissions must [will] be quantified using [based upon] the monitoring and testing protocols established in §115.725 and §115.764 of this title (relating to Monitoring and Testing Requirements), as appropriate.

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

(c) If the monitoring and testing data required under [referenced in] subsection (a) of this section does not exist or is unavailable, the owner or operator of the site shall [may] determine

the [its] HRVOC emissions for that period of time using the following methods [and] in the following order: continuous monitoring data; periodic monitoring data; testing data; manufacturer's data [from manufacturers]; and engineering calculations. [When determining the amount of HRVOC emissions under this subsection, the site will include a justification for using the substitute method or methods in lieu of the methods referenced in subsection (a) of this section.]

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

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

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

(e) The amount of allowances deducted from a site's compliance account under subsection (a) of this section will be reduced by the amount of allowances deducted in accordance with §101.393(d)(2)(A) of this title (relating to General Provisions).

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

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

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

§101.399. Allowance Banking and Trading.

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

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

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

(1) To trade a current allowance or vintage allowance for a single year, the seller shall submit an Application to Trade Allowances (Form HECT-2). Trades involving allowances needed for compliance with a control period must be submitted on or before January 30 of the following control period.

(2) To permanently trade ownership of any portion of the allowances allocated annually to an individual facility, the seller shall submit an Application for Stream Trade (Form HECT-4).

(3) To trade any portion of the allowances that are scheduled to be allocated to an individual facility in a future control period, the seller shall submit an Application for Future Trade (Form HECT-5).

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

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

[(1) The person desiring to transfer the allowances shall apply for approval of the transaction to the executive director by submitting a completed Form ECT-2, Application for Transfer of Allowances.]

[(2) The ECT-2 form must include the purchase price per allowance proposed to be paid, except for transactions between sites under common ownership or control.]

[(3) All information regarding the quantity and purchase price of the allowances will be immediately made available to the public.]

[(4) If the executive director approves the application, the executive director will send a letter to the seller and purchaser reflecting the transaction. The transaction is final upon issuance of the letter.]

[(c) A person receiving allowances on an annual basis may permanently transfer ownership of current and future allowances to any person in accordance with the following requirements.]

[(1) The person desiring to transfer the allowances shall apply for approval of the transaction to the executive director by submitting a completed Form ECT-4, Application for Permanent Transfer of Allowance Ownership.]

[(2) The ECT-4 form must include the purchase price per allowance proposed to be paid, except for transactions between sites under common ownership or control.]

[(3) All information regarding the quantity and purchase price of the allowances will be immediately made available to the public.]

[(4) If the executive director approves the application, the executive director will send a letter to the seller and purchaser reflecting the transaction. The transaction is final upon issuance of the letter.]

[(d) A person may transfer allowances that are scheduled to be allocated in a future control period but have not yet been deposited into an account.]

[(1) The person desiring to transfer the allowances shall apply for approval of the transaction to the executive director by submitting a completed Form ECT-5, Application for Transfer of Individual Future Year Allowances.]

[(2) The ECT-5 form must include the purchase price per allowance proposed to be paid, except for transactions between sites under common ownership or control.]

[(3) All information regarding the quantity and purchase price of the allowances will be immediately made available to the public.]

[(4) If the executive director approves the application, the executive director will send a letter to the seller and purchaser reflecting the transaction. The transaction is final upon issuance of the letter.]

(f) [~~(e)~~] Allowances that were provided under §101.394(a)(2) [~~§101.394(a)(1)(C)~~] of this title (relating to Allocation of Allowances) are not eligible for trade [~~transfer under subsections (b), (c), or (d) of this section~~].

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

(h) [~~(g)~~] Only an authorized account representative [~~representatives~~] may trade [~~transfer~~] allowances.

(i) [~~(h)~~] Allowances subject to an approved transaction will be deposited into the buyer's [~~purchaser's broker or compliance~~] account within 30 days of receipt of a completed trade [~~transfer~~] application.

[~~(i) Volatile organic compound emission reduction credits (ERC) certified in accordance with Division 1 of this subchapter (relating to Emission Credit Banking and Trading) may be converted to a yearly highly-reactive volatile organic compound (HRVOC) allocation.~~]

[~~(1) Qualified volatile organic compound (VOC) ERCs must be generated:~~]

[~~(A) from a reduction at a site located in the Houston/Galveston/Brazoria nonattainment area;~~]

[~~(B) from a reduction strategy implemented after December 31, 2004; and~~]

[~~(C) from a reduction in VOC species other than those defined as HRVOCs under §115.10 of this title (relating to Definitions).~~]

[~~(2) VOC reductions due to the installation of best available control technology do not qualify for conversion under this subsection.~~]

[~~(3) In addition to the requirements of Division 1 of this subchapter, a qualified VOC ERC must meet the following requirements:~~]

[~~(A) the ERC must be quantifiable, real, surplus, enforceable, and permanent as required in §101.302 of this title (relating to General Provisions) at the time the ERC is converted;~~]

[~~(B) the baseline emissions to which the VOC reduction is compared must consist of the average actual emissions for any two consecutive calendar years preceding the emission reduction strategy and that include or follow the most recent year of emission inventory used in the state implementation plan;~~]

[~~(C) the quantification of VOC reductions must be performed using the monitoring and testing methods required under §115.725 or §115.764 of this title (relating to Monitoring and Testing Requirements) and subject to the recordkeeping and reporting requirements under §115.726 and §115.766 of this title (relating to Recordkeeping and Reporting Requirements);~~]

[~~(D) the ERC must not have expired; and~~]

[~~(E) the owner of the ERC shall have prior approval from the executive director to convert the ERC to an HRVOC allocation.~~]

[~~(4) VOC ERCs must be converted to HRVOC allowances at a ratio calculated using the equation in the following figure.~~]
[~~Figure: 30 TAC §101.399(i)(4)~~]

[~~(5) For each site eligible to receive allowances under §101.394(a) of this title, additional HRVOC allowances received from the conversion of VOC ERCs under this subsection must be limited to a quantity not to exceed more than 5% of the site's initial HRVOC allocation.~~]

[~~(6) In addition to paragraph (5) of this subsection, sites subject to this division may receive an HRVOC allocation from the conversion of VOC ERCs under this subsection equivalent to any HRVOC emissions increases from new or modified covered facilities not in operation prior to January 2, 2004, and that were included in an application for a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) that was deemed administratively complete by the executive director within one year of the effective date of this rule.~~]

§101.400. Reporting.

(a) No later than March 31 after each control period, the owner or operator of each site shall [~~will~~] submit a completed [~~Form ECT-1H, Highly-Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade~~] Annual Compliance Report (Form HECT-1)[~~,~~] to the executive director, which must [~~will~~] include the following:

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

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

(3) a summary of all final transactions for the preceding control period.[~~; and~~]

[~~(4) the total amount and respective dates of HRVOC emissions from emissions events subject to the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements).~~]

(b) For the owner or operator of a site [~~sites~~] failing to submit a Form HECT-1 [~~an ECT-1H form~~] by the required deadline in subsection (a) of this section, the executive director may withhold approval of any proposed trades from that site involving allowances allocated for the control period for which the Form HECT-1 [~~ECT-1H form~~] is due or to be allocated in subsequent control periods.

(c) The owner or operator of a site subject to this division that no longer has authorization to operate any affected facilities may request a waiver from the reporting requirements in this section. If approved, the Form HECT-1 will not be required until a new affected facility is authorized at the site.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406034
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-6812

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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§115.10, 115.110 - 115.112, 115.114, 115.115, 115.117 - 115.119, 115.121, 115.122, 115.125 - 115.127, 115.129, 115.139, 115.215, 115.219, 115.229, 115.239, 115.359, 115.415, 115.416, 115.419, 115.420 - 115.423, 115.425 - 115.427, 115.429, 115.440 - 115.442, 115.446, 115.449 - 115.451, 115.453, 115.459 - 115.461, 115.469, 115.471, 115.473, 115.479, and 115.519; new §115.410 and §115.411; and the repeal of §115.417.

If adopted, the new, amended, and repealed sections of Chapter 115 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 as either in attainment or nonattainment with the NAAQS, or as unclassifiable. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

On March 27, 2008, the EPA revised both the primary and secondary ozone NAAQS to a level of 0.075 parts per million (ppm) with an effective date of May 27, 2008 (73 FR 16436). On May 21, 2012, the EPA established initial air quality designations for the 2008 eight-hour ozone NAAQS. Effective July 20, 2012, the Dallas-Fort Worth (DFW) 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area. The DFW area must attain the 2008 eight-hour ozone NAAQS by December 31, 2018 (77 FR 30088).

Nonattainment areas classified as moderate and above are required to meet the mandates of FCAA, §172(c)(1) and §182(b)(2). FCAA, §172(c)(1) requires the state to submit a SIP revision that incorporates all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for all emission sources addressed in a Control Techniques Guidelines (CTG) and all non-CTG major sources of volatile organic compounds (VOC), including emission sources covered in an Alternative Control Technology (ACT) document. 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 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. While ACT documents also provide available information, such as emission control options and associated costs for an industry sector, this information does not constitute presumptive RACT and the same FCAA obligations required for CTG do not apply to ACT documents. Although the FCAA requires the state to implement RACT, EPA guidance provides states with the flexibility to determine the most technologically and economically feasible RACT requirements for a nonattainment area. 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.

Depending on the classification of an area designated nonattainment for a standard, the major source threshold for which sources are subject to RACT requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold level for sources in an area to prevent backsliding (78 FR 34178, June 6, 2013). For this reason, the major source emission threshold remains at the serious classification level, which is the potential to emit (PTE) 50 tons per year (tpy) of VOC for Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. For Wise County, however, the major source threshold is the moderate classification level, which is the PTE 100 tpy of VOC.

The state previously adopted Chapter 115 RACT rules for VOC sources in most of the DFW area as part of the SIP for the 1997 eight-hour ozone standard. On January 14, 2009, the EPA approved the DFW VOC rules in 30 TAC Chapter 115 as meeting the RACT requirements for VOC for the 1997 eight-hour ozone NAAQS (74 FR 1903). State regulations in Chapter 115 that implement the controls recommended in CTG or ACT documents or that implement equivalent or superior emission control strategies were determined to fulfill RACT requirements for any CTG or ACT documents issued prior to 2006 for the nine-county DFW 1997 eight-hour ozone nonattainment area. Since this EPA approval, the commission adopted RACT rules for VOC emission source categories addressed by CTG documents that were issued between 2006 and 2008, as well as for non-CTG major source storage tanks (Rule Project Numbers 2010-016-115-EN and 2010-025-115-EN, respectively). These rulemakings were submitted to the EPA for approval but have not yet been acted upon.

The purpose of this proposed rulemaking would be to revise Chapter 115 to implement RACT for all VOC CTG emission sources categories in the DFW 2008 eight-hour ozone nonattainment area as required by FCAA, §172(c)(1) and §182(b)(2). RACT requirements must be implemented in the DFW area no later than January 1, 2017. The commission proposes revisions to implement RACT for the following rules: Subchapter B, Division 1, Storage of Volatile Organic Compounds; Subchapter B, Division 2, Vent Gas Control; Subchapter B, Division 3, Water Separation; Subchapter C, Division 1, Loading and Unloading of Volatile Organic Compounds; Subchapter C, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities; Subchapter C, Division 3, Control of Volatile Organic Compound Leaks from Transport Vessels; Subchapter D, Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and

Petrochemical Processes in Ozone Nonattainment Areas; Subchapter E, Division 1, Degreasing Processes; Subchapter E, Division 2, Surface Coating Processes; Subchapter E, Division 4, Offset Lithographic Printing; Subchapter E, Division 5, Control Requirements for Surface Coating Processes; Subchapter E, Division 6, Industrial Cleaning Solvents; Subchapter E, Division 7, Miscellaneous Industrial Adhesives; and Subchapter F, Division 1, Cutback Asphalt. The commission invites comment on the technological and economic feasibility of the RACT rule revisions proposed in these divisions.

The commission is not proposing amendments to implement RACT for certain emission source categories because the commission's analyses of point source emissions inventory, Title V permits, new source review permits, and central registry databases revealed that there would be no affected sources that would meet the rule applicability or that would be affected by the rule requirements. The commission is proposing to provide negative declarations for these categories. Subchapter B, Division 4, Industrial Wastewater (issued as an ACT); Subchapter B, Division 5, Municipal Solid Waste Landfills (not an EPA-issued document); Subchapter B, Division 6, Batch Processes (issued as an ACT); Subchapter D, Division 1, Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries (issued as a CTG); Subchapter E, Division 3, Flexographic and Rotogravure Printing (issued as a CTG); and Subchapter F, Division 2, Pharmaceutical Manufacturing Facilities (issued as a CTG).

Certain coating categories in the Subchapter E, Division 2 rules are also not being proposed for revision for reasons provided in the Section by Section Discussion section of this preamble for those rules. These emission source categories are not discussed beyond this Background section of the rulemaking. For additional information, see the "RACT Appendix F: Reasonably Available Control Technology Analysis" of the DFW 2008 Eight-Hour Ozone Attainment Demonstration SIP Revision (2013-015-SIP-NR) being proposed concurrently with this rulemaking.

This proposed rulemaking would include Wise County as part of the DFW 2008 eight-hour ozone nonattainment area since it was designated as nonattainment by the EPA in the final designations rule published in the *Federal Register* on May 21, 2012 (77 FR 30088). The TCEQ and other concerned parties are currently challenging whether the EPA's inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area was lawful. These challenges are currently pending in the United States Court of Appeals for the District of Columbia Circuit. If the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area is overturned before this rulemaking is adopted, the TCEQ will take action to revise this rulemaking appropriately. Because the TCEQ cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR). Should Wise County be removed from the DFW 2008 ozone nonattainment area after the adoption of these rules, the proposed rules would allow the commission to exempt sources in Wise County from RACT requirements upon notice by the TCEQ via publication in the *Texas Register* that Wise County is no longer a part of the DFW 2008 eight-hour ozone nonattainment area.

Demonstrating Noninterference under FCAA, Section 110(l)

The revisions proposed in this rulemaking would implement RACT for sources of VOC emissions in the DFW area, as required under FCAA, §172(c)(1) and §182(b)(2) for nonattainment areas classified as moderate and above. The state has previously adopted Chapter 115 RACT rules for sources in the DFW area as part of the 1997 eight-hour ozone standard. Because Wise County was classified as attainment under the 1997 eight-hour ozone standard, the existing Chapter 115 VOC RACT rules currently do not extend to sources in Wise County. The revisions proposed as part of this rulemaking fulfill the state's obligations by requiring sources of VOC emissions to implement RACT, as mandated by FCAA, §172(c)(1) and §182(b)(2). As part of this rulemaking, the commission is also proposing other technical revisions intended to add compliance flexibility, streamline and consolidate requirements, remove obsolete language and requirements that have been superseded by more stringent rules, and clarify the rules for consistency with the agency's intent and CTG recommendations. Non-substantive revisions are also being proposed as part of this rulemaking that would remove obsolete language, establish consistent terminology, and update the rule language to current *Texas Register* and TCEQ style and format requirements. The technical corrections and non-substantive revisions are only proposed for the rules that are simultaneously being revised to implement RACT. The commission has determined that the proposed revisions would not negatively affect the status of the state's progress towards attainment with the ozone NAAQS, would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

Section by Section Discussion

In addition to proposing rules to implement RACT in the DFW area, 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,* August 2014. Such changes include appropriate and consistent use of acronyms, punctuation, section references, and certain terminology like "that," "which," "shall," "must," "owner or operator, "and "all persons." References to the "Beaumont/Port Arthur area," "Dallas/Fort Worth area" and the "Houston/Galveston area" have been updated to the "Beaumont-Port Arthur area," "Dallas-Fort Worth area" and the "Houston-Galveston-Brazoria area," respectively to be consistent with current terminology for the region. The proposal would change references throughout the division to the Code of Federal Regulations (CFR) by adding "Part" or the section symbol before numerical references, whichever is appropriate. Proposed revisions would delete metric units, in certain instances, that have been determined to be obsolete. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

Although the purpose of this rulemaking is to implement RACT for the DFW 2008 eight-hour ozone nonattainment area, the commission is proposing to revise portions of the rules to make technical corrections that may not be directly related to implementing RACT. These technical corrections are potentially substantive, affect the Houston-Galveston-Brazoria (HGB) ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties), and are intended to clarify the rules to be consistent with the agency's original intent and CTG recommendations, add flexibility, and streamline requirements where appropriate. Additionally, the commission proposes changes that would affect areas that are currently attaining the ozone NAAQS (e.g., the Beaumont-Port

Arthur (BPA) area and El Paso area as well as Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties and other counties listed in §115.10 as a covered attainment county). The specific changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. The commission is requesting comment on any instance where the proposed technical corrections would inadvertently change the requirements in the commission's existing rules.

The commission proposes revisions to the compliance schedule section of each division to delete the reference to §115.930, which specifies general compliance dates for sources subject to the Chapter 115 rules. The commission proposes to replace the reference to §115.930 with a statement of the actual language in §115.930 that indicates the compliance date has already passed and that owners and operators affected by this should continue to comply with the requirements in the division. This change improves readability and increases usability of the rule by appropriately instituting plain language. Each instance this change is made in the rules is not specifically explained beyond this portion of the Section by Section Discussion section.

Subchapter A, Definitions

Section 115.10, Definitions

Proposed revisions would remove Wise County from the definition in paragraph (10) of "Covered ozone attainment counties" since it is now part of the DFW 2008 ozone nonattainment area. In addition, the commission proposes to delete the word "ozone" from this defined term. During a recent rulemaking, the commission adopted changes which added "ozone." However, "Covered ozone attainment counties" is inconsistent with the references used throughout the divisions in Chapter 115, so rather than alter the sections that still refer to "Covered attainment counties," the commission proposes to simply delete the word "ozone" to maintain consistency.

The commission proposes amendments to the definition in paragraph (11) to incorporate Wise County into the "Dallas-Fort Worth area" for the specific divisions that the commission is proposing to apply to Wise County. However, not all Chapter 115 rules are proposed to be applied to Wise County. For some source categories, the commission is making a negative declaration for RACT purposes in Wise County making it unnecessary to expand the corresponding Chapter 115 rules to Wise County. Additionally, some Chapter 115 requirements were adopted for purposes other than RACT, such as contingency measures and 15% Rate of Progress SIP revisions. The commission is only proposing to apply those rules to Wise County necessary to fulfill FCAA RACT requirements. Therefore, the proposed revisions to the definition of "Dallas-Fort Worth area" would restructure the definition into three separate subparagraphs to delineate which Chapter 115 divisions apply in which counties of the ten-county DFW 2008 eight-hour ozone nonattainment area.

Subparagraph (A) lists those Chapter 115 rules that only apply in Collin, Dallas, Denton, and Tarrant Counties. Consistent with the current definition, Subchapter B, Division 5, is included as only applying to Collin, Dallas, Denton, and Tarrant Counties. In addition, the current definition of "Dallas-Fort Worth area" applies to Subchapter F, Division 3, Degassing of Storage Tanks, Transport Vessels, and Marine Vessels, and Division 4, Petroleum Dry Cleaning Systems, to all nine counties. However, the rule requirements in Subchapter F, Divisions 3 and 4, specifically §115.541(a)(2) and §115.559(a), only apply those rules to Collin, Dallas, Denton, and Tarrant Counties. Therefore, the commission is proposing to include Subchapter F, Divisions 3 and 4 under proposed subparagraph (A) to be consistent with the actual rule requirements in those divisions.

Subparagraph (B) lists those Chapter 115 rules that would only apply in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, but not in Wise County. The divisions under subparagraph (B) that currently and will continue to apply to these nine counties include: Subchapter B, Division 4, Subchapter D, Division 1, Subchapter E, Division 3, and Subchapter F, Division 2.

Subparagraph (C) would specify that all other Chapter 115 divisions apply to Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, i.e., all ten counties in the 2008 eight-hour ozone nonattainment area. The specific divisions proposed to be applied to Wise County include: Subchapter B, Divisions, 1-3; Subchapter C, Divisions 1-3; Subchapter D, Divisions 3; Subchapter E, Divisions 1 and 2, and 4-7; and Subchapter F, Division 1.

The existing definition, "El Paso," in paragraph (13) is being proposed as "El Paso area." During a recent rulemaking, the commission adopted changes that eliminated "area." However, "El Paso" is inconsistent with the references used throughout the divisions in Chapter 115, so rather than alter the sections that still refer to "El Paso," the commission proposes to simply add the word "area" to maintain consistency.

The commission proposes adding "or internal floating roof" to the definition of "Internal floating cover" in paragraph (24) to indicate that these terms can be used interchangeably. Corresponding changes are proposed to the storage tank rule in Subchapter B, Division 1 to only refer to internal floating roofs and not internal floating covers since internal floating roofs aligns with the standard terminology for that industry. This change is not intended to impact the other divisions in the chapter that reference internal floating cover.

Subchapter B, General Volatile Organic Compounds

Division 1, Storage of Volatile Organic Compounds

The proposed rulemaking would change internal floating cover to internal floating roof in each instance it is referenced throughout the division. As part of this rulemaking, the commission is proposing to update the "Internal floating cover" definition in §115.10(24) to include "internal floating roof" to accommodate the use of either term, where appropriate throughout the chapter. Although the definition itself is not being revised, the term is proposed for revision to more appropriately align with terminology used by industry. The proposed rulemaking would likewise change references throughout the division to "roof or cover" to "roof" where roof refers to an internal or external floating roof.

Section 115.110, Applicability and Definitions

The proposed rulemaking adds a definition in subsection (b), "Closure device" as paragraph (1). As a result of the proposed definitions, the commission is proposing to renumber existing paragraphs (1) - (13) as (2) - (14), respectively.

The proposed definition of "Closure device" in paragraph (1) would refer to one of several pieces of equipment designed to cover openings in the roof of a fixed roof storage tank. These devices can either be temporarily opened or have a component

that provides a temporary opening. The proposed definition is used in §§115.112, 115.114, and 115.118.

Section 115.111, Exemptions

The commission proposes amendments to subsection (a)(4), (6), and (7) that would revoke exemptions for certain floating roof storage tanks in the DFW area constructed or modified prior to 1983. Staff analyzed information in the commission's 2011 and 2012 Point Source Emissions Inventory and found no tanks to which these exemptions would apply. Proposed subsection (a)(4) would revoke the exemption for tanks with a shoe-mounted secondary seal installed or scheduled for installation before August 22, 1980. Proposed subsection (a)(6) would revoke the exemption for welded tanks storing liquids with true vapor pressure less than 4.0 pounds per square inch absolute (psia) under a floating roof with certain specified types of primary seals installed before August 22, 1980. Proposed subsection (a)(7) would revoke the exemption for welded tanks storing liquids with true vapor pressure between 4.0 and 6.0 psia under a floating roof with certain specified types of primary seals installed before December 10, 1982. The commission requests comment on these revocations, especially if owners or operators are relying on these exemptions for compliance in the DFW area.

The proposed rulemaking would amend subsections (a)(8), (b)(8), and (c)(5) to change the current exemption for storage tanks less than 1,000 gallons to apply to tanks with a storage capacity of less than or equal to 1,000 gallons. This amendment would correct an inadvertent change made during the last rulemaking affecting this section (Rule Project No. 2010-025-115-AI) and restore the intended exemption as it existed prior to that rulemaking.

In the proposed amendments to subsection (a)(10) and (11), the commission would exclude Wise County from the existing exemptions in subsection (a)(10) and (a)(11), which apply to owners or operators of storage tanks storing condensate in the nine-county DFW area. These exemptions were adopted for the nine-county DFW serious ozone nonattainment area under the 1997 eight-hour ozone NAAQS; however, Wise County was not a part of the DFW area at that time and is classified as moderate nonattainment under the 2008 eight-hour ozone NAAQS.

The commission proposes to create an exemption in subsection (a)(12) from the flashed gases control requirements for owners or operators of condensate storage tanks in Wise County with an annual condensate throughput of at least 6,000 barrels (bbl) of condensate. This exemption would apply if a VOC measurement from the condensate, according to the test methods in §115.117, showed that the annual uncontrolled VOC measurement is less than 100 tpy. This language parallels exemptions in other areas and provides affected owners and operators producing low-VOC condensate below the 100 tpy major source threshold to vent the VOC emissions to the atmosphere without control, while assuring that owners and operators use an approved test method for emission measurement.

Section 115.112, Control Requirements

The proposal would amend subsection (e)(4)(B) and (5)(B) to exclude Wise County from the control requirement applicable to the nine-county DFW area since the major source applicability threshold for Wise County is not equivalent to the major source threshold for the other nine counties. The proposed rulemaking would add subsection (e)(4)(C) and (5)(C) to extend the control requirement for flashed gases from crude oil and condensate tanks to Wise County with a throughput of 6,000 bbl of condensate. This throughput level is consistent with the condensate VOC emission factor used throughout this section that equates the throughput with the major source applicability threshold, which is 100 tpy of uncontrolled VOC emissions for Wise County.

The commission proposes an amendment to subsection (e)(5) to harmonize the applicability of the control requirement for storage tanks prior to custody transfer and at pipeline breakout stations in the DFW area. The proposed change would clarify that the control requirements of this paragraph apply to the aggregate of all storage tanks at a pipeline breakout station, in addition to the existing applicability. Currently, individual storage tanks and the aggregate of storage tanks at an upstream tank battery are specified in paragraph (5). The proposed change ensures all storage tanks originally intended to be controlled are explicitly listed and is limited to the DFW area because the purpose of this rulemaking is to implement RACT for the DFW area.

Proposed subsection (e)(7) would require owners and operators of storage tanks in the DFW area with a flashed gas control requirement to equip such tanks with closure devices, as defined in proposed §115.110(1), that close all openings not routed to a control device. The proposal would also require owners or operators to maintain the storage tank and its closure devices in accordance with manufacturer instructions or industry standards, if manufacturer instructions are not available. Several major closure device manufacturers provide maintenance instructions on their websites. The American Petroleum Institute (API) has developed an industry standard for upstream storage tank and closure device maintenance, API Recommended Practice 12R1: *Recommended Practice for Setting, Maintenance, Inspection, Operation, and Repair of Tanks in Production Service.* Proper maintenance of the tank and its attached closure devices is necessary to assure that vapors are routed to the required control device.

The proposed rulemaking would also set specific operational requirements for the closure devices in subsection (e)(7)(A) - (D). These requirements are necessary to assure that as much of the tank vapor as practicable is routed to the required control device.

The commission proposes subsection (e)(7)(A), which would require that all closure devices, including thief hatches and pressure or pressure-vacuum relief valves, be closed at all times except when required to be open for temporary access or to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control practices. Such opening, actuation, or use must be limited to minimize vapor loss. Thief hatches and pressure or pressure-vacuum relief valves are necessary operational and safety devices on a fixed roof storage tank that must be open at times to function. However, a thief hatch that is left open longer than required for access to the tank, or a relief valve that does not close properly allows more VOC vapors than necessary to vent to the atmosphere rather than pass to the required control device. Proposed inspection requirements in §115.114(a)(5) would assure compliance with this provision.

Proposed subsection (e)(7)(B) would require that all closure devices be properly sealed to minimize vapor loss when closed. This requirement would set a performance criterion for a typical failure point of the device.

In proposed subsection (e)(7)(C), the commission would require all devices to be latched closed or, if designed to relieve excess

pressure, to be set to open at a pressure that will ensure all vapors are routed to the vapor recovery unit or other vapor control device under normal operating conditions. This requirement assures that the required control device is the first to receive VOC vapors as pressure in the tank rises, while allowing venting to the atmosphere in an emergency over-pressurization event such as a fire. The commission acknowledges that manual opening of a thief hatch for tank gauging and sampling is a normal operating procedure and that VOC vapors from the tank will vent uncontrolled during this temporary activity. Proposed subsection (e)(7)(A) would require minimization of this open time. The commission does not consider an upstream dump valve stuck in the open position to be normal operation because it allows liquid and gas above design pressure to enter the storage tank.

Proposed subsection (e)(7)(D) would require repair of leaking closure devices by setting a 15-day limit for repairs. The proposal would define a leak as the exuding of gasses from a closed device based on sight, smell, or sound. The leak definition and repair time limit are consistent with the commission's leak definition for similar detection methods and repair requirements in nonattainment areas. Although detecting a leak with an instrument would provide a more accurate measurement, for the sake of expedient measurement by personnel without special equipment, the commission proposes to use the typical audio/visual/olfactory monitoring to determine a leak. The proposed language also includes a delay of repair option for a lack of parts or a required shutdown. If parts are unavailable, the owner or operator may delay repair until five days after receipt of promptly-ordered parts. If the repair requires a shutdown that would create more emissions than the repair would eliminate, the owner or operator could delay repair until the next shutdown. The burden of proof that the shutdown would create more emissions than the repair is the responsibility of the owner or operator. The commission solicits comments on the delay of repair provisions in this proposal.

Section 115.114, Inspection Requirements

The proposed rulemaking would add "and Repair" to the title of this section to better describe the existing and proposed repair requirements.

The commission proposes subsection (a)(5), which would require owners and operators of condensate storage tanks in the DFW area with a flashed gas control requirement to inspect and repair all closure devices that are not connected to a control device as specified in the remainder of the proposed paragraph.

In proposed subsection (a)(5)(A), the commission would add a requirement for audio, visual, and olfactory inspection of each closure device not connected to a control device to assure compliance with the closure requirement in proposed §115.112(e)(7)(A). The inspection would need to occur within one business day after sampling or gauging through a thief or access hatch or when liquids are unloaded from the tank. The inspection would need to occur while liquids are not being loaded into or out of the tank. The inspection assures that openings on the storage tank remain closed with VOC vapors routed to the required control device after sampling, gauging, or unloading events require a temporary opening in the tank. The inspection timing mirrors the 24-hour inspection of relief valves in the commission's leak detection and repair (LDAR) regulations in Subchapter D, with additional flexibility for weekends and holidays. The commission anticipates that although each inspection method may not be pertinent to every device, the combination would provide sufficient data to determine if the device is open. Since the inspection would not require specialized equipment, the owner or operator's environmental compliance personnel or contract workers responsible for the sampling, gauging, or unloading activity that triggered the inspection could perform it. If multiple tank openings due to gauging, sampling, or unloading event occur in a day, a single inspection within a business day of the last event would suffice. If a closure device is found open, proposed subsection (a)(5)(A) would require an attempt to close it. If the attempt fails, the device would be leaking, as defined in proposed §115.112(e)(7)(D) and would need to be repaired. If someone other than the owner or operator performs the inspection and closure attempt, sufficient time is built into the repair requirement for the owner or operator's personnel to complete a repair.

The proposed rulemaking also includes a more detailed inspection in subsection (a)(5)(B). This proposed inspection would occur quarterly and target all gaskets and seals of thief hatches and pressure or pressure-vacuum relief valves and other closure devices on DFW area condensate tanks with a flashed gas control requirement. The inspection would determine if the devices are properly sealed to minimize vapor loss, as required in proposed §115.112(e)(7)(B). This inspection would also be an audio/visual/olfactory inspection; however in many cases it would require the owner or operator to partially disassemble the component to access the seal or gasket. This inspection is designed to complement the control requirement in proposed §115.112(e)(7) for the affected devices, which would require the devices to be maintained according to manufacturer's instructions. For instance, one manufacturer of thief hatches and pressure or pressure-vacuum relief valves recommends quarterly maintenance that requires partially disassembling the device to clean the internal gaskets.

Proposed subparagraph (B) would also include a repair requirement with a first attempt at repair within five calendar days and completed repair within 15 calendar days after the inspection. This requirement would assure timely repairs and continued routing of VOC vapors to the required control device. The proposal would also state that a repair is complete if the device no longer exudes process gasses based on sight, smell, or sound. The proposed repair monitoring definition in §115.112(e)(7)(D) uses the same inspection method used to determine if a device is leaking. The repair times mirror the commission's LDAR regulations in Subchapter D. The same delay of repair options stated in §115.112(e)(7)(D) allow delayed repair for lack of available parts or a repair that would generate more emissions than a shutdown.

Section 115.115, Monitoring Requirements

The commission proposes amendments to subsection (a)(3)(A) and (B) for carbon adsorbers and carbon adsorption systems. These two proposed revisions would apply to the BPA, DFW, El Paso, and HGB areas and are intended to clarify the existing rule requirements.

The proposed amendment to subsection (a)(3)(A) would remove the option to use Method 21 as a monitoring method for measurement of VOC concentration every seven days. The commission does not anticipate that any owners or operators are using this method to measure VOC concentrations on self-regenerating carbon adsorption systems installed on storage tanks. The commission solicits comments on this change.

Proposed amendment to subsection (a)(3)(B) would specify that switching the vent gas flow to fresh carbon at a regular prede-

termined time interval option is only available for carbon adsorbers and carbon adsorption systems that do not self-regenerate carbon directly. It was the commission's original intent that this would apply to adsorbers and carbon adsorption systems for which owners or operators remove a nearly-saturated carbon container and insert a fresh carbon container. The commission solicits comments on this change.

Section 115.117, Approved Test Methods

In proposed amended subsection (a)(8), the commission would add ASTM International, formerly known as American Society for Testing and Materials (ASTM), Method D6377, *Standard Test Method for Determination of Vapor Pressure of Crude Oil: VPCRx Expansion Method* (ASTM D6377), to the list of approved test methods for the measurement of true vapor pressure of crude oils. The EPA approved ASTM D6377 as a broadly applicable alternative test method for the determination of vapor pressure of crude oils that have a vapor pressure within the range of 3.6 to 26.1 psia at 100 degrees Fahrenheit at vapor-liquid ratios from 4:1 to 0.02:1 (79 FR 14033, March 12, 2014). However, the EPA did not approve the method for crude oils that exhibit a vapor pressure less than 3.6 pounds per square inch (psi) at 100 degrees Fahrenheit.

Section 115.118, Recordkeeping Requirements

The commission proposes subsection (a)(6)(D) to require affected owners of condensate storage tanks in the DFW area to maintain records of manufacturer maintenance instructions or applicable industry standards that proposed §115.112(e)(7) would require them to follow. It would be necessary to maintain these records to ensure enforceability of the proposed control requirement.

In proposed subsection (a)(6)(E), the commission proposes recordkeeping requirements for inspections and repairs of affected condensate storage tanks in the DFW area proposed in §115.114(a)(5). The proposed regulations would require records of each inspection; proposed clause (i) would require the inspection date; and proposed clause (ii) would require the status of the device during inspection. Proposed clause (iii) would require the length of time a closure device was open for reasons not allowed by §115.112(e)(7)(A) since the last inspection. Proposed clause (iv) would require the date of repair attempts and repair completion. Proposed clause (v) would require a list of closure devices awaiting repair. The proposed recordkeeping requirements are necessary to ensure enforceability of the control and inspection requirements and assure that VOC vapors are routed to the required control device. Examples of device status during inspection in clause (ii) include "closed; found open, closed during inspection;" or "open, unable to close" for closure devices inspected according to proposed §115.114(a)(5)(A); and "sealed" or "not sealed, repaired during inspection" for gaskets inspected under §115.114(a)(5)(B). The commission anticipates that some seal and gasket repairs can and will occur during the inspection.

Section 115.119, Compliance Schedules

The commission proposes to exclude Wise County from the existing compliance schedule in subsection (b)(1)(C), which applies to owners or operators of storage tanks storing crude oil or condensate in the nine-county DFW area. These exemptions were adopted for the nine-county DFW serious ozone nonattainment area under the 1997 eight-hour ozone NAAQS; however, Wise County was not a part of the DFW area at that time and is classified as moderate nonattainment under the 2008 eight-hour ozone NAAQS.

In proposed paragraph (b)(3), the commission would specify that affected storage tank owners or operators in the current nine counties of the DFW area would need to comply with control, inspection, and recordkeeping requirements in §§115.112(e)(7), 115.114(a)(5), and 115.118(a)(6)(D) and (E) by January 1, 2017. This matches the compliance schedule for storage tanks in Wise County and provides owners and operators approximately a year and a half to train personnel and develop necessary procedures. The commission contends this is a sufficient lead time.

Proposed subsection (f) would require the owner or operator of storage tanks in Wise County to comply with the requirements in the division as soon as practicable, but no later than January 1, 2017. This compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the mandatory RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013). It is also consistent with the 15-month compliance timeframe provided to owners and operators of storage tanks in the December 2011 (Rule Project No. 2010-025-115-EN) amendments to this division.

The proposed rulemaking would re-letter existing subsection (f) as subsection (g) to accommodate the compliance schedule proposed as subsection (f) for affected owners and operators in Wise County.

Proposed subsection (h) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each storage tank would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter B, General Volatile Organic Compound Sources

Division 2, Vent Gas Control

Section 115.121, Emission Specifications

In the proposed amendment to subsection (a)(1), the commission would clarify that emissions from compressor rod packing that are contained and routed through a vent are a vent gas stream potentially requiring control. The proposed rulemaking also notes that a glycol dehydrator still vent is a vent gas stream potentially requiring control. This proposed clarification to paragraph (1) applies to affected owners and operators in the BPA, DFW, El Paso, and HGB areas.

The compressor emission interpretation, TCEQ interpretation number R5-121.012, relies on the definition of "Vent" in §101.1 as "any duct, stack, chimney, flu, conduit, or other device used to conduct air contaminants into the atmosphere." If emissions from compressor rod packings are fully contained and routed to the atmosphere through a duct or other device, the emissions are not fugitive emissions and the vent gas rules apply.

In the glycol dehydrator interpretation, TCEQ interpretation number R5-121.005, the commission determined that the still vent is a process vent subject to the vent gas rules because the glycol reboiler is a process, as defined in §101.1, and the still vent meets the §101.1 definition of a vent. When the still vent emissions are routed to the glycol reboiler, the reboiler is acting as a control device.

Section 115.122, Control Requirements

The changes being proposed in this section are intended to clarify certain existing requirements that affect the BPA, DFW, and HGB areas. The proposed rulemaking would specify that flares used as control devices must be lit at all times when VOC vapors are routed to the flare. The changes are proposed in subsections (a)(1)(B) and (2)(A), (b)(2), and (c)(1)(B) and (4)(A). The commission proposes to require 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. This is not a new requirement and is not intended to increase the compliance burden for affected owners and operators.

The proposed rulemaking would also specify in subsection (a)(1)(C) that a glycol dehydrator reboiler receiving emissions from a still vent is a vapor control system. This is consistent with the published rule interpretation referenced elsewhere in this Section by Section Discussion.

The revision proposed for subsection (a)(3)(E) would change the title of the division referencing Chapter 101, Subchapter H, Division 1 to "Emission Reduction Credit Program." In a separate rulemaking (Rule No. 2014-007-101-AI), the commission is proposing this change to the name of this division.

The commission proposes to exclude Wise County from the control requirements in subsection (a)(3)(B) applicable to bakery ovens. The major source threshold for Wise County, as discussed in the Background and Summary of the Factual Basis for the Proposed Rules portion of this preamble, is the PTE 100 tpy of VOC. The commission did not identify any bakeries meeting this applicability threshold.

Section 115.125, Testing Requirements

Proposed paragraph (2)(B) adds EPA Test Method 21 to the list of approved test methods for the purpose of determining breakthrough on a carbon adsorption system or carbon adsorber.

Section 115.126, Monitoring and Recordkeeping Requirements

The proposed rulemaking would remove an outdated statement in the introductory paragraph of §115.126 that records generated prior to December 31, 2000 did not need to be kept for a full five years. This proposed change affects Aransas, Bexar, Calhoun, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties and the BPA, DFW, El Paso, and HGB areas.

The commission proposes to renumber existing paragraph (1)(A)(iv) to paragraph (1)(A)(iii) and replace the contents of existing clause (iv) with requirements for a carbon adsorption system or carbon adsorber, while maintaining consistent sentence structure. This proposed change affects the BPA, DFW, El Paso, and HGB and Victoria County.

Proposed paragraph (1)(A)(iv) would specify that an owner or operator shall monitor a carbon adsorption system according to one of the options in subclauses (I) or (II). The language in this clause would replace the language in existing paragraph (1)(A)(iii) that currently requires continuous VOC concentration measurement. Subclause (I) specifies that the monitoring is to determine if breakthrough has occurred, and 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 proposed 100 ppmv concentration defining breakthrough is chosen to coincide with TCEQ's Air Permits Division guidance on best available control technology for carbon adsorption systems, which currently identifies 100 ppmv as an appropriate upper-bound concentration for determining breakthrough. Subclause (II) provides an alternative engineering safeguard to switch the vent gas flow to fresh carbon at a regular predetermined time interval for a carbon adsorber or carbon adsorption system that does not regenerate the carbon directly. The time interval must be less than the carbon replacement interval determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorption system or carbon adsorber. The alternative requirement assures protection at least equivalent to the current provision since owners and operators are required to switch to fresh carbon in all possible operating scenarios before the system reaches its absorption capacity rather than switching after measurements, which can be as much as 15 minutes apart, that detect breakthrough. In conjunction with the testing requirements in §115.125, pre-breakthrough operation of the carbon adsorption system or carbon adsorber will be in compliance with applicable control requirements.

Section 115.127, Exemptions

The proposed rulemaking would clarify that compliance with the exemptions for combined vent streams should be determined after the combination of the streams, but prior to the combined stream entering a control device, if present. The commission proposes to add this language to subsections (a), (b), and (c) to be consistent with a published rule interpretation made in 1998. In the rule interpretation, TCEQ interpretation number R5-121.009, the commission stated that testing individual vent gas streams prior to combination to determine exemption status may be impossible, and that a 1992 agency legal opinion required any testing of the vent gas stream to be conducted prior to a control device.

Section 115.129, Counties and Compliance Schedules

Proposed subsection (e) would require the owner or operator of a vent gas stream in Wise County to comply with the requirements in the division as soon as practicable, but no later than January 1, 2017. The compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the mandatory RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The proposed rulemaking would also add subsection (f) to provide 60 days for owners and operators of vent gas streams in the DFW area that become subject to the division after the appropriate compliance date to comply with the requirements in the division.

Proposed subsection (g) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each vent gas stream would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is cur-

rently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter B, General Volatile Organic Compound Sources

Division 3, Water Separation

Section 115.139, Counties and Compliance Schedules

Proposed subsection (c) would specify that compliance with this division for owners and operators in Wise County is required as soon as practicable, but no later than January 1, 2017. The compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The commission proposes a subsection (d) to provide 60 days for owners and operators of facilities in the DFW area that become subject to the requirements of this division after the compliance date to come into full compliance. The commission maintains that 60 days is a sufficient amount of time for both an existing source that crosses an exemption threshold and a newly-constructed source to make necessary adjustments to achieve compliance. For example, water separators placed into service after January 1, 2017 would be required to comply within 60 days after installation. Existing water separators previously exempt from the rule but no longer qualifying for that exemption after the applicable compliance date would be required to comply with the proposed rule no later than 60 days after the separator no longer qualifies for the exemption.

Proposed subsection (g) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each water separator would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter C, Volatile Organic Compound Transfer Operations

Division 1, Loading and Unloading of Volatile Organic Compounds

The commission proposes to replace the term "tank-truck" with the term "tank-truck tank" in each occurrence throughout the division. In the existing rule, tank-truck and tank-truck tank are used interchangeably; however, the defined term in §115.10 is tank-truck tank. This change would establish consistency and improve the usability of this rule by using only the defined term. These changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

Section 115.215, Approved Test Methods

The commission proposes revising paragraph (4) to add ASTM Test Method D6377, "Standard Test Method for Determination of Vapor Pressure of Crude Oil: VPCRx Expansion Method" (ASTM D6377) to the list of approved test methods for measuring the true vapor pressure of crude oils. The EPA approved ASTM D6377 as a broadly applicable alternative test method for the determination of vapor pressure of crude oils that have a vapor pressure within the range of 3.6 to 26.1 psia at 100 degrees Fahrenheit at vapor-liquid ratios from 4:1 to 0.02:1 (79 FR 14033, March 12, 2014). However, the EPA did not approve the method for crude oils that exhibit a vapor pressure less than 3.6 psi at 100 degrees Fahrenheit.

In addition, proposed paragraph (4) would state that true vapor pressure must be corrected to storage temperature 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.

Proposed paragraph (10) would delete the December 29, 1992 reference date related to Test Method 301 specified by 40 CFR Part 63, Appendix A. Test Method 301 is a standard method and the EPA updates it periodically. Removing the reference date would ensure the latest version of the test method is used at all times.

Section 115.219, Counties and Compliance Schedules

Proposed subsection (d) would delete the compliance requirements for the owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to comply with the requirements applicable to covered attainment counties in §§115.211(2), 115.212(b), and 115.214(b) because these counties are no longer included in the "Covered attainment counties" definition in §115.10.

Proposed subsection (e) would specify that the owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017. The compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013). Proposed subsection (e) would also specify that the owner or operator of each gasoline terminal and gasoline bulk plant in Wise County shall continue to comply with the applicable requirements in §§115.211(2), 115.212(b), and 115.214(b) until the facility achieves compliance with the newly applicable requirements in §§115.211(1), 115.212(a), and 115.214(a). If the proposed rules are adopted by the commission, Wise County would no longer be a covered attainment county upon the rule effective date; therefore, it is necessary to specify that the owner or operator of each gasoline terminal or gasoline bulk plant in Wise County must continue to comply with the requirements that currently apply in §§115.211(2), 115.212(b), and 115.214(b).

Proposed subsection (f) would require the owner or operator in the DFW area that becomes subject to the requirements of this division after the applicable compliance date in subsections (a), (d), or (e) to comply with the requirements in this division no later than 60 days after becoming subject. Proposed subsection (f) would be consistent with the compliance schedule format adopted in other Chapter 115 rules. The commission expects that 60 days is an adequate amount of time for newly affected owners and operators to comply with the rule requirements. For example, each new gasoline terminal, gasoline bulk plant, and VOC transfer operation beginning service after January 1, 2017 would be required to comply within 60 days. Existing gasoline terminal, gasoline bulk plant, and VOC transfer operation previously exempt from the rule but no longer qualifying for that exemption after January 1, 2017 would be required to comply with the proposed rule no later than 60 days after the gasoline terminal, gasoline bulk plant, and VOC transfer operation no longer qualifies for the exemption.

Proposed subsection (e) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation would not be required to comply with the requirements in §§115.211(1), 115.212(a), and 115.214(a) and would be required to continue complying with the requirements in §§115.211(2), 115.2112(b), and 115.214(b). The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* An owner or operator in Wise County would not be required to comply with any of the requirements applicable to the nine-county DFW area, but would continue to be subject to the same requirements applicable to Wise County while defined as a covered attainment county, prior to this rulemaking.

The addition of subsection (g) is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter C, Volatile Organic Compound Transfer Operations

Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

Section 115.229, Counties and Compliance Schedules

The proposed amendment adds subsection (e) to specify that a gasoline dispensing facility (GDF) in Wise County must comply with applicable requirements as soon as practicable, but no later than January 1, 2017. The compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT compliance deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

Proposed subsection (f) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each GDF would be required to continue to comply with the requirements in this division applicable to the covered attainment counties. The requirements in the DFW area would no longer apply to GDFs in Wise County. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* An owner or operator in Wise County would not be required to comply with any of the requirements applicable to the nine-county DFW area, but would continue to be subject to the same requirements applicable to Wise County while classified as a covered attainment county, defined in §115.10, prior to this rulemaking.

The addition of subsection (f) is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

In other divisions of this rulemaking, the commission is proposing to add a compliance schedule requiring owners and operators in the DFW area to comply with the applicable rules no later than 60 days after becoming subject. However, in §115.222, the control requirements for GDFs, a requirement currently exists mandating an owner or operator exceeding an exemption level based on throughput to comply with the applicable portions of the section within 120 days. This provision applies to new GDFs and GDFs that no longer qualify for exemption.

Subchapter C, Volatile Organic Compound Transfer Operations

Division 3, Control of Volatile Organic Compound Leaks From Transport Vessels

Section 115.239, Counties and Compliance Schedules

Proposed subsection (c) would delete the compliance requirements for the owner or operator of each gasoline tank-truck tank in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to comply with the requirements in §115.234(b) and §115.235(b). The requirements in these sections no longer apply since these five counties are part of the DFW area and are no longer considered covered attainment counties.

The commission proposes subsection (d) to specify that the owner or operator of each non-gasoline VOC tank-truck tank in Wise County shall comply with the applicable requirements as soon as practicable, but no later than January 1, 2017. The compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013). Gasoline tank-truck tanks in Wise County are currently subject to the inspection requirements specified for covered attainment counties. The proposed rule would require owners or operators of gasoline tank-truck tanks to continue to comply with the requirements applicable in the covered attainment counties until compliance with the DFW area requirements in §115.234(a) and §115.235(a) is achieved.

Proposed subsection (e) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each tank-truck tank would not be required to comply with the requirements in §115.234(a) and §115.235(a) and would be required to continue complying with the requirements in §115.234(b) and §115.235(b). The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* An owner or operator in Wise County

would not be required to comply with any of the requirements applicable to the nine-county DFW area, but would continue to be subject to the same requirements applicable to Wise County while classified as a covered attainment county, prior to this rulemaking.

The addition of subsection (e) is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

In other divisions of this rulemaking, the commission is proposing to add a compliance schedule requiring owners and operators in the DFW area to comply with the applicable rules no later than 60 days after becoming subject. For this division, however, the commission determined it is not necessary to provide the owner or operator of the tank-truck tanks in the DFW area an additional 60 days to comply with the requirements of this division. The cost to conduct the Test Method 27 leak-tight test, required prior to loading or unloading VOC, is about $250 per test and should last approximately two to five hours to complete. Because the leak-tight test can be done within one day at a reasonable cost, it is not necessary for an additional 60 days to conduct the leak-tight test.

Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes In Ozone Nonattainment Areas

Section 115.359, Counties and Compliance Schedules

The proposed rulemaking would add subsection (c) to require compliance with the division for owners and operators in Wise County no later than January 1, 2017. The compliance date would provide affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

Proposed subsection (d) would also add a requirement for the owners or operators of sources in the DFW area that become subject to the division to comply with the division within 60 days of becoming subject. Proposed subsection (d) would be consistent with the compliance schedule format adopted in other Chapter 115 rules. The commission expects that 60 days is an adequate amount of time for newly affected owners and operators to comply with the rule requirements. Owners and operators affected by proposed subsection (d) would include those that were not in operation by the applicable date of compliance as well as those that no longer qualify for exemption.

Proposed subsection (e) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each affected source would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter E, Solvent-Using Processes

Division 1, Degreasing Processes

Section 115.410, Applicability and Definitions

The commission proposes new §115.410 to clearly identify the degreasing processes affected by the requirements in this division and to specify the rule citations that contain the definitions related to degreasing processes covered by this division.

Proposed new subsection (a) would establish that the provisions in this division apply in the BPA, DFW, El Paso, and HGB areas as defined in §115.10 and in Bastrop, Bexar, Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson Counties to cold solvent degreasing processes, open-top vapor degreasing processes, and conveyorized degreasing processes using VOC-containing solvent. Explicitly stating the applicability in the beginning of the division increases the usability and flow of the rule and provides owners and operators the information to determine whether their process is regulated under this division. Proposed new subsection (a) is not intended to alter the existing applicability for any area or county.

Proposed new subsection (a) indicates that the division only applies to degreasing processes using VOC-containing solvents. Although the division currently does not contain a statement of applicability, the division prescribes operating requirements and equipment specifications for reducing VOC emissions resulting from degreasing processes. Regulating those processes using materials other than those containing VOC is not necessary since there would be no resulting VOC emissions.

The commission proposes new subsection (b) to state that unless specifically defined in the Texas Clean Air Act or in 30 TAC §§3.2, 101.1, or 115.10, the terms in this division have the meanings commonly used in the field of air pollution control. Currently, there are no definitions located in the division and the absence of a definition section could imply that no applicable definitions exist. The majority of the terms that are unique to degreasing processes are located in §101.1. Since the definitions in §101.1 apply to more rules than just the rules in Chapter 115 and to avoid duplicative definitions, the commission is proposing to simply reference §§3.2, 101.1, and 115.10 in subsection (b).

Section 115.411, Exemptions

The commission proposes new §115.411 to list the exemptions that apply to the owner or operator of degreasing processes subject to this division. The exemptions were simply moved from §115.417 to §115.411 to improve usability, consistent with other divisions in the chapter and only minor, non-substantive revisions necessary to conform to Texas Register formatting guidelines are proposed to the existing language currently located in §115.417, which is currently proposed for repeal.

Section 115.415, Testing Requirements

The proposed changes to paragraph (1)(B) would specify that the test methods to which minor modifications can be made are in paragraph (1)(A). The proposed revisions in paragraph (1)(B) would accommodate the addition of the testing option proposed in paragraph (1)(C) since subparagraph (B) would not apply to

proposed paragraph (1)(C) and (D). The proposed testing requirements in paragraphs (1)(C) and (D) would apply to all areas currently affected by paragraph (1).

The proposed rulemaking would add paragraph (1)(C) to allow the owner or operator of cold solvent cleaning to rely on standard reference materials for the true vapor pressure of each VOC to demonstrate compliance with the vapor pressure control requirements in §115.412(1) instead of requiring the use of one of the approved ASTM International Test Methods listed in paragraph (1)(A). The commission expects that relying on this type of information is adequate to verify the vapor pressure of a degreasing solvent. Allowing owners and operators to choose this option reduces the compliance burden while maintaining the effectiveness of the rule. The commission invites comment on the effectiveness of this alternative testing option.

Similarly, the proposed changes would add paragraph (1)(D) to allow the owner or operator to use analytical data from the degreasing solvent supplier or manufacturer's material safety data sheet to demonstrate compliance with the vapor pressure control requirements in §115.412(1) instead of requiring the use of one of the approved ASTM Methods listed in paragraph (1)(A). The commission expects that relying on this type of information is adequate to verify the vapor pressure of a degreasing solvent. Allowing owners and operators to choose this option reduces the compliance burden while maintaining the effectiveness of the rule.

Section 115.416, Recordkeeping Requirements

The proposed rulemaking modifies paragraph (3) to replace the word "operation" with the word "process" because the regulations of this division reference degreasing processes, not degreasing operations. The proposed rulemaking would update the exemption section reference from §115.417(5) to §115.411(5) since the existing exemptions are being proposed in new §115.411. These changes are not intended to change the meaning or applicability of paragraph (3).

The propose paragraph (4) to require degreasing processes in the DFW area to sufficiently demonstrate continuous compliance with the conditions listed in paragraph (4)(A) and (B). The existing recordkeeping requirements in §115.416 do not contain provisions requiring owners and operators in the DFW area to maintain records demonstrating compliance with the vapor pressure testing in §115.415 or the exemptions in existing §115.417. Owners and operators could be expected to present records containing sufficient information or data to the appropriate authorities upon request. Under this division, similar records are required to be maintained for other degreasing processes and for other geographic locations subject to this rule. The proposed requirement is not intended to impose a burden on owners and operators and the commission anticipates the proposed recordkeeping would minimize the impact to affected sources in the instance documentation. This requirement would ensure the state has adequate information to determine compliance with the rules. The records that are currently required to be kept under this section must be retained for at least two years, which is consistent throughout the Chapter 115, Subchapter E rules. Accordingly, the records proposed in subparagraphs (A) and (B) are required to be maintained for two years. The proposed requirement only applies to the DFW area and not to any of the other areas listed in this rule. The commission invites comment on recordkeeping sufficient to demonstrate compliance with the applicable control requirements and exemptions for degreasing processes.

Proposed paragraph (4)(A) would impose recordkeeping for degreasing processes in the DFW area sufficient to demonstrate compliance with the vapor pressure requirements specified in §115.415(1). The testing requirements contained in §115.415(1) prescribe the appropriate ASTM methods for owners and operators of cold solvent degreasing processes to conduct to determine the vapor pressure of degreasing solvents to then determine whether the conditions of §115.412(1) have been met.

Proposed paragraph (4)(B) would impose recordkeeping for degreasing processes in the DFW area sufficient to demonstrate compliance with the applicable exemptions in §115.411.

§115.417, Exemptions

The commission proposes to repeal this section and re-locate the existing exemptions to proposed new §115.411.

Section 115.419, Counties and Compliance Schedules

The commission proposes to add subsection (d) to specify that compliance with the division for owners and operators in Wise County would be required no later than January 1, 2017. The compliance date would provide affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The commission proposes to add subsection (e) to require an owner or operator in the DFW area that becomes subject to the requirements of this division after the applicable compliance dates specified in subsections (a), (c), or (d) to comply with the requirements in the division no later than 60 days after becoming subject. Proposed subsection (e) would be consistent with the compliance schedule format adopted in other Chapter 115 rules. The commission expects that 60 days is an adequate amount of time for newly affected owners and operators to comply with the rule requirements. Owners and operators affected by proposed subsection (e) would include those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption.

Proposed subsection (f) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each degreasing process would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter E, Solvent-Using Processes

Division 2, Surface Coating Processes

For certain surface coating categories regulated under this division, the applicability would not be extended to Wise County for reasons explained in other portions of this Section by Section Discussion. Shipbuilding and ship repair coating, wood furniture coating, wood parts and products, vehicle refinishing (body shop), and mirror backing coating categories would not affect Wise County.

In some instances, the commission proposes adding Wise County to the surface coating processes rule applicability in Subchapter E, Divisions 2 and 5 to mitigate the administrative burden for an owner or operator when determining whether a coating process is required to comply with the rule requirements.

As part of this rulemaking, many changes are proposed to update rule citations, including those for tables and equations, that have been renumbered as a result of the reorganization and consolidation of existing requirements proposed in §§115.420, 115.421, and 115.427. These updates are only for purposes of referencing the correct citations and are not intended to substantively change any existing requirements. Each occurrence is not explicitly discussed; only revisions proposed to the content of the tables and equations are discussed.

Section 115.420, Surface Coating Definitions

The proposed rulemaking would change the section title from "Surface Coating Definitions" to "Applicability and Definitions" to reflect the incorporation of the applicability into this section. Currently, this division does not have a designated portion of the rule that clearly conveys the applicability. Establishing the applicability would ensure that internal and external users are able to easily access the information necessary to determine how each surface coating process is affected by the division.

The commission proposes reorganizing this section to accommodate the inclusion of the applicability for the rules in this division. Proposed subsection (a) would state that the owner or operator of a surface coating process in the BPA, DFW, El Paso, HGB areas and in Gregg, Nueces, and Victoria Counties, as specified in proposed §115.420(a)(1) - (16), is subject to this division in accordance with the compliance schedules listed in §115.429. The addition of the rule applicability in proposed subsection (a) is not intended to change the current applicability of these rules. Any changes to the applicability would be separately proposed actions and are discussed elsewhere in this Section by Section Discussion portion of the preamble; the particular changes described here are only to address content formatting.

Proposed subsection (a)(1) would state that the requirements in this division apply to large appliance coatings in the BPA and El Paso areas and in Gregg, Nueces, and Victoria Counties. Large appliance coating in the DFW and HGB areas is covered under Subchapter E, Division 5.

Proposed subsection (a)(2) would state that the requirements in this division apply to metal furniture coatings in the BPA and El Paso areas and in Gregg, Nueces, and Victoria Counties. Metal furniture coating in the DFW and HGB areas is covered under Subchapter E, Division 5. The commission proposes subsection (a)(3) to state that the requirements in this division apply to coil coating in the BPA, DFW, El Paso, and HGB areas and in Gregg, Nueces, and Victoria Counties.

Proposed subsection (a)(4) would state that the requirements in this division apply to paper coating in the BPA, DFW, El Paso, and HGB areas and in Gregg, Nueces, and Victoria Counties. In the DFW and HGB areas, applicability would be determined by the VOC emissions from each individual paper coating line. Proposed subparagraph (A) would specify that each paper coating lines in the DFW and HGB areas that has the PTE less than 25 tpy of VOC is subject to this division. Proposed subparagraph (B) specifies that each paper coating line in the DFW and HGB areas that has the PTE equal to or greater than 25 tpy of VOC would be subject to the requirements in Subchapter E, Division 5.

Proposed subsection (a)(5) would state that the requirements in this division apply to fabric coating in the BPA, DFW, El Paso, and HGB areas and in Gregg, Nueces, and Victoria Counties. Proposed subsection (a)(6) would state that the requirements in this division apply to vinyl coating in the BPA, DFW, El Paso, HGB areas and in Gregg, Nueces, and Victoria Counties. Proposed subsection (a)(7) would state that the requirements in this division apply to can coating in the BPA, DFW, El Paso, and HGB areas and in Gregg, Nueces, and Victoria Counties.

Proposed subsection (a)(8) would state that the requirements in this division apply to automobile and light-duty truck coating in the BPA, El Paso, and HGB areas. Automobile and light-duty truck coating in the DFW area is covered under the rules in Subchapter E, Division 5.

Proposed subsection (a)(9) would state that the requirements in this division apply to vehicle refinishing coating in the DFW area, except in Wise County, and in the El Paso and HGB areas. The vehicle refinishing coating rules currently do not apply in the BPA area or in Gregg, Nueces, and Victoria Counties. The commission is not proposing to expand the applicability to include Wise County for this surface coating category because in the available data relied upon for this portion of the rulemaking, as described in the Background and Summary of the Factual Basis for the Proposed Rules section of this preamble, there were no sources identified. RACT is required for vehicle refinishing, which is an ACT emission source category, by the FCAA for sources that have the PTE equal to or greater than 100 tpy of VOC.

Proposed subsection (a)(10) would state that the requirements in this division apply to miscellaneous metal parts and products coating in the DFW area, except in Wise County, and the El Paso and HGB areas and in Gregg, Nueces, and Victoria Counties. The commission also proposes to include that this division only applies to designated on-site maintenance shops for the DFW and HGB areas, as specified in the existing exemption in §115.427(a)(8), proposed as §115.427(8).

Proposed subsection (a)(11) would state that the requirements in this division apply to factory surface coating of flat wood paneling in the BPA, DFW, and El Paso area, and the HGB area and in Gregg, Nueces, and Victoria Counties. The commission is proposing to include Wise County in the applicability for this CTG emission source category for administrative convenience purposes only. The commission's review of available data reveals no affected sources in Wise County or in any of the other nine counties in the DFW area. The commission continues to make a negative declaration for the flat wood paneling coating 2006 CTG (EPA-453/R-06-004) emission source category because no sources were identified in the DFW area that perform this type of coating process (see DFW 2008 Eight-Hour Ozone Attainment Demonstration SIP Revision (2013-015-SIP-NR) for more information).

Proposed subsection (a)(12) would state that the requirements in this division apply to aerospace coating in the BPA, DFW, El Paso, and HGB areas and in Gregg, Nueces, and Victoria Counties. Proposed subsection (a)(13) would state that the requirements in this division apply to mirror backing coatings in the BPA area, the DFW area, except in Wise County, and the El Paso and HGB areas. Mirror backing coating is not a CTG emission source category and in order to fulfill RACT requirements, the state is only obligated to implement RACT for major sources of mirror backing coating. No major sources performing wood parts and products coating were identified in Wise County; therefore, the commission is providing a negative declaration for this emission

source category (see DFW 2008 Eight-Hour Ozone Attainment Demonstration SIP Revision (2013-015-SIP-NR) for more information).

Proposed subsection (a)(14) would state that the requirements in this division apply to wood parts and products coatings in the DFW, El Paso, and HGB areas. The commission is not proposing to include Wise County in the applicability for this coating category since this rule was adopted for Rate of Progress SIP purposes. Wood parts and products is not a CTG emission source category and in order to fulfill RACT requirements, the state is only obligated to implement RACT for major sources of wood parts and products coating. No major sources performing wood parts and products coating were identified in Wise County; therefore, the commission is providing a negative declaration for this emission source category (see DFW 2008 Eight-Hour Ozone Attainment Demonstration SIP Revision (2013-015-SIP-NR) for more information).

Proposed subsection (a)(15) would state that the requirements in this division apply to wood furniture manufacturing coatings in the DFW area, except in Wise County, and the El Paso and HGB areas. The commission is proposing to provide a negative declaration for the wood furniture manufacturing coating CTG emission source category because the threshold is 25 tpy of VOC emissions. There were no affected sources identified in Wise County that perform this type of coating process (see DFW 2008 Eight-Hour Ozone Attainment Demonstration SIP Revision (2013-015-SIP-NR) for more information).

Proposed subsection (a)(16) would state that the requirements in this division apply to marine coatings in the BPA and HGB areas. The commission continues to make a negative declaration for this emission source category because there were no affected sources identified in the DFW area that perform this type of coating process (see DFW 2008 Eight-Hour Ozone Attainment Demonstration SIP Revision (2013-015-SIP-NR) for more information).

To accommodate the proposed applicability in subsection (a), the commission is proposing to re-letter existing subsections (a) and (b) as subsections (b) and (c), respectively. The commission proposes to delete the "Vehicle coating" catchline in existing subsection (b)(12), renumber subsection (b)(12)(A) as subsection (c)(12), and re-letter subsection (b)(12)(A)(i) and (ii) as subsection (c)(12)(A) and (B), respectively. Proposed paragraph (12) contains the definitions for automobile and light-duty truck manufacturing coating. Similarly, existing subsection (b)(12)(B) is proposed as subsection (c)(13), and subsection (b)(12)(B)(i) - (ix) is proposed as subsection (c)(13)(A) - (I), respectively. Proposed subsection (c)(13) contains the definitions for vehicle refinishing (body shops). These are two different coating categories with separate requirements in the division and do not share any of the same specialty definitions within existing subsection (b)(12). The proposed changes would allow users to more easily navigate through the definitions and more appropriately mirror the formatting scheme of the other coating categories in this section and in the Subchapter E, Division 5 surface coating definition section.

Existing subsection (b)(13) is being proposed as subsection (c)(14). Existing paragraph (13) defines vinyl coating. This change is necessary as a result of the renumbering of other definitions in this section.

The commission proposes to delete the "Wood parts and products coating" catchline in existing subsection (b)(14). Existing subsection (b)(14)(A) is proposed as subsection (c)(15), and existing clauses (i) - (xi) are proposed as paragraphs (A) - (K). Proposed subsection (c)(15) contains the definitions for wood parts and products coating facilities that are subject to proposed §115.421(14). Similarly, existing subsection (b)(14)(B) is proposed as subsection (c)(16), and existing clauses (i) - (xix) are proposed as subparagraphs (A) - (S). Proposed subsection (c)(16) contains definitions for wood furniture manufacturing facilities subject to proposed §115.421(15). These are two different coating categories with separate requirements in the division that do not share any of the same specialty definitions within existing subsection (b)(14). The proposed changes would allow users to more easily navigate through the definitions and more appropriately mirror the formatting scheme of the other coating categories in this section and in the Subchapter E, Division 5 surface coating definition section.

Section 115.421, Emission Specifications

The commission proposes removing the existing subsection (a) designation to accommodate the proposed deletion of existing subsection (b) and to conform to *Texas Register* formatting guidelines. Proposed changes to subsection (a) remove reference to the areas affected by this section and state that the owner or operator of the surface coating processes specified in §115.420(a) shall not cause, suffer, allow, or permit VOC emissions to exceed the emission limits in proposed paragraphs (1) - (16), which are existing paragraphs (1) - (15). The citations in existing subsection (a) are also updated to correspond to the proposed numbering scheme. Finally, the commission proposes correcting the definition citation from §115.420(b)(1)(XX) to §115.420(c)(1)(YY). The current citation erroneously references "Mold release" instead of "Monthly weighted average."

The proposed rulemaking would renumber the existing paragraphs in subsection (a) to accommodate the consolidation of subsections (a) and (b). Since the requirements for the surface coating categories regulated in subsection (b) are identical to those in subsection (a), the commission is proposing to delete subsection (b) and to include Gregg, Nueces, and Victoria Counties in the subsection (a) rules.

Existing subsection (a)(9) - (11) are being proposed as paragraphs (8) - (10), respectively. The commission proposes deleting the content of existing paragraph (8), dividing the two surface coating categories comprising existing paragraph (8), and renumbering as paragraphs (11) and (12) for automobile and light-duty truck surface coating and vehicle refinishing surface coating (body shops), respectively. Existing subsection (a)(12) - (15) are proposed as paragraphs (13) - (16), respectively. In addition, the existing tables containing the VOC emission limits for the paragraphs that are being renumbered in this rulemaking are also being renumbered accordingly. The renumbering of the paragraphs in this section allows all of the coating categories affecting Gregg, Nueces, and Victoria Counties to be in uninterrupted numerical order since these three counties are not subject to all of the surface coating category rules.

The commission is proposing to modify existing paragraph (7). The paragraph erroneously describes the units of the VOC emission limits as solvent content per gallon of coating; however, the table listing the emission limits includes both pounds of VOC per gallon and kilogram of VOC per liter. For this reason, proposed revisions would specify that the basis of the VOC emission limits in this paragraph is solvent "VOC" content per "unit volume."

Another change that would be made to this section in each instance it occurs without explicit discussion is the deletion of the geographic locations that are specifically listed in a paragraph to indicate that the applicability for a certain surface coating process is different than for the other processes regulated in the section. This modification is being proposed for existing paragraphs (13) - (15), which are proposed as paragraphs (14) - (16), respectively, as a result of the proposed addition of the comprehensive rule applicability for each surface coating category as §115.420(a). The inclusion of areas affected in individual paragraphs is no longer necessary.

The current rule structure combines automobile and light-duty truck surface coating and vehicle refinishing surface coating in paragraph (8). However, the proposed rulemaking would separate these two vehicle surface coating processes since there are no common rule requirements between the two and the other surface coating processes in the division are proposed to be regulated in individual paragraphs. The proposed applicability in §115.420(a) would also reserve separate paragraphs for the two processes. The automobile and light-duty truck surface coating is proposed as paragraph (11) and vehicle refinishing is proposed as paragraph (12). The requirements in each of the paragraphs are not being amended.

Proposed amendments to existing paragraph (9)(A), being proposed as paragraph (8)(A), would create a table to display the VOC emission limits for miscellaneous metal parts and products coating. The proposed revisions would delete the clauses in existing subparagraph (A), which list the emission limits in tabular format. The proposed table improves readability of the rule by presenting the data more clearly and concisely. The table would contain the same coating types and VOC limits, in both pound per gallon (lb/gal) and kilogram per liter (kg/liter), as in existing subparagraph (A).

Proposed paragraph (11) incorporates the emission specifications for automobile and light-duty truck manufacturing coating from existing paragraph (8)(A). The existing paragraph (11) is being proposed as paragraph (10). No changes are proposed to the content of the paragraph. As discussed elsewhere in this Section by Section, this change is part of the reorganization of this division and combines all of the surface coating categories affecting Gregg, Nueces, and Victoria Counties, which comprise existing subsection (b), in uninterrupted numerical order.

Proposed paragraph (12) incorporates the emission specifications for vehicle refinishing coating (body shops) from existing paragraph (8)(B). The existing paragraph (12) is being proposed as paragraph (13). The commission proposes to add a table displaying the coating VOC emission limits. The proposed table improves readability of the rule by presenting the data more clearly and concisely. No other substantive changes are proposed to the content of the paragraph. As discussed elsewhere in this Section by Section Discussion portion of the preamble, this change is part of the reorganization of this division.

Proposed amendments to existing paragraph (13), being proposed as paragraph (14), would create a table to display the VOC emission limits for the surface coating of wood parts and products. The proposed revisions would delete the clauses in existing subparagraph (A), which list the emission limits in tabular format. The proposed table improves readability of the rule by presenting the data more clearly and concisely. The table would contain the same coating types and VOC limits, in both lb/gal and kg/liter, as in existing subparagraph (A).

The commission also proposes to move the contents of existing paragraph (13)(B) to paragraph (14), delete the contents of existing paragraph (13)(C), and eliminate paragraph (13)(B) and (C). The relocation of the contents in subparagraph (B) would conform to Texas Register formatting since both subparagraphs (A) and (C) are being proposed for deletion.

The proposed deletion of existing paragraph (13)(C) would eliminate the compliance option that states the alternate control requirements in §115.423(3) do not apply if a vapor control system is used to control emissions from wood parts and products coating operations in addition to all wood parts and products coatings complying with the emission limits in existing subparagraph (A). Providing this option is not necessary since an owner or operator meeting the requirements in clause (ii) would already satisfy compliance with the rule and thus would not need to comply with §115.423(3). The commission invites comment on whether this provision is still a necessary compliance option to provide for wood parts and products coating processes.

The commission proposes to amend existing subsection (a)(15)(B)(ii), being proposed as paragraph (16)(B)(ii), to include the description of the variable V_s in this equation, which is the volume fraction of solids in the batch in liter of solids per liter of coating, within the figure itself.

The commission proposes to delete the entire subsection (b) and integrate the requirements for Gregg, Nueces, and Victoria Counties with the requirements for the BPA, DFW, El Paso, and HGB areas. Since the requirements for the surface coating categories applicable to just Gregg, Nueces, and Victoria Counties, the commission is proposing to delete subsection (b) and to include Gregg, Nueces, and Victoria Counties in the subsection (a) rules.

Section 115.422, Control Requirements

The proposed rulemaking would revise to state that the owner or operator of a surface coating process in Gregg, Nueces, and Victoria Counties shall comply with the requirements in paragraph (5). The requirements in paragraph (5) apply to aerospace coating processes. The existing rule does not prescribe any requirements for Gregg, Nueces, and Victoria Counties in this section; however, the existing emission specifications in §115.421(b) refers owners and operators to this section to comply with the particular control requirements in paragraph (5). Since the existing emissions specifications in §115.421(b) are being deleted along with the reference to paragraph (5), the commission proposes to indicate at the beginning of the section that the requirements of paragraph (5) apply to affected owners and operators in Gregg, Nueces, and Victoria Counties.

Although this section is being proposed to include Gregg, Nueces, and Victoria Counties, paragraph (6) would only continue to apply to the BPA, DFW, El Paso, and HGB areas. The emission specification citations would be updated from §115.421(a) to §115.421 and the exemption citations would be updated from §115.427(a) to §115.427.

Similarly, proposed changes to paragraph (6)(A) would update the rule citations to correctly match the rule being referenced, which are being renumbered due to the reorganization of that section. The emission specification citations would be updated from §115.421(a) to §115.421 and the exemption citations would be updated from §115.427(a) to §115.427.

Proposed changes to paragraph (7) would eliminate the March 1, 2013 compliance date for paper surface coating lines in the DFW and HGB areas that are subject to this division. The compliance date has already passed and is now obsolete.

Section 115.423, Alternate Control Requirements

The commission proposes revising the equation in paragraph (3)(A) to correct the coating content units for variable VOC_a, the VOC content of the coatings used on the coating line expressed on a pounds of VOC per gallon of solids basis. In the existing rule, the variable is defined as pounds of VOC per gallon of coating, but in order for the required overall control efficiency, represented as variable E, to be correctly calculated, VOC_a needs to be defined as pound of VOC per gallon of solids basis. This rule change is not anticipated to impact any current users of this option since the commission expects that an owner or operator choosing this compliance route is already calculating on a solids basis to yield the correct value.

Section 115.425, Testing Requirements

In addition to updating cross-references based on the proposed renumbering in §115.421, the commission proposes various non-substantive formatting and stylistic changes to §115.425 consistent with commission and *Texas Register* guidelines.

Section 115.426, Monitoring and Recordkeeping Requirements

In addition to updating cross-references based on the proposed renumbering in §115.421, the commission proposes various non-substantive formatting and stylistic changes to §115.425 consistent with commission and Texas Register guidelines.

The proposed changes to paragraph (1)(C) and (D) would update the existing language to accommodate the formatting changes proposed for the entire paragraph. Proposed changes to paragraph (1)(D) would also clarify that the local air pollution control agency must have jurisdiction to request records maintained by affected owners and operators. The proposed minor change to paragraph (2)(C) adds language to ensure any local air pollution control agency has jurisdiction when requesting records.

Section 115.427, Exemptions

The commission proposes to consolidate the exemptions for all of the areas affected by this section. As a result, the contents of this section would be significantly reorganized, improving the readability. The commission is proposing to state the areas affected by each exemption that does not apply to all areas, so that owners and operators are able to easily determine the applicable exemptions. The changes in this section are not intended to alter the processes or activities for which an exemption is provided.

Proposed revisions to paragraph (1) specify that miscellaneous metal parts and products surface coating emission specifications in proposed revised §115.421(8) is the emission source category being referred to, instead of only citing the rule reference.

Proposed changes to paragraph (1)(B) and (C) delete reference to the vehicle refinishing and ships and offshore oil or gas drilling platforms emission specifications. These subparagraphs currently state that these two coating processes are exempt from the miscellaneous metal parts and products surface coating emission specifications except as required by §115.421(a)(8)(B) and (C) and (15). However, these references are not necessary since the emission specifications for these two rule categories do not state any instances in which the miscellaneous metal parts and products emission specifications apply. The proposed changes to this exemption result in an exemption worded similarly to existing subsection (b)(2) for Gregg, Nueces, and Victoria Counties. The commission solicits comment on any instance in which duplicative applicability occurs for the coating of miscellaneous metal parts and products due to deleting these references to the vehicle refinishing and ships and offshore oil or gas drilling platforms.

Also, in paragraph (1)(B) and (C), the areas for which the exemption applies are listed because the two coating categories in subparagraphs (B) and (C) do not apply in the other areas listed for regulation in this section. Proposed changes would renumber existing paragraphs (7) and (8) as paragraphs (8) and (9), respectively. Proposed paragraph (7) would exempt surface coating operations located at any property in Gregg, Nueces, and Victoria Counties that when uncontrolled, will emit a combined weight of VOC less than 550 pounds in any continuous 24-hour period from §115.421. 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(1) - (10), which are the categories that apply in these three counties. 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. This exemption is identical to the exemption in existing subsection (b)(1) and is only being relocated as a result of the proposed consolidation of existing subsections (a) and (b).

The commission proposes to revise the exemption in existing paragraph (7), proposed as paragraph (8), to delete the date that this paragraph began to apply since the date has already passed and the exemption now applies.

Existing paragraph (8) is being proposed as paragraph (9) and exempts miscellaneous metal parts and product coating processes in Wise County from this division. This exemption was adopted during the 2011 rulemaking (Rule Project No. 2010-016-115-EN) to no longer require designated on-site maintenance shops to comply with the miscellaneous metal parts and products rule requirements that were not already subject to the requirements. However, because Wise County has not previously been included in the applicability for the miscellaneous metal parts and products rule in Division 2, the commission is proposing to only require affected owners and operators that meet the applicability in the Division 5 rule to comply with the Division 5 rule. No part of the Division 2 miscellaneous metal and plastic parts coating rule is proposed to apply in Wise County.

Existing exemptions in subsection (b) are being proposed for relocation into proposed designated subsection (a). The contents of existing paragraph (1) would become paragraph (7). Existing paragraphs (2) and (3) would be incorporated into proposed paragraphs (1) and (2). The exemptions for Gregg, Nueces, and Victoria Counties are not intended to be altered. Finally, existing paragraph (4) is identical to the exemption provided in proposed paragraph (6).

Section 115.429, Counties and Compliance Schedules

Proposed revisions to subsection (a) add Ellis, Johnson, Kaufman, Parker, and Rockwall to the list of counties for which the compliance date has already passed. Because Ellis, Johnson, Kaufman, Parker, and Rockwall Counties are proposed for inclusion in subsection (a), the commission proposes deleting sub-

section (b). Accordingly, existing subsections (c) and (d) are proposed as subsections (b) and (c), respectively. Additionally, proposed subsection (c) excludes Wise County since this compliance date is already passed and would not apply.

The commission proposes to add subsections (d) and (e). Proposed subsection (d) would specify that compliance with the division for owners and operators in Wise County is required no later than January 1, 2017. The compliance date would provide affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The commission proposes subsection (e) to require an owner or operator in the DFW area that becomes subject to the requirements of this division after the applicable compliance dates to comply with the requirements in the division no later than 60 days after becoming subject. Proposed subsection (e) would be consistent with the compliance schedule format adopted in other Chapter 115 rules. The commission expects that 60 days is an adequate amount of time for newly affected owners and operators to comply with the rule requirements. Owners and operators affected by proposed subsection (e) would include those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption.

Proposed subsection (f) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each surface coating process would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter E, Solvent-Using Processes

Division 4, Offset Lithographic Printing

Although the commission did not identify sources that would be directly affected by the requirements proposed in Wise County, the exemption level in the current rule would impact sources that emit less than the reporting level required by the agency, making a negative declaration not possible. Additional information is provided in other portions of this preamble.

Section 115.440, Applicability and Definitions

The commission proposes revising the definition of "Major printing source" in subsection (b)(8)(A) to incorporate the major source emissions threshold for offset lithographic printers in Wise County because the major source definition for Wise County is different than the major source definition for the other nine DFW counties. Specifically, the commission proposes revising subsection (b)(8)(A) to exclude Wise County from the DFW area and proposes paragraph (8)(C) to define a major printing source in Wise County as all offset lithographic printing lines located on a property with combined uncontrolled emissions of VOC greater than or equal to 100 tons of VOC per calendar year.

The commission also proposes revising the definition of "Minor printing source" in subsection (b)(9)(A) to incorporate the minor source emissions threshold for offset lithographic printers in Wise County because the minor source definition for Wise County is different than the minor source definition for the other nine DFW counties. Specifically, the commission proposes revising subsection (b)(9)(A) to exclude Wise County from the DFW area and proposes paragraph (9)(C) to define a minor printing source in Wise County as all offset lithographic printing lines located on a property with combined uncontrolled emissions of VOC less than 100 tons of VOC per calendar year.

Section 115.441, Exemptions

The exemptions that currently apply to minor printing sources, as defined in §115.440, are proposed to apply to both minor and major printing sources in Wise County. These exemptions were adopted during a previous rulemaking (Rule No. 2008-019-115-EN) only for minor printing sources in the DFW and HGB areas because major printing sources in the DFW and HGB areas were already required to be in compliance with the rules which exemptions were being provided for, prior to that rulemaking.

Proposed revisions to subsection (b) would specify that the owner or operator of a major printing source qualifies for the listed exemptions, in addition to minor printing sources. Major printing sources are defined in §115.440 as all offset lithographic printing lines located on a property with combined uncontrolled emissions of VOC greater than or equal to 100 tpy of VOC per calendar year in Wise County.

The exemption in subsection (b)(1) is proposed for deletion since this exemption has expired. Accordingly, existing subsection (b)(2) - (4) is proposed as subsection (b)(1) - (3), respectively. No changes were proposed to the contents of these exemptions.

The proposed rulemaking would delete the existing contents in subsection (c), which exempts offset lithographic printers in the DFW and HGB areas from §115.442(a) and §115.446(a) beginning March 1, 2011. The printers that were once covered by this exemption are no longer affected by the requirements in §115.442(a) and §115.446(a), rendering this exemption obsolete with the passing of the March 1, 2011 date. As part of this rulemaking, the commission is concurrently proposing revisions to remove reference to the DFW and HGB areas in subsections §115.442(a) and §115.446(a).

Section 115.442, Control Requirements

The commission proposes revising subsection (a) to delete the DFW and HGB areas from the rule applicability of this subsection and to delete the language that indicates beginning March 1, 2011 this subsection no longer applies in these two areas. This language was adopted as part of a previous rulemaking to ensure printers in the DFW and HGB areas were only subject to one set of control requirements. This language is now obsolete; beginning March 1, 2011, this subsection ceased to apply in the DFW and HGB areas and subsection (b) and (c) began to apply.

Proposed revisions to subsection (b) delete reference to the specific compliance dates in existing §115.449(e) and (g) and instead reference §115.449, the "Counties and Compliance Schedules" section. The compliance date in §115.449(e) has already passed and the compliance date in §115.449(g) indicates when affected printers which become subject to the requirements after any of the stated compliance dates must comply with the rules. Generally referencing §115.449 suffi-

ciently directs owners and operators to the correct section to determine the appropriate compliance date for their process.

Proposed revisions to subsection (c) delete reference to the specific compliance dates in §115.449(f) and (g) and instead reference §115.449, the "Counties and Compliance Schedules" section. The compliance date in §115.449(f) has already passed and the compliance date in §115.449(g) indicates when affected printers that become subject to the requirements after their compliance date must comply with the rules. Generally referencing §115.449 sufficiently directs owners and operators to the correct section to determine the appropriate compliance date for their process.

Section 115.446, Monitoring and Recordkeeping Requirements

Proposed revisions to subsection (a) remove the DFW and HGB areas from the rule applicability and delete the language that indicates beginning March 1, 2011 this subsection no longer applies in these two areas. This language was adopted as part of a previous rulemaking to make clear that printers in the DFW and HGB areas were only subject to one set of monitoring and recordkeeping requirements. This language is now obsolete; beginning March 1, 2011, this subsection ceased to apply in the DFW and HGB areas and subsection (b) began to apply. Proposed revisions to subsection (b) delete reference to the specific compliance dates in existing §115.449(e) - (g) and instead reference §115.449, the "Counties and Compliance Schedules" section. The compliance dates in §115.449(e) and (f) have already passed and the compliance date in §115.449(g) indicates when affected printers which become subject to the requirements after any of the stated compliance dates must comply with the rules. Generally referencing §115.449 sufficiently directs owners and operators to the correct section to determine the appropriate compliance date for their process.

Section 115.449, Compliance Schedules

Proposed modifications to subsection (a) replace El Paso County with El Paso area since this is the term used throughout the rule and is the defined term in §115.10. This change is meant to make the terminology consistent throughout the rules in Chapter 115 and is not intended to substantively alter the applicability for El Paso since the El Paso area is comprised of El Paso County.

The commission proposes deleting a portion of existing subsections (e) and (f) to exclude Wise County from this compliance schedule. Although Wise County is now part of the DFW area, sources in Wise County affected by this current rulemaking were not required to be in compliance by March 1, 2011, as stated in existing subsection (e). The March 1, 2011 compliance date applied to revisions affecting the nine DFW counties comprising the 1997 eight-hour ozone nonattainment area as part of a previous rulemaking.

The commission proposes subsection (g) to establish the compliance schedule for offset lithographic printers in Wise County. Beginning January 1, 2017, all affected offset lithographic printers, both minor and major printing sources, would be required to be in compliance with the appropriate RACT requirements. The compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The commission proposes re-lettering subsection (g) as subsection (h) and to incorporate proposed subsection (g) indicating that an owner or operator in Wise County that becomes subject to the requirements of this division on or after January 1, 2017, which is specified in proposed subsection (g), has 60 days to comply. This is consistent with the requirements of the existing rule.

Proposed subsection (i) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each offset lithographic printing line would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter E, Solvent-Using Processes

Division 5, Control Requirements for Surface Coating Processes

The proposed rulemaking would expand the applicability of all surface coating categories covered by the Division 5 rules to include Wise County. The commission did not identify any paper, film, and foil coating lines meeting the applicability threshold or any large appliance coating sources in the available data relied upon for this portion of the rulemaking, as described in the Background and Summary of the Factual Basis for the Proposed Rules section of this preamble. Although no sources were identified, these rules are being proposed to apply in Wise County for administrative convenience, the same approach implemented in the surface coating rules in Subchapter E, Division 2.

Because this division applies in the DFW and HGB areas, some of the changes proposed may affect both of these areas. Many changes are proposed to the Subchapter E, Division 2 rules to reorganize and consolidate existing requirements. As a result of these changes, the commission is proposing to update the citations in this division that reference the Division 2 rules. The updates in these instances are only for purposes of referencing the correct citations and are not intended to substantively change any existing requirements. Each occurrence is not explicitly discussed.

Section 115.450, Applicability and Definitions

The proposed change to subsection (a)(3) adds the word "surface" to the miscellaneous plastic parts and products coating applicability for consistency with the use of terminology throughout this division. This change is not intended to substantively change the applicability of this paragraph.

The commission proposes changes to subsection (a)(4) to clarify that motor vehicle materials applied to miscellaneous metal and plastic parts specified in subsection (a)(3) applied at the original equipment manufacturer, off-site job shops that coat new parts and products, and that re-coat used parts and products are all subject to the requirements in this division. The existing applicability, adopted during the December 2011 RACT rulemaking (2010-016-115-EN), includes coatings applied at the original equipment manufacturer and at off-site job shops that coat new parts and products. The Section by Section Discussion sec-

tion for December 2011 rulemaking describes the applicability for motor vehicle materials as the proposed changes are described in this Section by Section Discussion section of this preamble; however, off-site job shops that re-coat used parts and products were excluded from the 2011 adopted rule, implying these processes are not covered. To ensure RACT is implemented for the motor vehicle material portion of the miscellaneous metal parts and products coating CTG category, the commission is proposing to clarify the intended applicability by adding the re-coating of used parts and products into paragraph (4) as a regulated process coating in this division.

Proposed changes to the equation in subsection (b)(12) would correctly subscript the variables. There are no substantive changes being made to this equation.

The commission proposes subsection (c)(2)(B) to add a definition for "Automotive/transportation plastic parts." For purposes of this division, an automotive/transportation plastic part is defined as the interior and exterior plastic components of automobiles, trucks, tractors, lawnmowers, and other mobile equipment. The commission adopted rules for this category in the December 2011 rulemaking (2010-016-115-EN) and relied largely on the recommendations in the EPA's 2008 Miscellaneous Metal and Plastic Parts CTG to establish the definitions for automotive/transportation plastic parts in these Division 5 rules, except where discussed in the Section by Section Discussion portion of that rulemaking. To develop the recommendations contained in the 2008 CTG, the EPA relied, at least partially, on its initial guidance document, *Alternative Control Techniques Document: Surface Coating of Automotive/Transportation and Business Machine Plastic Parts* (EPA-453/R-94-017). The recommended definitions in the EPA's 2008 CTG do not include a specific definition of automotive/transportation plastic parts, but the initial guidance document, *Alternative Control Techniques Document: Surface Coating of Automotive/Transportation and Business Machine Plastic Parts* (EPA-453/R-94-017), provides a description of the automotive/transportation sector intended to be covered in the document. Therefore, the commission is proposing to use the description provided in the initial document as the definition in this rule for automotive/transportation plastic parts. During the December 2011 rulemaking, the commission similarly incorporated descriptions of specific solvent-using processes into the respective rules in order to clearly indicate what types of parts or operations are intended to be covered.

As a result of the definition proposed in subsection (c)(2)(B), the commission proposes re-lettering existing subparagraphs (B) - (O) as subparagraphs (C) - (P), respectively. No other changes are proposed to the contents of the definitions in these subparagraphs.

The commission proposes to amend subsection (c)(6)(A) to improve the readability of this definition by removing commas and inserting "and is." This change provides consistency with the other definitions in this paragraph and is not intended to alter the meaning of this definition.

The commission proposes referring to the automobile and light-duty truck manufacturing coating processes throughout the subparagraphs in subsection (c)(6) since this is the defined term. The existing subparagraphs cite automobile and light-duty truck assembly coating processes. The commission also proposes to amend subsection (c)(6)(B) - (E), (G), and (H) to improve the readability of these definitions by inserting the word "is." This change provides consistency among all of the defined terms for the motor vehicle materials emission source category.

Section 115.451, Exemptions

The commission proposes to amend the rule citations referencing the surface coating categories in subsection (a). With the reorganization of the emission specifications in §115.421, the citations would need to be changed to correspond to the correct surface coating paragraphs intended to be included in the calculation described in this subsection. The emission source category paragraphs that are included are §115.421(3) - (7), (9), (10), and (13) - (16). The paper coating category in §115.421(a)(4), being proposed as §115.421(4) as part of this rulemaking, is currently not included in this exemption because it was inadvertently left out during the last rule revisions (Rule Project No. 2013-016-115-EN). However, some sources could still be subject to the paper coating requirements in Subchapter E, Division 2, while subject to Division 5 for another coating process, and therefore should be listed as an affected category. This proposed change would make this exemption consistent with the Division 2 exemption, from which it was derived. The last minor revision proposed for subsection (a) is to correct a comma that was erroneously adopted within the parentheses and should be located after the end parenthesis.

The commission proposes incorporating automotive/transportation and business machine plastic parts surface coating VOC limits in §115.453(a)(1)(E) and pleasure craft surface coating surface coating VOC limits in §115.453(a)(1)(F) into the exemption in subsection (b), which currently only exempts §115.453(a)(1)(C) and (D). Proposed subsection (b) would exempt the surface coating processes listed in subsection (b)(1) - (4) from all of the miscellaneous metal and plastic parts coating processes, including automotive/transportation and business machine plastic parts and pleasure craft coating. This exemption would clarify that any surface coating process regulated under another coating category in Chapter 115, which are those listed in the paragraphs of this subsection, would not be regulated under the automotive/transportation and business machine plastic parts and pleasure craft surface coating processes rules. This subsection was adopted during the December 2011 VOC RACT rulemaking (2010-016-115-EN) and the intent of this exemption is to ensure that a surface coating process is subject to only one set of control requirements.

Proposed revisions to subsection (b)(4) update the surface coating rule references to the surface coating processes specified in §115.420(a)(1) - (9) and (11) - (16). The commission is proposing to reference the applicability in §115.420(a) more appropriately pointing to the type of the process regulated as opposed to the definitions as in existing paragraph (4). The proposed minor change to subsection (j)(5) makes the coating plural instead of singular for consistency with the other surface coatings listed in the subsection.

The commission proposes to revise subsection (k) to exempt ultraviolet (UV) curable coatings applied to metal and plastic parts surface coating processes from the requirements in the division, except for the applicable recordkeeping requirements in §115.458(b)(5). This subsection currently exempts powder coatings, which includes UV curable powder coatings, but not UV curable liquid coatings even though these coatings produce inherently low VOC emissions. The existing exemption for powder coatings was derived from discussion regarding the negligible emissions in the EPA's Miscellaneous Metal and Plastic Parts Coating CTG. The commission requests comment on proposing to include UV curable coatings in this exemption.

In addition, the commission proposes addressing the metal and plastic parts being referred to by rule citation to avoid confusion as to which substrates are covered under this exemption. The December 2011 rulemaking explicitly lists the surface coating categories in §115.453(a)(1)(C) - (F) and (2) as affected by this exemption for powder coatings, and to ensure this is clearly conveyed, the commission is proposing to incorporate §115.453(a)(1)(C) - (F) and (2) in the exemption.

Proposed subsection (p) would exempt adhesives applied to miscellaneous metal and plastic parts listed in §115.453(a)(3) and (4) that meet a specific adhesive or adhesive primer application process definition in §115.470, which are regulated in Table 2 of §115.473(a) are not subject to the requirements in this division. To avoid potential confusion regarding applicability of requirements for adhesives between this division and Subchapter E, Division 7, this proposed exemption clarifies that manufacturers of miscellaneous metal and plastic parts applying any of the specialty adhesives listed in Table 2 of §115.473(a), the VOC limits in the Division 7 would be subject to the requirements in Division 7 for those adhesives, rather than the requirements of Division 5. An adhesive that would meet the contact adhesive definition would not be included in this exemption since these are more general adhesives intended to be regulated under the appropriate miscellaneous metal and plastic parts coating category. This proposed exemption makes clear the commission's intent regarding the applicability of the two divisions and continues to satisfy RACT for both the miscellaneous metal and plastic parts coating category and the miscellaneous industrial adhesives category.

Section 115.453, Control Requirements

The commission proposes to amend subsection (c)(8) by stating that one of the criteria must be met but not both, in order to comply with the surface coating application system requirement of this rule. Paragraph (8) allows an owner or operator to use a coating application system that is not explicitly listed in subsection (c)(1) - (7). The owner or operator may comply by either demonstrating that the coating application system achieves a transfer efficiency equivalent to high volume low pressure spray systems or that the coating application system achieves a transfer efficiency of 65%.

Section 115.459, Compliance Schedules

The commission proposes revising subsection (a) to specify that the compliance schedule pertains to the HGB and DFW areas, but not Wise County. The existing language does not list the areas since the compliance schedule applied to the only two areas subject to the division. Since the applicability of the division has been expanded to include Wise County, it is necessary to list the areas so that all affected owners and operators know which compliance schedule to follow.

Existing subsection (b) is being proposed as subsection (c) to accommodate the compliance schedule proposed as subsection (b) for affected owners and operators in Wise County. The commission proposes subsection (b) to specify that compliance with the division for owners and operators in Wise County would be required no later than January 1, 2017. The compliance date would provide affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The commission proposes to modify existing subsection (c) to include Wise County in the requirement specifying that an owner or operator that becomes subject to the requirements of this division after the applicable compliance dates are required to comply with the requirements in the division no later than 60 days after becoming subject. This compliance requirement is currently in place for affected sources in the other nine DFW counties. The commission expects that 60 days is an adequate amount of time for newly affected owners and operators in Wise County to comply with the rule requirements. Owners and operators affected by proposed subsection (c) would include those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption.

Proposed subsection (d) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each surface coating process would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter E, Solvent-Using Processes

Division 6, Industrial Cleaning Solvents

Section 115.460, Applicability and Definitions

The commission proposes renumbering and various revisions to the definitions in subsection (b). The existing definitions in paragraphs (10) and (11) would be renumbered as paragraphs (11) and (12), respectively. The definitions in this section are not altered in any way other than being renumbered, except where specifically discussed. The changes proposed in this section impact the DFW and HGB areas. The commission solicits comment on any potentially adverse impacts to the HGB area resulting from the proposed changes.

The commission proposes paragraph (10) to define the term "Solvent" to accommodate the revision proposed to the definition of "Solvent cleaning operation." Proposed paragraph (10) states that a solvent is a VOC-containing liquid used to perform solvent cleaning operations. Defining the term helps to clarify that the applicability of this division is limited to VOC solvents used for cleaning and is not intended to affect solvent cleaning operations employing the use of materials containing no VOC. The rules in this division were adopted during the December 2011 VOC RACT rulemaking (2010-016-115-EN) in response to the EPA's 2006 Industrial Cleaning Solvents CTG. The CTG does not contain any recommended definitions for this emission source category so the commission relied on the South Coast Air Quality Management District (SCAQMD) and Bay Area Air Quality Management District (BAAQMD) solvent cleaning rules, as explained in the preamble of the 2011 rulemaking, for definitions related to the industrial cleaning solvents emission source category. Consistent with the other definitions adopted in this division, the commission is proposing to use the definition of *Solvent* from SCAQMD Solvent Cleaning Operations, Regulation XI, Rule 1171, with minor modification for terminology consistency within these rules.

The commission proposes to revise the definition of "Solvent cleaning operation," renumbered as paragraph (11), to clarify that a solvent cleaning operation is one that uses a VOC solvent. The scope of this rule only encompasses operations that remove 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 using a VOC solvent. The existing solvent cleaning operation definition was adopted during the December 2011 VOC RACT rulemaking (2010-016-115-EN), and is derived from the description provided in the EPA's CTG document. The intended purpose of the rules of this division, which are largely based on the recommendations provided in the CTG document, is to control VOC pollution generated from the use of industrial cleaning solvents. The commission did not intend for non-VOC containing materials to be subject to the requirements. This revision to this paragraph serves to clarify, but not change, the cleaning solvent operations regulated in this division. The commission also proposes minor, non-substantive changes to the equation proposed in subsection (b)(12) to correctly subscript the variables.

Section 115.461, Exemptions

The commission proposes revising subsection (a) to add the word "solvent" simply for consistency since the defined term is "solvent cleaning operation." This revision is not intended to alter the meaning of this subsection.

The commission proposes adding the word "aerosol" to the exemption in subsection (e) to clarify that total use refers to total "aerosol" use and not total cleaning solvent use. The commission has received questions from the public regarding the amount of cleaning solvent covered under the exemption, indicating the exemption may not be completely clear. The original exemption was adopted in the December 2011 VOC RACT rulemaking (2010-016-115-EN) and is based on the exemption provided in the SCAQMD Regulation XI, Rule 1171, Section (g)(4). Consistent with exemption in the SCAQMD, the commission's intent is to allow sites to use higher VOC content cleaning solvents in aerosol cans in limited quantities if necessary for situations where low-VOC cleaning solvents may not be as effective, provided the total amount does not meet or exceed 160 fluid ounces per day. Because this division applies to the DFW and HGB areas, this exemption impacts sources in both of these areas.

Section 115.469, Compliance Schedules

The commission proposes revising subsection (a) to specify that the compliance schedule pertains to the HGB and DFW areas, but not Wise County. The existing language does not list the areas since the compliance schedule applied to the only two areas subject to the division. Since the applicability of the division has been expanded to include Wise County, it is necessary to list the areas so that all affected owners and operators know which compliance schedule to follow.

Existing subsection (b) is being proposed as subsection (c) to accommodate the compliance schedule proposed as subsection (b) for affected owners and operators in Wise County. The commission proposes subsection (b) to specify that compliance with the division for owners and operators in Wise County would be required no later than January 1, 2017. The compliance date would provide affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The commission proposes to modify existing subsection (c) to include Wise County in the requirement specifying that an owner or operator that becomes subject to the requirements of this division after the applicable compliance dates are required to comply with the requirements in the division no later than 60 days after becoming subject. This compliance requirement is currently in place for affected sources in the other nine DFW counties. The commission expects that 60 days is an adequate amount of time for newly affected owners and operators in Wise County to comply with the rule requirements. Owners and operators affected by proposed subsection (c) would include those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption.

Proposed subsection (d) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each solvent cleaning operation would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter E, Solvent-Using Processes

Division 7, Miscellaneous Industrial Adhesives

Section 115.471, Exemptions

The commission proposes to revise the exemption in existing subsection (c) to clarify that adhesives and adhesive primers used for miscellaneous metal and plastic parts surface coating processes in §115.453(a)(1)(C) - (F) and (2) meeting a specialty application process definition in the definitions section of this division are not included in this exemption. The existing exemption states that 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 application processes listed in §115.473(a), is exempt from the requirements of this division. To avoid confusion regarding applicability of requirements for adhesives between this division and Subchapter E, Division 5, Control Requirements for Surface Coating Processes, this proposed exemption clarifies that adhesives applied to miscellaneous metal and plastic parts listed in §115.453(a)(3) and (4) that meet a specific adhesive or adhesive primer application process definition in §115.470, which are regulated in Table 2 of §115.473(a), are not subject to the requirements in this division. The proposed revised exemption clarifies that manufacturers of miscellaneous metal and plastic parts applying any of the specialty adhesives listed in Table 2 of the VOC limits in §115.473(a) of the Division 7 miscellaneous industrial adhesives rule, would be subject to the requirements in Division 7 for those adhesives, rather than Division 5. An adhesive that would meet the contact adhesive definition would not be included in this exemption since these are more general adhesives and are intended to be regulated under the appropriate miscellaneous metal and plastic parts coating category. The proposed exemption makes clear the commission's intent regard-

ing the applicability of the two divisions and continues to satisfy RACT for both the miscellaneous metal and plastic parts coating category and the miscellaneous industrial adhesives category.

Section 115.473, Control Requirements

The commission proposes to amend subsection (c)(8) by stating that one of the criteria must be met but not both, in order to comply with the surface coating application system requirement of this rule. Paragraph (8) allows an owner or operator to use a coating application system that is not explicitly listed in subsection (c)(1) - (7). The owner or operator may comply by either demonstrating that the coating application system achieves a transfer efficiency equivalent to high volume low pressure spray systems or that the coating application system achieves a transfer efficiency of 65%.

Section 115.479, Compliance Schedules

The commission proposes revising subsection (a) to specify that the compliance schedule pertains to the HGB and DFW areas, but not Wise County. The existing language does not list the areas since the compliance schedule applied to the only two areas subject to the division. Since the applicability of the division has been expanded to include Wise County, it is necessary to list the areas so that all affected owners and operators know which compliance schedule to follow.

Existing subsection (b) is being proposed as subsection (c) to accommodate the compliance schedule proposed as subsection (b) for affected owners and operators in Wise County. Proposed subsection (b) would require the owner or operator of an application process in Wise County to comply with the requirements in the division as soon as practicable, but no later than January 1, 2017. The compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the mandatory RACT deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The commission proposes to modify existing subsection (c) to include Wise County in the requirement specifying that an owner or operator that becomes subject to the requirements of this division after the applicable compliance dates are required to comply with the requirements in the division no later than 60 days after becoming subject. This compliance requirement is currently in place for affected sources in the other nine DFW counties. The commission expects that 60 days is an adequate amount of time for newly affected owners and operators in Wise County to comply with the rule requirements. Owners and operators affected by proposed subsection (c) would include those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption.

Proposed subsection (d) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each application process would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

Subchapter F, Miscellaneous Industrial Sources

Division 1, Cutback Asphalt

§115.519, Counties and Compliance Schedules

Proposed subsection (d) would specify that compliance for all affected persons in Wise County is as soon as practicable, but no later than January 1, 2017. The compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and ensures that controls will be in place by the RACT compliance deadline, January 1, 2017, in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

Proposed subsection (e) would specify that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner or operator of each would not be required to comply with any of the requirements in this division. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

In other divisions of this rulemaking, the commission is proposing to add a compliance schedule requiring owners and operators in the DFW area to comply with the applicable rules no later than 60 days after becoming subject. For this division, however, the commission determined it is not necessary to provide affected persons of cutback asphalt in the DFW area an additional 60 days to comply with the requirements.

Fiscal Note: Costs to State and Local Government

Jeff Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency and no significant fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rulemaking would revise Chapter 115 to implement VOC RACT for the DFW area, as required by FCAA, §182(b)(2). FCAA, §182(b)(2) requires the state to implement RACT for emission source categories addressed in specific CTG documents and for non-CTG major sources.

The proposed rulemaking would expand the rule applicability for the affected emission source categories to include Wise County. Generally, each division prescribes control, monitoring, testing, recordkeeping, and inspection requirements, which an affected owner or operator would be required to comply with no later than January 1, 2017.

The subchapters in Chapter 115 proposed for revision are: Subchapter B, Divisions 1 - 3; Subchapter C, Divisions 1 - 3; Subchapter D, Division 3; Subchapter E, Divisions 1, 2, and 4 - 7 and Subchapter F, Division 1, Cutback Asphalt.

No fiscal implications are anticipated for TCEQ as a result of the proposed rules. TCEQ Regional Field Operations Division

staff would be required to perform inspections of affected entities to verify compliance with the rules. However, these proposed changes are not expected to significantly increase the workload or the number of facilities requiring inspection.

Affected units of state or local government are expected to experience the same fiscal impacts as businesses, as described under this fiscal note. All state and local government facilities affected by this rulemaking would be required to comply with the appropriate rules no later than January 1, 2017. The following subchapters proposed for amendment may have fiscal implications for units of state or local government: Subchapter C, Division 2; Subchapter E, Divisions 1 and 6; and Subchapter F, Division 1.

Subchapter C, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

GDFs that meet certain throughput requirements may be affected by this rulemaking. According to the TCEQ's Petroleum Storage Tank Registration information, approximately four governmental entities or facilities in Wise County may be affected. The new requirements are applicable to owners and operators of GDFs in Wise County once the throughput at the GDFs exceeds 10,000 gallons per month. GDFs in Wise County that exceed the throughput limit must install Stage I vapor recovery equipment and comply with the rule. Once installed, the Stage I equipment must be tested annually.

Subchapter E, Division 1, Degreasing Processes

State and local government agencies in Wise County could be affected by the degreasing process rules, but the exact number of affected entities is not known due to the limited information available in Wise County concerning degreasing units. No state or local government sources were identified in the 2011 Point Source Emissions Inventory or in permitting data as being affected by the rules proposed for Wise County. Existing state or local government sources that may currently be performing degreasing processes in the other nine DFW counties may be required to maintain additional records if they perform cold solvent cleaning or qualify for an exemption and are not already keeping records. Affected owners and operators of state or local government agencies would be required to comply with equipment and operating specifications as well as testing and recordkeeping requirements. These proposed additional recordkeeping requirements are not expected to have a significant fiscal impact.

Subchapter E, Division 6, Industrial Cleaning Solvents

State and local government agencies in Wise County could be affected by the industrial cleaning solvents rule requirements if they meet the applicability criteria, but the exact number of affected entities is not known due to the limited information available in Wise County concerning these operations. State and local government entities in Wise County that use solvents for cleaning activities other than janitorial cleaning purposes with total actual VOC emissions greater than 3.0 tpy could be affected by the rules. The proposed rules would impose monitoring and recordkeeping requirements to demonstrate continuous compliance with the applicable control requirements. These requirements are not expected to have significant fiscal implications.

Subchapter F, Division 1, Cutback Asphalt

State and local government agencies in Wise County with the responsibility to maintain road surfaces may be affected by the proposed changes to the cutback asphalt provisions. Wise County and the nine cities within Wise County would need to revise their contracts with paving companies to not use cutback asphalt from April 16 to September 15 every year. Wise County and the nine cities will have almost 18 months to comply with the new requirements. Compliant material could therefore be ordered before the 2017 ozone season begins. Texas Department of Transportation has approved alternative asphalt material (EC-30), which is cheaper than the most commonly used cutback asphalt (MC-30). Therefore, if EC-30 is used, it could reduce the cost for a road project funded by Wise County or any municipalities within Wise County. However, if another more expensive alternative material is used, there could be additional costs. Any cutback asphalt already purchased can still be used as priming and patching material so existing cutback asphalt stock would not be wasted.

Public Benefits and Costs

Mr. Horvath has 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 in compliance with federal law and may contribute to improved public health through improved air quality.

The proposed rules are not expected to have direct fiscal implications for individuals. Businesses in Wise County will be affected by the proposed rules. Fiscal implications will depend upon whether the business meets the applicability requirements of the proposed rules and if they are affected, how they implement any necessary controls, monitoring, tests, recordkeeping, and inspection requirements to limit VOCs.

The following subchapters with proposed amendments are not expected to result in fiscal implications for businesses or unit of state or local government.

Subchapter B, Division 3, Water Separation

No fiscal impacts are anticipated for operators of oil and gas facilities to comply with this proposed subchapter. The water separation rule only applies to businesses such as oil and gas production facilities in Wise County. Targa Midstream Services, Devon Energy, and Enbridge Gathering are three major oil and gas operators in Wise County. They operate three-way separators to separate condensate, natural gas, and water at their well sites and compressor stations in Wise County. A three-way separator is operated under pressure and will not emit VOC like a typical atmospheric water separator. Three-way separators operated in Wise County already meet the §115.132(a)(1) control requirement of holding a vacuum or pressure without emitting to the atmosphere. Therefore, no further control is required under the existing regulations.

These operators also operate slop oil tanks to collect used oil generated from the site and water contaminated oil from the collection sumps. Because there is often water present, the slop oil tank may also be arranged to allow water to be decanted from the bottom of a collection tank. This slop oil collection tank is considered a VOC water separator. Due to the low vapor pressure of the waste oil, the collection tank would be exempt from the rule.

Subchapter C, Division 1, Loading and Unloading of Volatile Organic Compounds

No fiscal implications are anticipated as a result of the implementation of this proposed subchapter. Based on information in the permit registration database there would be no fiscal implication to oil and gas operators in Wise County for the following reasons: the throughput of condensate is lower than the existing 20,000 gallons per day exemption threshold; the vapor pres-

sure of produced water is lower than the existing 0.5 psia exemption threshold; or sites meeting the current applicability have already installed vapor balancing systems to control vapors from the loading operations.

The following subchapters with proposed amendments are expected to result in fiscal implications for businesses.

Subchapter B, Division 1, Storage of Volatile Organic Compounds

Owners or operators of storage tanks storing VOC in the DFW area will have new compliance requirements under the proposed rules. The proposal extends the current rules to Wise County, requiring 95% control of VOC emissions from condensate storage tanks if uncontrolled emissions would be over 100 tpy. Owners or operators of condensate storage tanks with the 95% control requirement would be required to maintain their tanks; inspect tank openings periodically to assure that the openings are closed tightly and VOC vapors are being controlled; repair any leaks found during inspection; and keep records of the inspections.

Based on condensate production data from 2011 or 2012, staff estimates that there are two sites in Wise County with affected condensate storage tanks and three sites with affected condensate storage tanks in the other nine counties of the DFW area. Additional sites may become affected if their condensate production increases. Staff's review of permit information on file shows that one of the Wise County sites and two of the sites in the other nine counties have installed controls on their storage tanks. Therefore, there is only one site in Wise County expected to need new controls. All five tank battery sites in the ten-county DFW area would be required to incur additional operation and maintenance expenses.

The proposed rulemaking would require the installation of a vapor recovery unit at the affected site. The capital (first year) costs for the vapor recovery unit is estimated to be between $60,000 and $110,000. In most instances, revenue from the sale of recovered condensate would more than offset operations and maintenance costs on a yearly basis. In 2006, the EPA's Natural Gas Star program estimates annual savings of $44,000 - $1,000,000 depending on system configuration, the amount and sale price of recovered product, operations, and maintenance costs. Recovered condensate at 100 tpy in Wise County with specific gravity of 0.7 equates to approximately 816 (bbl). Assuming a price comparable to crude oil at $100/bbl, the savings from recovered condensate, sold as vapor or liquid, is estimated to be $81,600 per year.

Proposed monitoring of vapor recovery units includes requirements for a run time meter on a compressor and a flow meter on the recovered vapor line. The estimated cost to add a run-time meter is $300. The estimated cost to install a totalizing flow meter is $3,000.

The proposed rules would allow for the use of flares to control VOC emissions from tanks. The proposed rules would require flares to be designed and operated in accordance with 40 CFR §60.18(b) - (f) and require the flare to be lit at all times when there is an emissions stream being vented to the flare. If the flare is already subject to the requirements in 40 CFR §60.18 then there is no additional fiscal impact associated with this requirement. If the flare is not already subject to the requirements in 40 CFR §60.18 the cost of a temperature monitor will range from $500 to $1,000. A design verification to meet 40 CFR §60.18 would cost approximately $3,000. A flare or vapor recovery unit is assumed for each controlled tank battery, not both, and owners and operators are expected to choose the most economical option, which for affected sites in Wise County is likely to be vapor recovery.

Inspection and maintenance costs for closure devices at affected sites are estimated to be approximately $1,911 each year and repair and recordkeeping costs to implement the proposed rule changes are expected to be minimal.

Overall, for the first five years the proposed change to Subchapter B is in effect, an affected tank battery in Wise County is expected to realize cost savings of an estimated $79,428 each year due to recovered condensate, assuming installation of a vapor recovery unit and recovered condensate of 100 tpy.

Subchapter B, Division 2, Vent Gas Control

Owners or operators of sources of vent gas in Wise County would be required to have 90% control of VOC vent gas emissions; monitor operating parameters of any required vapor control device; calculate to demonstrate qualification of exemptions; and keep records. Total capital costs for monitoring existing controls for a vapor recovery unit and three condensers in the first year the proposed rule change is in effect are estimated to be approximately $10,000 with $1,300 in operation and maintenance costs each year for 13 sites.

The 2012 Emissions Inventory showed 15 glycol dehydrator still vents in Wise County at 11 sites emitting VOC vent gases. Of these, six still vents operate with compliant controls already, and the other nine still vents operated under exemption threshold. Therefore, no new controls will be required, but six sites will be required to continue operating existing controls.

Subchapter C, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

The rulemaking may affect 26 aboveground storage tanks and 57 underground storage tanks located at GDFs in Wise County. GDFs in Wise County that exceed the throughput limit (10,000 gallons per month) must install Stage I vapor recovery equipment and comply with this rule. Once installed, the Stage I equipment must be tested annually. Installment of Stage I equipment will have a cost of approximately $490 per tank for a total cost of approximately $980 for a station with an average of two tanks. Any GDF that is required to install Stage I equipment will also be required to annually test the equipment at a cost of $250 to $275 a year.

Subchapter C, Division 3, Control of Volatile Organic Compound Leaks from Transport Vessels

An owner or operator of a tank-truck tank must comply with this rule. The number of tank-truck tanks that may be affected in the Wise County is unknown. Only the tank-truck tanks filled with VOC with a vapor pressure greater than 0.5 psia (including condensate) within Wise County would be subject to the new requirements. The tank-truck tank must pass an annual pressure-vacuum test if the tank-truck tank is transporting gasoline or VOC with vapor pressure higher than 0.5 psia. It is a reasonable assumption that most of the tank-truck tanks transporting VOC in the DFW area and the surrounding covered attainment counties already comply with the vapor tightness testing requirement. All gasoline tank-truck tanks in Wise County are already subject to the rule requirements.

Subchapter D, Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas

Owners and operators of three natural gas processing plants in Wise County will need to increase the stringency of their LDAR programs. Existing sites either have permits that require less stringent LDAR programs or are anticipated to be exempt from the proposed rules. The proposed rules require leak monitoring on prescribed schedules that vary by component type, repair of leaking components, and recordkeeping.

The 2012 Emissions Inventory contains three natural gas processing plants in Wise County. One of these plants may be exempt due to a low number of components. The other two plants have LDAR requirements in their permits that are less stringent than the proposed requirements. Specifically, the proposed requirements have a 500 ppmv leak definition versus a 10,000 ppmv permit leak definition for valves and pressure relief valves. This means that the proposed rule would require repair of valves and pressure relief valves with measured emissions of 501 to 9,999 ppmv, whereas the permit would not require repair until the leak increased to 10,000 ppmv. Assuming that on-site personnel conduct monitoring, no additional monitoring related costs are anticipated. Repair costs are estimated at $150 per valve, with an estimate of two repairs per site per year. Assuming two additional valve packing installations per site per year, the total maintenance cost of general valve repair is $120 per year. Estimated total additional compliance costs are $720 per year per applicable site.

Subchapter E, Division 1, Degreasing Processes

The owner or operator of a degreasing process in Wise County must comply with the equipment and operating specifications and testing and recordkeeping requirements that are currently in the rules. The control requirements prescribe operating and equipment specifications for cold solvent cleaning, open-top vapor degreasing, and conveyorized degreasing processes. In lieu of complying with the control requirements, an owner or operator can choose to employ a vapor control system achieving a certain level of efficiency. Either testing or analytical data must be relied upon to demonstrate compliance with applicable control requirements and records must be maintained to document the compliance demonstration.

Revisions being proposed as part of this rulemaking that would apply to all affected degreasing processes including allowing cold solvent degreasing processes to satisfy compliance with vapor pressure testing requirements by relying on analytical data from the solvent supplier or manufacturer or from standard reference materials, in lieu of performing one of the currently-approved test method procedures.

Revisions being proposed as part of this rulemaking that would apply to all affected degreasing processes in the DFW area require recordkeeping to demonstrate continuous compliance with the cold solvent cleaning vapor pressure control requirements and with exemption criteria. Because there is limited data available for degreasing units in Wise County, the exact number of entities that would be affected is not known.

The commission anticipates most degreasers are already operating in compliance with the Chapter 115 requirements because permitting requirements, which apply regardless of the county in which a degreaser is located, mandate compliance with certain provisions in the Chapter 115 degreasing rules. For this reason, a degreaser affected by this rulemaking is expected to have the appropriate operating and equipment controls in place, eliminating the need to replace or retrofit an older degreasing unit and minimizing potential fiscal impacts.

If, however, there is a degreasing unit which would become subject to the Chapter 115 requirements as a result of this rulemaking, the commission anticipates that currently operating units would possess the necessary equipment specifications or control options listed in the existing rule and, thus, be in compliance with the rule. It is possible that degreasing units exist that would need to be replaced or retrofitted; if this instance were to occur, it is expected that replacing instead of retrofitting a unit is more economical and an owner or operator would choose this option.

Subchapter E, Division 2, Surface Coating Processes and Division 5, Control Requirements for Surface Coating Processes

The rules proposed for surface coating processes in Wise County apply to the appropriate surface coating rules in either Division 2 or Division 5, depending on which applicability criteria a particular coating process meets. As a result of Wise County being proposed for inclusion in the applicability for these two divisions, owners and operators of affected surface coating processes would be required to comply with the same controls, testing, monitoring, and recordkeeping requirements as the other nine counties in the DFW area for which these rules already apply. Because many of these coating processes affect smaller sources and smaller sources are not required to report to the Point Source Emissions Inventory, the exact number of affected sources is often not known.

Under the Division 2 rules, the rules for paper coating, fabric coating, vinyl coating, coil coating, factory coating of flat wood paneling, and can coating would be implemented in Wise County. Owners and operators of these surface coating categories would be required to limit the VOC content of coatings, comply with perform testing, and maintain records.

Large appliance, metal furniture, automobile and light-duty truck assembly, miscellaneous metal parts and products, miscellaneous plastic parts and products, pleasure craft, and automotive/transportation and business machine plastic parts surface coating processes are covered under the Division 5 rules. In addition to the types of requirements in Division 2, additional requirements include limiting the VOC content of coatings, increasing the overall control efficiency for add-on controls, and establishing minimum transfer efficiency for coating application methods. The Division 5 rules provide the affected owner or operator with several equivalent compliance options including using reformulated materials combined with specific application systems; reformulated materials combined with specified applications systems and add-on controls; and add-on controls that meet specified overall control efficiency. The rules would impose monitoring and recordkeeping requirements to demonstrate continuous compliance with the applicable control requirements for affected sources in Wise County.

The rules provide options for compliance, and although affected owners or operators are expected to choose the most cost-effective option, the fiscal impacts over the first five years generally are difficult to determine. The costs will vary within each industry depending on the compliance option chosen and other site specific variables like the type of coatings and solvents being used and the existing equipment. Some costs, such as purchasing monitoring equipment and configuring process operations to allow the use of compliant materials, are initial one-time costs and some costs are increases in annual operating costs, such as the incremental increases in the cost of coatings and solvents. The fiscal impacts are not expected to be the same for each affected surface coating process but are not expected to be significant in general.

Subchapter E, Division 4, Offset Lithographic Printing

The owner or operator in Wise County of offset lithographic printing lines located on a property that have the combined PTE at least 3.0 tons of VOC per calendar year when uncontrolled would be required to comply with the rules unless the site meets certain exemption criteria. The rules would require the owner or operator of an affected site to reduce the VOC concentration of the fountain solutions and cleaning solutions used in the printing process.

The rules proposed for Wise County apply to all offset lithographic printing lines located on a property that have the combined PTE at least 3.0 tons of VOC per calendar year when uncontrolled. The rules include separate requirements for major printing and minor printing sources. In Wise County, a major printing source is an offset lithographic printer with at least 100 tpy of VOC emissions and minor printing source is an offset lithographic printer with less than 100 tpy of VOC emissions.

The rules require the owner or operator of an affected site to reduce the alcohol content of the fountain solutions and provide several equivalent compliance options including using reformulated materials alone or in combination with add-on refrigeration equipment. The rules would also require the owner or operator to reduce the VOC content of the cleaning solutions and provide several equivalent compliance options. Finally, the rules prescribe monitoring, testing, and recordkeeping requirements to demonstrate continuous compliance with the content limits.

There were no offset lithographic printers identified in Wise County. If there are any affected sites, staff would expect that owners and operators would choose the most cost effective option. The fiscal impacts over the first five years are difficult to determine. The costs would differ depending on the compliance option used and/or other site specific variables like the type of solution being used. Some costs, such as purchasing monitoring equipment, are initial one-time costs and some costs are increases in annual operating costs, such as the incremental increases in the cost of solutions. The fiscal impacts would not be expected to be the same for each affected offset lithographic printing line.

Subchapter E, Division 6, Industrial Cleaning Solvents

In Wise County, the owner or operator of industrial cleaning solvent operations located on a property with total actual VOC emissions equal to or greater than 3.0 tpy, when uncontrolled, is required to comply with the rules unless specifically exempt. Because sites at which solvent cleaning operations take place are likely to be classified by their primary process, it is difficult to identify the number of sources affected. The scope of this rule is very broad and could apply to sites performing a wide variety of primary processes.

The rules provide options for compliance, and affected owners or operators are expected to choose the most cost-effective option. Based upon the EPA's 2006 Industrial Cleaning Solvent CTG fiscal analysis, most affected owners and operators will comply with the required controls by switching to low-VOC solvents due to the potential costs associated the use of add-on controls, such as catalytic or thermal incinerators, reaching hundreds of thousands of dollars depending on the flue gas volumetric flow rate and energy recovery. The EPA's CTG estimated parts cleaning operations would cost an affected owner or operator $2,589 per ton of VOC reduced with a cost of capital of 5% and a payback time of five years and estimated that all other cleaning operations would save affected owner and operators $1,590 per ton of VOC reduced.

The costs the proposed rules would impose on affected owners and operators would differ depending on the compliance option used and other site-specific variables such as the industrial process conducted at the site and the type of solvents required to achieve an acceptable level of cleanliness. The fiscal impacts are not expected to be the same for each affected industrial cleaning solvent operation because a vast range of industries perform these types of operations for a variety of different purposes.

Subchapter E, Division 7, Miscellaneous Industrial Adhesives

The existing rules would apply to manufacturers using adhesives during any of the specified application processes in Wise County and would require limiting the VOC emissions from adhesive application processes by the use of low-VOC adhesives or by the use of vapor control systems; complying with work practices; performing testing; and maintaining records. Because adhesive application is a step in a manufacturing process, the agency is not able to identify the number of manufacturing sources applying adhesives that would be affected.

The CTG, which is the basis of the rules in Division 7, estimates that most affected owners and operators will comply with the required controls by switching to low-VOC adhesive materials due to the potential costs associated with the use of add-on controls, such as catalytic or thermal incinerators, which could cost hundreds of thousands of dollars depending on the flue gas volumetric flow rate and energy recovery.

The EPA's guidelines further state that the owner or operator switching to low-VOC formulas is expected to incur additional costs estimated at $1,421 per ton of VOC emissions reduced, on average. Specifically, small business would incur costs of $1,490 per year, on average, versus $4,480 for a large business. This is similar to the EPA's estimated annualized costs of using the low-VOC adhesives to be approximately $3,400 per year. These costs include capital costs, operation/maintenance costs, solvent savings, and adhesive costs.

Costs associated with work practice procedures are not known due to the lack of studies focusing on economic impacts of implementing work practice procedures. The EPA estimates that such procedures should contribute to cost reductions by reducing the amount of cleaning materials used. The proposed rules provide various options for compliance. Affected owner and operators are expected to choose the most cost-effective option to comply with the proposed rules.

Small Business and Micro-Business Assessment

In general, no adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation or administration of the proposed rules. Staff is unable to identify any small or micro-businesses that would be affected by the proposed rules. If there are small or micro-businesses affected, they are expected to experience the same costs or cost savings as large businesses.

It is estimated that most affected owners and operators will comply with any requirements that require additional controls by switching to low-VOC processes or materials due to the potential costs associated with the use of add-on controls.

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 by the FCAA to implement RACT for emission source categories addressed in EPA guidance documents and the proposed rules are not expected to adversely affect small or micro-businesses 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 the 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 state previously adopted Chapter 115 RACT rules for VOC sources in the DFW area as part of the SIP for the 1997 eight-hour ozone standard. On March 27, 2008, the EPA revised the eight-hour ozone NAAQS to a level of 0.075 ppm with an effective date of May 27, 2008 (73 FR 16436). On May 21, 2012 the EPA established initial air quality designations for the 2008 eight-hour ozone NAAQS and effective July 20, 2012, the DFW area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area for the 2008 ozone NAAQS. For nonattainment areas classified as moderate and above, FCAA, §172(b)(1) and §182(b)(2) requires the state to submit a SIP revision that implements RACT for sources of VOC addressed in a CTG document issued from November 15, 1990 through the area's attainment date; CTG documents issued before November 15, 1990; and all other major stationary sources of VOC. 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). The proposed new rules implement RACT for sources of VOCs addressed in a CTG document issued from November 15, 1990 through the area's attainment date; CTG documents issued before November 15, 1990; and all other major stationary sources of VOCs. The commission is also proposing rules that would allow the commission to remove the applicability of RACT requirements to sources in Wise County, if Wise County were to be removed from the DFW 2008 eight-hour ozone nonattainment area. These specific changes are proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR). The proposed rules update RACT requirements for the following source categories in Chapter 115: Storage of Volatile Organic Compounds; Vent Gas Control; General Volatile Organic Compound Sources, Water Separation; Loading and Unloading of Volatile Organic Compounds; Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities; Control of Volatile Organic Compound Leaks from Transport Vessels; Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas; Degreasing Processes; Surface Coating Processes; Offset Lithographic Printing; Control Requirements for Surface Coating Processes; Industrial Cleaning Solvents; Miscellaneous Industrial Adhesives; and Cutback Asphalt.

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. The proposed rulemaking will revise Chapter 115 to implement RACT for all VOC CTG emission sources categories in the 2008 eight-hour ozone DFW nonattainment area as required by FCAA, §172(c)(1) and §182(b)(2).

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 pro-

vided 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 federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially 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 VOC emission sources that have been determined by the commission to be RACT for the DFW area. 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.

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.

The commission is also proposing rules that would allow the commission to remove the applicability of RACT requirements to sources in Wise County, if Wise County was to be removed from the DFW 2008 ozone nonattainment area. These specific changes are proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 Attainment Demonstration SIP Revision (2013-015-SIP-NR).

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 revise Chapter 115 to implement RACT for all VOC CTG emission sources categories in the 2008 eight-hour ozone DFW nonattainment area as required by FCAA, §172(c)(1) and §182(b)(2). 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 VOCs. 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 Hearing

The commission will hold a public hearing on this proposal in Arlington on January 15, 2015 at 6:30 p.m. at the City of Arlington Council Chamber, 101 W. Abrams Street, Arlington, Texas 76010 and in Austin on January 22, 2015 at 10:00 a.m. at the Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas 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 the 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 Derek Baxter, 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.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-048-115-AI. The comment period closes January 30, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Frances Dowiak, Air Quality Planning Section, (512) 239-3931.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

Statutory Authority

The amended 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 amended 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; 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 amended 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 amended 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 amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.10. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Background--The ambient concentration of volatile organic compounds in the air, determined at least one meter upwind of the component to be monitored. Test Method 21 (40 Code of Federal Regulations Part 60, Appendix A) shall be used to determine the background.

(2) Beaumont-Port Arthur area--Hardin, Jefferson, and Orange Counties.

(3) Capture efficiency--The amount of volatile organic compounds (VOC) collected by a capture system that is expressed as a percentage derived from the weight per unit time of VOCs entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs.

(4) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) Closed-vent system--A system that:

(A) is not open to the atmosphere;

(B) is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices; and

(C) transports gas or vapor from a piece or pieces of equipment directly to a control device.

(6) Coaxial system--A type of system consisting of a tube within a tube that requires only one tank opening. The tank opening allows fuel to flow through the inner tube while vapors are displaced through the annular space between the inner and outer tubes.

(7) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds.

(8) Connector--A flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. The term connector does not include joined fittings welded completely around the circumference of the interface. A union connecting two pipes is considered to be one connector.

(9) Continuous monitoring--Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(10) Covered [~~ozone~~] attainment counties--Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties. Beginning January 1, 2017 this paragraph no longer applies to Wise County.

(11) Dallas-Fort Worth area--As follows: [~~For purposes of Subchapter B of this chapter, General Volatile Organic Compound Sources, Division 5, Municipal Solid Waste Landfills, Collin, Dallas, Denton, and Tarrant Counties. For all other divisions, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.~~]

(A) Collin, Dallas, Denton, and Tarrant Counties for:

(i) Subchapter B, Division 5 of this chapter (relating to Municipal Solid Waste Landfills);

(ii) Subchapter F, Division 3 of this chapter (relating to Degassing of Storage Tanks, Transport Vessels, and Marine Vessels);

(iii) Subchapter F, Division 4 of this chapter (relating to Petroleum Dry Cleaning Systems);

(B) Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties for:

(i) Subchapter B, Division 4 of this chapter (relating to Industrial Wastewater);

(ii) Subchapter D, Division 1 of this chapter (relating to Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries);

(iii) Subchapter E, Division 3 of this chapter (relating to Flexographic and Rotogravure Printing);

(iv) Subchapter F, Division 2 of this chapter (relating to Pharmaceutical Manufacturing Facilities); and

(C) Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties for all other divisions of this chapter.

(12) Dual-point vapor balance system--A type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for vapor connection.

(13) El Paso area--El Paso County.

(14) Emergency flare--A flare that only receives emissions during an upset event.

(15) External floating roof--A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(16) Fugitive emission--Any volatile organic compound entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(17) Gasoline bulk plant--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(18) Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.

(19) Gasoline terminal--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(20) Heavy liquid--Volatile organic compounds that have a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius).

(21) Highly-reactive volatile organic compound--As follows.

(A) In Harris County, one or more of the following volatile organic compounds (VOC): 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, one or more of the following VOC: ethylene and propylene.

(22) Houston-Galveston or Houston-Galveston-Brazoria area--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(23) Incinerator--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.

(24) Internal floating cover or internal floating roof--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) is [~~shall be~~] considered to be an internal floating roof storage tank.

(25) Leak-free marine vessel--A marine vessel with cargo tank closures (hatch covers, expansion domes, ullage openings, butterworth covers, and gauging covers) that were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures must meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves must be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(26) Light liquid--Volatile organic compounds that have a true vapor pressure greater than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius), and are a liquid at operating conditions.

(27) Liquefied petroleum gas--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(28) Low-density polyethylene--A thermoplastic polymer or copolymer comprised of at least 50% ethylene by weight and having a density of 0.940 grams per cubic centimeter or less.

(29) Marine loading facility--The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(30) Marine loading operation--The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(31) Marine terminal--Any marine facility or structure constructed to transfer oil, gasoline, or other volatile organic liquid bulk cargo to or from a marine vessel. A marine terminal may include one or more marine loading facilities.

(32) Metal-to-metal seal--A connection formed by a swage ring that exerts an elastic, radial preload on narrow sealing lands, plastically deforming the pipe being connected, and maintaining sealing pressure indefinitely.

(33) Natural gas/gasoline processing--A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied natural gas units, and field gas gathering systems.

(34) Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(35) Polymer or resin manufacturing process--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(36) Pressure relief valve or pressure-vacuum relief valve--A safety device used to prevent operating pressures from exceeding the maximum and minimum allowable working pressure of the process equipment. A pressure relief valve or pressure-vacuum relief valve is automatically actuated by the static pressure upstream of the valve but does not include:

(A) a rupture disk; or

(B) a conservation vent or other device on an atmospheric storage tank that is actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge.

(37) Printing line--An operation consisting of a series of one or more printing processes and including associated drying areas.

(38) Process drain--Any opening (including a covered or controlled opening) that is installed or used to receive or convey wastewater into the wastewater system.

(39) Process unit--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.

(40) Rupture disk--A diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

(41) Shutdown or turnaround--For the purposes of this chapter, a work practice or operational procedure that stops production from a process unit or part of a unit during which time it is technically feasible to clear process material from a process unit or part of a unit consistent with safety constraints, and repairs can be accomplished.

(A) The term shutdown or turnaround does not include a work practice that would stop production from a process unit or part of a unit:

(i) for less than 24 hours; or

(ii) for a shorter period of time than would be required to clear the process unit or part of the unit and start up the unit.

(B) Operation of a process unit or part of a unit in recycle mode (i.e., process material is circulated, but production does not occur) is not considered shutdown.

(42) Startup--For the purposes of this chapter, the setting into operation of a piece of equipment or process unit for the purpose of production or waste management.

(43) Strippable volatile organic compound (VOC)--Any VOC in cooling tower heat exchange system water that is emitted to the atmosphere when the water passes through the cooling tower.

(44) Synthetic organic chemical manufacturing process--A process that produces, as intermediates or final products, one or more of the chemicals listed in 40 Code of Federal Regulations §60.489 (October 17, 2000).

(45) Tank-truck tank--Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(46) Transport vessel--Any land-based mode of transportation (truck or rail) equipped with a storage tank having a capacity greater than 1,000 gallons that is used to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(47) True partial pressure--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.

(48) Vapor balance system--A system that provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(49) Vapor control system or vapor recovery system--Any control system that utilizes vapor collection equipment to route volatile organic compounds (VOC) to a control device that reduces VOC emissions.

(50) Vapor-tight--Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in this chapter.

(51) Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406007
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.110 - 115.112, 115.114, 115.115, 115.117 - 115.119

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; 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.

(1) Closure device--A piece of equipment that covers an opening in the roof of a fixed roof storage tank and either can be temporarily opened or has a component that provides a temporary opening. Examples of closure devices include, but are not limited to, thief hatches, pressure relief valves, pressure-vacuum relief valves, and access hatches.

(2) [~~(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).

(3) [~~(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.

(4) [~~(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.

(5) [~~(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.

(6) [~~(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.

(7) [~~(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.

(8) [~~(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 into the stored liquid.

(9) [~~(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.

(10) [~~(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.

(11) [~~(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.

(12) [~~(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.

(13) [~~(12)~~] 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.

(14) [~~(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), (4), (6), (7), and (9) - (11) of this subsection.

(1) Except as provided in §115.118 of this title (relating to Recordkeeping Requirements), a 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) A storage tank 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,~~] or El Paso areas is exempt from the requirements of this division. This exemption no longer applies in the Dallas-Fort Worth area beginning March 1, 2013.

(3) A storage tank with a storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas 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) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(a), (d), and (e) of this title (relating to Control Requirements).

(6) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas 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) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas 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) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(9) In the Houston-Galveston-Brazoria area, a storage tank or tank battery storing condensate, as defined in §101.1 of this title (relating to Definitions), prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(d)(4) or (e)(4)(A) of this title, to control flashed gases if the owner or operator demonstrates, using the 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.

(10) In the Dallas-Fort Worth area, except Wise County, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(i) of this title, to control flashed gases if the owner or operator demonstrates, using the 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 50 tons per year on a rolling 12-month basis. This exemption no longer applies 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title (relating to Compliance Schedules) that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard.

(11) In the Dallas-Fort Worth area, except in Wise County, on or after the date specified in §115.119(b)(1)(C) of this title, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(ii) of this title, to control flashed gases if the owner or operator demonstrates, using the 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.

(12) In Wise County, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C) of this title, to control flashed gases if the owner or operator demonstrates, using the 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 100 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, a storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer is exempt from the requirements of this division.

(3) A storage tank with storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is 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) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(b) of this title.

(6) A 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) A 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) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(c) The following exemptions apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) A 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 a floating roof [~~or cover~~] storage tank are exempt from the provisions of §115.112(c) of this title.

(3) A storage tank with storage capacity between 1,000 gallons and 25,000 gallons is exempt from the requirements of §115.112(c)(1) of this title if construction began before May 12, 1973.

(4) A storage tank with storage capacity less than or equal to 420,000 gallons is exempt from the requirements of §115.112(c)(3) of this title.

(5) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

§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 beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any volatile organic compounds (VOC) 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 in compliance with the control requirements 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 an external floating roof or internal floating roof [~~cover~~] storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof [~~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 an external floating roof storage tank, 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 in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank 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 in Gregg, Nueces, and Victoria Counties.

(1) No person shall place, store, or hold in any storage tank any VOC, 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 in compliance with the control requirements 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 an external floating roof or internal floating roof [~~cover~~] storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof [~~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 an external floating roof storage tank, secondary seals must 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 in width between the secondary seal and tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(c) The following requirements apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) No person may place, store, or hold in any storage tank any VOC, other than crude oil or condensate, 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 in compliance with the control requirements specified in Table I(b) of this paragraph for VOC other than crude oil and condensate.
Figure: 30 TAC §115.112(c)(1)
[~~Figure:~~ ~~30 TAC §115.112(c)(1)~~]

(2) For an external floating roof or internal floating roof [~~cover~~] storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(B) All tank gauging and sampling devices must 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 unless the storage tank 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 control devices, properly maintained and operated:

(A) an internal floating roof [~~cover~~] or external floating roof, as defined in §115.10 of this title. These control devices will not be allowed if the VOC has a true vapor pressure of 11.0 pounds per square inch absolute (psia) [~~psia~~] or greater. All tank-gauging and tank-sampling devices must be vapor-tight, except when gauging or sampling is taking place; or

(B) a vapor control system as defined in §115.10 of this title.

(d) The following requirements apply in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title. The requirements in this subsection no longer apply beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any VOC 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 in compliance with the control requirements 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 an external floating roof or internal floating roof [~~cover~~] storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof [~~cover~~] or external floating roof as defined in §115.10 of this title 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 roof [~~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 roof [~~cover~~] for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(D) Any external floating roof 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 an internal floating roof [~~cover~~] storage tank 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 an external floating roof storage tank, 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 may not be greater than 1.0 square inch per foot 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:

(i) a pole wiper and pole float that has a seal or wiper 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.

(H) The external floating roof or internal floating roof [~~cover~~] must be floating on the liquid surface at all times except as specified in this subparagraph. The external floating roof or internal floating roof [~~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 storage tank has been cleaned 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 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 control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%.

(4) For a storage tank storing condensate, as defined in §101.1 of this title, prior to custody transfer, flashed gases must be routed to a vapor control system 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) For a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, 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) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title (relating to Approved Test Methods).

(B) The owner or operator may 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.

(C) For crude oil storage only, the owner or operator may 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.

(D) Other test methods or computer simulations may be allowed if approved by the executive director.

(e) The control requirements in this subsection apply in the Houston-Galveston-Brazoria and Dallas-Fort Worth areas beginning March 1, 2013, except as specified in §115.119 of this title (relating to Compliance Schedules).

(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 in compliance with the control requirements specified in 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)
[~~Figure:~~ ~~30 TAC §115.112(e)(1)~~]

(2) For an external floating roof or internal floating roof [~~cover~~] storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof [~~cover~~] or external floating roof must provide a projection below the liquid surface. Automatic bleeder vents (vacuum breaker vents) and rim space vents are not subject to this requirement.

(B) All openings in an internal floating roof [~~cover~~] or external floating roof 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. Automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof [~~or cover~~] drains are not subject to this requirement.

(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 roof [~~cover~~] for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(E) Any external floating roof 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 an internal floating roof [~~cover~~] storage tank 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 an external floating roof storage tank, 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 may not be 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 or wiper 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 external floating roof or internal floating roof [~~cover~~] must be floating on the liquid surface at all times except as allowed under the following circumstances:

(i) during the initial fill or refill after the storage tank has been cleaned;

(ii) 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;

(iii) when necessary for supporting a change in service to an incompatible liquid;

(iv) when the storage tank has a storage capacity less than 25,000 gallons;

(v) 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;

(vi) when all VOC emissions from the storage tank, including emissions from floating roof [~~or cover~~] landings, have been included in an emissions limit or cap approved under Chapter 116 of this title prior to March 1, 2013; or

(vii) when all VOC emissions from floating roof [~~or cover~~] landings at the regulated entity are less than 25 tons per year.

(3) A control device 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 the following minimum control efficiency:

(i) in the Houston-Galveston-Brazoria area, 90%; and

(ii) in the Dallas-Fort Worth area, 95%.

(B) A vapor recovery unit must be designed to process all vapor generated by the maximum liquid throughput of the storage tank or the aggregate of storage tanks in a tank battery 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) For a storage tank storing condensate prior to custody transfer, flashed gases must be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds:

(A) in the Houston-Galveston-Brazoria area, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis; [~~and~~]

(B) in the Dallas-Fort Worth area except Wise County:

(i) 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis; or

(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Am-

bient Air Quality Standard, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis; and[.]

(C) in Wise County, 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis.

(5) For a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, or from the aggregate of storage tanks at a pipeline breakout station in the Dallas-Fort Worth area, equal or exceed:

(A) in the Houston-Galveston-Brazoria area, 25 tons per year on a rolling 12-month basis; [and]

(B) in the Dallas-Fort Worth area, except Wise County:

(i) 50 tons per year on a rolling 12-month basis; or

(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 25 tons per year on a rolling 12-month basis; and[.]

(C) in Wise County, 100 tons per year on a rolling 12-month basis.

(6) Uncontrolled emissions from a storage tank or tank battery storing crude oil or condensate prior to custody transfer or at a pipeline breakout station 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) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title.

(B) The owner or operator may use other test methods or computer simulations approved by the executive director.

(C) The owner or operator may 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, the owner or operator may 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.

(7) Storage tanks in the Dallas-Fort Worth area storing crude oil or condensate prior to custody transfer or at a pipeline breakout station for which the owner or operator is required by this subsection to control flashed gases must be maintained in accordance with manufacturer instructions. All openings in the storage tank through which vapors are not routed to a vapor recovery unit or other vapor control device must be equipped with a closure device maintained according to the manufacturer's instructions, and operated according to this paragraph. If manufacturer instructions are unavailable, industry standards consistent with good engineering practice can be substituted.

(A) Each closure device must be closed at all times except when normally actuated or required to be open for temporary access or to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control practices. Such opening, actuation, or use must be limited to minimize vapor loss.

(B) Each closure device must be properly sealed to minimize vapor loss when closed.

(C) Each closure device must either be latched closed or, if designed to relieve pressure, set to automatically open at a pressure that will ensure all vapors are routed to the vapor recovery unit or other vapor control device under normal operating conditions other than gauging the tank or taking a sample through an open thief hatch.

(D) No closure device may be allowed to have a VOC leak for more than 15 calendar days after the leak is found unless delay of repair is allowed. For the purposes of this subparagraph, a leak is the exuding of process gasses from a closed device based on sight, smell, or sound. If parts are unavailable, repair may be delayed. Parts must be ordered promptly and the repair must be completed within five days of receipt of required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more emissions than the repair would eliminate. Repair must be completed by the end of the next shutdown.

§115.114. Inspection and Repair 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).

(1) For an internal floating roof [cover] storage tank, the internal floating roof [cover] 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 roof [cover] 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 roof [cover]; 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 chapter (relating to Degassing of Storage Tanks, Transport Vessels, and Marine 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 an external floating roof storage tank, 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), and (e)(2)(G) 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), and (e)(2)(G) 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 of this chapter.

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or oper-

ator 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 storage tank is equipped with a mechanical shoe or liquid-mounted primary seal, compliance with §115.112(a)(2)(F), (d)(2)(F), and (e)(2)(G) of this title can be determined by visual inspection.

(4) For an external floating roof storage tank, 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), and (e)(2)(F) and (G) 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 in accordance with Subchapter F, Division 3 of this chapter.

(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.

(5) For fixed roof storage tanks in the Dallas-Fort Worth area storing crude oil or condensate prior to custody transfer or at a pipeline breakout station for which the owner or operator is required by §115.112(e) of this title to control flashed gases, the owner or operator shall inspect and repair all closure devices not connected to a vapor recovery unit or other vapor control device according to the schedule in this paragraph.

(A) The owner or operator shall conduct an audio, visual, and olfactory inspection of each closure device not connected to a vapor recovery unit or other vapor control device to ensure compliance with §115.112(e)(7)(A) of this title. The inspection must occur when liquids are not being added to or unloaded from the tank. If the owner or operator finds the closure device open for reasons not allowed in §115.112(e)(7)(A) of this title, the owner or operator shall attempt to close the device during the inspection. The inspection must occur before the end of one business day after each opening of a thief or access hatch for sampling or gauging, and before the end of one business day after each unloading event. If multiple events occur on a single day, a single inspection within one business day after the last event is sufficient.

(B) The owner or operator shall conduct an audio, visual, and olfactory inspection of all gaskets and vapor sealing surfaces of each closure device not connected to a vapor recovery unit or other vapor control device once per calendar quarter to ensure compliance with §115.112(e)(7)(B) of this title. If the owner or operator finds an improperly sealed closure device, the owner or operator shall make a first attempt at repair no later than five calendar days after the inspection and repair the device no later than 15 calendar days after the inspection. For the purpose of this subparagraph, a repair is complete if the closure device no longer exudes process gasses based on sight, smell, or sound.

(b) The following inspection requirements apply in Gregg, Nueces, and Victoria Counties.

(1) For an internal floating roof [~~cover~~] storage tank, the following inspection requirements apply.

(A) If during an inspection of an internal floating roof [~~cover~~] storage tank, the internal floating roof [~~cover~~] 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 roof [~~cover~~]; 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 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 an external floating roof storage tank, the secondary seal gap must 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 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 storage 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 an external floating roof storage tank, the secondary seal must 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 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 apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) For an internal floating roof [~~cover~~] storage tank, the following inspection requirements apply.

(A) If during an inspection of an internal floating roof [~~cover~~] storage tank, the internal floating roof [~~cover~~] 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 roof [~~cover~~]; 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 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 an external floating roof storage tank, the following inspection requirements apply.

(A) 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.

(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.

§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 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 or carbon adsorber, as defined in §101.1 of this title (relating to Definitions), the owner or operator shall:

(A) continuously monitor the exhaust gas VOC concentration of a 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[~~. The owner or operator may conduct this monitoring using Method 21, as specified in §115.117 of this title (relating to Approved Test Methods), if the monitoring is conducted once every seven calendar days~~]; or

(B) switch the vent gas flow to fresh carbon at a regular predetermined time interval for a carbon adsorber or carbon adsorption system that does not regenerate the carbon directly. The time interval must be [~~that is~~] less than the carbon replacement interval determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorption system or carbon adsorber.

(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) 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 monitor operational parameters of any of the emission control devices listed in this subsection installed to meet applicable control requirements.

(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 or catalytic incinerator, the owner or operator shall continuously monitor the inlet and outlet gas temperature.

(3) For a carbon adsorption system or carbon adsorber, the owner or operator shall continuously monitor the exhaust gas VOC concentration to determine if breakthrough has occurred. The owner or operator may conduct this monitoring using Method 21, as specified in §115.117 of this title, if the monitoring is conducted once every seven calendar days.

§115.117. Approved Test Methods.

For 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 Gregg, Nueces, and Victoria Counties, 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 21 (40 CFR Part 60, Appendix A-7) for determining volatile organic compounds concentrations for the purposes of determining the presence of leaks and determining breakthrough on a carbon adsorption system or carbon adsorber. If the owner or operator

chooses to conduct a test to verify a vapor-tight requirement, Method 21 is acceptable;

(4) Method 22 (40 CFR Part 60, Appendix A) for determination of visible emissions from flares;

(5) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(6) Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(7) test method described in 40 CFR §60.113a(a)(1)(ii) (effective April 8, 1987) for measurement of storage tank seal gap;

(8) true vapor pressure must be determined using standard reference texts or ASTM International [~~American Society for Testing and Materials~~] Test Method D323, D2879, D4953, D5190, [~~or~~] D5191, or D6377 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517. For the purposes of temperature correction, the owner or operator shall use the actual storage temperature. Actual storage temperature of an unheated storage tank may be determined using the maximum local monthly average ambient temperature as reported by the National Weather Service. Actual storage temperature of a heated storage tank must be determined using either the measured temperature or the temperature set point of the storage tank;

(9) 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;

(10) test methods referenced in paragraphs (2), (5), and (6) 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;

(11) 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

(12) 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 an external floating roof storage tank that is exempt from the requirement for a secondary seal in accordance with §115.111(a)(1), (6), and (7) 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 and Repair 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)

[~~Figure: 30 TAC §115.118(a)(3)~~]

(4) The owner or operator shall maintain records of any operational parameter monitoring required in §115.115(a) of this title (relating to Monitoring Requirements). Such records must be sufficient to demonstrate proper functioning of those devices to design specifications and must include, but are not limited to, the following.

(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 temperature is below the manufacturer's recommended operating temperature for controlling the VOC vapors routed to the device.

(C) For a carbon adsorption system or carbon adsorber, 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; or

(ii) record the date and time of each switch between carbon containers and the method of determining the carbon replacement interval if the carbon adsorption system or carbon adsorber 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.

(E) For a vapor recovery unit, the owner or operator shall maintain records of the continuous operational parameter monitoring required in §115.115(a)(5) of this title.

(F) For any other control device not listed in this paragraph, the owner or operator shall maintain records of the continuous operational parameter monitoring required in §115.115(a)(6) of this title sufficient to demonstrate proper functioning of the control device to design specifications.

(5) The owner or operator shall maintain the results of any testing conducted in accordance with §115.116 of this title (relating to Testing Requirements) or §115.117 of this title (relating to Approved Test Methods) at an affected site. Results may be maintained at an off-site location if made available for review within 24 hours.

(6) In the Houston-Galveston-Brazoria and Dallas-Fort Worth areas, the owner or operator shall maintain the following additional records.

(A) The owner or operator of a fixed roof storage tank that is not required in §115.112(d)(1) or (e)(1) of this title (relating to Control Requirements) to be equipped with an external floating roof, internal floating roof [~~cover~~], or vapor control system 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 a storage tank with storage capacity of 25,000 gallons or less storing VOC other than crude oil or condensate, or to a storage tank with storage capacity of 40,000 gallons or less storing crude oil or condensate.

(B) 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 control system shall maintain records of the estimated uncontrolled emissions from the storage tank on a rolling 12-month basis. The records 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.

(C) The owner or operator of an external floating roof or internal floating roof [~~cover~~] storage tank meeting the extended compliance date in §115.119(a)(1)(A) or (b)(1)(A) of this title (relating to Compliance Schedules) shall maintain records of the date of the last time the storage tank was emptied and degassed.

(D) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station in the Dallas-Fort Worth area and is required by §115.112(e) of this title to control flash emissions shall maintain records of the manufacturer or industry standard instructions used to maintain the storage tanks and tank closure devices in use.

(E) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station in the Dallas-Fort Worth area shall maintain records of the results of each inspection and repair required in §115.114(a)(5) or §115.112(e)(7) of this title, including the following items:

(i) the date of the inspection;

(ii) the status of the device during inspection;

(iii) the amount of time a closure device was open since the last inspection for reasons not allowed in §115.112(e)(7)(A) of this title;

(iv) the date repair was attempted and completed; and

(v) the list of closure devices awaiting delayed repair as allowed by §115.112(e)(7)(D) of this title.

(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 March 1, 2011, 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 an external floating roof storage tank that is exempt from the requirement for a secondary seal in accordance with §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 in §115.112 of this title. 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 or carbon adsorber, to determine if breakthrough has occurred.

(4) The owner or operator shall maintain records of the results of any testing conducted in accordance with §115.117 of this title at an affected site.

(5) 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.

§115.119. Compliance Schedules.

(a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has [~~already~~] passed and the owner or operator of each storage tank in which any volatile organic compounds (VOC) are [~~is~~] placed, stored, or held shall continue to comply with this division except as follows.

(1) The affected owner or operator shall comply with the requirements of §§115.112(d); 115.115(a)(1), (2), (3)(A), and (4); 115.117, and 115.118(a) of this title (relating to Control Requirements; Monitoring Requirements; Approved Test Methods; and Recordkeeping Requirements, respectively) no later than January 1, 2009. Section 115.112(d) of this title no longer applies in the Houston-Galveston-Brazoria area beginning March 1, 2013. Prior to March 1, 2013, the owner or operator of a storage tank subject to §115.112(d) of this title shall continue to comply with §115.112(d) of this title until compliance has been demonstrated with the requirements of §115.112(e) of this title.

(A) 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 and degassed but no later than January 1, 2017.

(B) 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.

(2) The affected owner or operator shall comply with §§115.112(e), 115.115(a)(3)(B), (5), and (6), and 115.116 of this title (relating to Testing Requirements) as soon as practicable, but no later than March 1, 2013.

(A) 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 and degassed but no later than January 1, 2017.

(B) 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 March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(b) In Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division on or before March 1, 2009, and shall continue to comply with this division, except as follows.

(1) The affected owner or operator shall comply with §§115.112(e), 115.115(a)(3)(B), (5), and (6), 115.116, and 115.118(a)(6) of this title as soon as practicable, but no later than March 1, 2013.

(A) If compliance with §115.112(e) of this title would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than December 1, 2021.

(B) The owner or operator of a 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 March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(C) As soon as practicable but no later than 15 months after the commission publishes notice in the *Texas Register* that the Dallas-Fort Worth area, except Wise County, has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard the owner or operator of a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station is required to be in compliance with the control requirements in §115.112(e)(4)(B)(ii) and (5)(B)(ii) of this title except as specified in §115.111(a)(11) of this title (relating to Exemptions).

(2) The owner or operator is no longer required to comply with §115.112(a) of this title beginning March 1, 2013.

(3) The affected owner or operator shall comply with §§115.112(e)(7), 115.114(a)(5), and 115.118(a)(6)(D) and (E) of this title as soon as practicable, but no later than January 1, 2017.

(c) In Hardin, Jefferson, and Orange Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by March 7, 1997, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(d) In El Paso County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 1996, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(e) In Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by July 31, 1993, and shall continue to comply with this division, except that compliance with §115.116(b) of this title is required as soon as practicable, but no later than March 1, 2013.

(f) In Wise County, the owner or operator of each storage tank in which any VOC is placed, stored, or held shall comply with this division as soon as practicable, but no later than January 1, 2017.

(g) [~~(f)~~] The owner or operator of each storage tank in which any VOC is placed, stored, or held that becomes subject to this division on or after the date specified in subsections (a) - (f) [~~(e)~~] of this section, shall comply with the requirements in this division no later than 60 days after becoming subject.

(h) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each storage tank is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406008
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 2. VENT GAS CONTROL

30 TAC §§115.121, 115.122, 115.125 - 115.127, 115.129

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.121. Emission Specifications.

(a) For all persons in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~], Dallas-Fort Worth [~~Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas, as

defined in §115.10 of this title (relating to Definitions), the following emission specifications shall apply.

(1) No person may allow a vent gas stream containing volatile organic compounds (VOC) to be emitted from any process vent, unless the vent gas stream is controlled properly in accordance with §115.122(a)(1) of this title (relating to Control Requirements). Vent gas streams include emissions from compressor rod packing that are contained and routed through a vent and emissions from a glycol dehydrator still vent.

(2) No person may allow a vent gas stream to be emitted from the following processes unless the vent gas stream is controlled properly in accordance with §115.122(a)(2) of this title:

(A) any synthetic organic chemical manufacturing industry reactor process or distillation operation;

(B) any air oxidation synthetic organic chemical manufacturing process;

(C) any liquid phase polypropylene manufacturing process;

(D) any liquid phase slurry high-density polyethylene manufacturing process; or

(E) any continuous polystyrene manufacturing process.

(3) In the Dallas-Fort Worth [~~Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas, VOC emissions from bakery ovens, as defined in §115.10 of this title, shall be controlled properly in accordance with §115.122(a)(3) of this title.

(4) Any vent gas stream in the Houston-Galveston-Brazoria [~~Houston/Galveston~~] area which includes a highly-reactive volatile organic compound [~~HRVOC~~], as defined in §115.10 of this title, is subject to the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) in addition to the applicable requirements of this division [~~(relating to Vent Gas Control)~~].

(b) In Nueces and Victoria Counties, no person may allow a vent gas stream to be emitted from any process vent containing one or more of the following VOC or classes of VOC, unless the vent gas stream is controlled properly in accordance with §115.122(b) of this title:

(1) emissions of ethylene associated with the formation, handling, and storage of solidified low-density polyethylene;

(2) emissions of the following specific VOC: ethylene, butadiene, isobutylene, styrene, isoprene, propylene, methylstyrene; and

(3) emissions of specified classes of VOC, including aldehydes, alcohols, aromatics, ethers, olefins, peroxides, amines, acids, esters, ketones, sulfides, and branched chain hydrocarbons (C_8 and above).

(c) For persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following emission specifications shall apply.

(1) No person may allow a vent gas stream to be emitted from any process vent containing one or more of the following VOC or classes of VOC, unless the vent gas stream is controlled properly in accordance with §115.122(c)(1) of this title:

(A) emissions of ethylene associated with the formation, handling, and storage of solidified low-density polyethylene;

(B) emissions of the following specific VOC: ethylene, butadiene, isobutylene, styrene, isoprene, propylene, and methylstyrene; and

(C) emissions of specified classes of VOC, including aldehydes, alcohols, aromatics, ethers, olefins, peroxides, amines, acids, esters, ketones, sulfides, and branched chain hydrocarbons (C_8 and above).

(2) No person may allow a vent gas stream to be emitted from any catalyst regeneration of a petroleum or chemical process system, basic oxygen furnace, or fluid coking unit into the atmosphere, unless the vent gas stream is properly controlled in accordance with §115.122(c)(2) of this title.

(3) No person may allow a vent gas stream to be emitted from any iron cupola into the atmosphere, unless the vent gas stream is properly controlled in accordance with §115.122(c)(3) of this title.

(4) Vent gas streams from blast furnaces shall be controlled properly in accordance with §115.122(c)(4) of this title.

§115.122. Control Requirements.

(a) For all persons in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~], Dallas-Fort Worth [~~Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas, the following control requirements shall apply.

(1) Any vent gas streams affected by §115.121(a)(1) of this title (relating to Emission Specifications) must be controlled properly with a control efficiency of at least 90% or to a volatile organic compound (VOC) concentration of no more than 20 parts per million by volume (ppmv) (on a dry basis corrected to 3.0% oxygen for combustion devices):

(A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit [~~(704 degrees Celsius)~~];

(B) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(C) by any other vapor control system, as defined in §115.10 of this title (relating to Definitions). A glycol dehydrator reboiler burning the vent stream from the still vent is a vapor control system.

(2) Any vent gas streams affected by §115.121(a)(2) of this title must be controlled properly with a control efficiency of at least 98% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices):

(A) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(B) by any other vapor control system, as defined in §115.10 of this title.

(3) For the Dallas-Fort Worth [~~Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas, VOC emissions from each bakery with a bakery oven vent gas stream(s) affected by §115.121(a)(3) of this title shall be reduced as follows.

(A) Each bakery in the Houston-Galveston-Brazoria [~~Houston/Galveston~~] area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%.

(B) Each bakery in the Dallas-Fort Worth [~~Dallas/Fort Worth~~] area, except in Wise County, with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year, shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%.

(C) Each bakery in the Dallas-Fort Worth [~~Dallas/Fort Worth~~] area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, but less than 50 tons per calendar year, shall reduce total VOC emissions by at least 30% from the bakery's 1990 emissions inventory in accordance with the schedule specified in §115.129(d) of this title (relating to Counties and Compliance Schedules).

(D) Each bakery in the El Paso area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year shall reduce total VOC emissions by at least 30% from the bakery's 1990 emissions inventory in accordance with the schedule specified in §115.129(e) of this title.

(E) Emission reductions in the 30% to 90% range are not creditable under Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Reduction Credit Program) [~~(relating to Emission Credit Banking and Trading)~~] for the following bakeries:

(i) each bakery in the Houston-Galveston-Brazoria [~~Houston/Galveston~~] area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year;

(ii) each bakery in the Dallas-Fort Worth [~~Dallas/Fort Worth~~] area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year;

(iii) each bakery in the El Paso area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year.

(4) Any vent gas stream that becomes subject to the provisions of paragraphs (1), (2), or (3) of this subsection by exceeding provisions of §115.127(a) of this title (relating to Exemptions) shall remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits unless 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 §115.127(a) of this title; and:

(A) the project by which throughput or emission rate was reduced is authorized by 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, 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 authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator has given the executive director 30 days' notice of the project in writing.

(b) For all persons in Nueces and Victoria Counties, any vent gas streams affected by §115.121(b) of this title must be controlled properly with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices):

(1) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit [~~(704 degrees Celsius)~~];

(2) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(3) by any other vapor control system, as defined in §115.10 of this title.

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following control requirements shall apply.

(1) Any vent gas streams affected by §115.121(c)(1) of this title must be controlled properly:

(A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit [~~(704 degrees Celsius)~~];

(B) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(C) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

(2) Any vent gas streams affected by §115.121(c)(2) of this title must be controlled properly:

(A) in a direct-flame incinerator or boiler at a temperature equal to or greater than 1,300 degrees Fahrenheit [~~(704 degrees Celsius)~~]; or

(B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

(3) Any vent gas streams affected by §115.121(c)(3) of this title must be controlled properly:

(A) at a temperature equal to or greater than 1,300 degrees Fahrenheit [~~(704 degrees Celsius)~~] in an afterburner having a retention time of at least one-fourth of a second, and having a steady flame that is not affected by the cupola charge and relights automatically if extinguished; or

(B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

(4) Any vent gas streams affected by §115.121(c)(4) of this title must be controlled properly:

(A) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare or in a combustion device used in a heating process associated with the operation of a blast furnace; or

(B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

§115.125. Testing Requirements.

Compliance with the emission specifications, vapor control system efficiency, and certain control requirements and exemption criteria of §§115.121 - 115.123 and 115.127 of this title (relating to Emission Specifications; Control Requirements; Alternate Control Requirements; and Exemptions) shall be determined by applying one or more of the following test methods and procedures, as appropriate, when specifically required within this division [~~(relating to Vent Gas Control)~~], when required by the executive director under §101.8 of this title (relating to Sampling), or when the owner or operator elects to conduct testing of one or more vent gas streams.

(1) Flow rate. Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) are used for determining flow rates, as necessary.

(2) Concentration of volatile organic compounds (VOC).

(A) Test Method 18 (40 CFR Part 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography.

(B) Test Method 21 (40 CFR Part 60, Appendix A-7) for determining VOC concentrations for the purpose of determining breakthrough on a carbon adsorption system or carbon adsorber.

(C) [~~(B)~~] Test Method 25 (40 CFR Part 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.

(D) [~~(C)~~] Test Methods 25A or 25B (40 CFR Part 60, Appendix A) are used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.

(3) Performance requirements for flares and vapor combustors.

(A) For flares, Test Method 22 (40 CFR Part 60, Appendix A) is used for visual determination of fugitive emissions from material sources and smoke emissions.

(B) For flares, additional test method requirements are described in 40 CFR §60.18(f), unless the United States Environmental Protection Agency (EPA) [~~EPA~~] or the executive director has granted a waiver from such testing requirements.

(C) Flares in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~], Dallas-Fort Worth [~~Dallas/Fort Worth~~], and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas shall comply with the performance test requirements of 40 CFR §60.18(b), unless EPA or the executive director has granted a waiver from such testing requirements.

(D) For vapor combustors, the owner or operator may consider the unit to be a flare. Each vapor combustor in Victoria County and the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~], Dallas-Fort Worth [~~Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas which the owner or operator elected to consider as a flare shall meet the performance test requirements of 40 CFR §60.18(b) in lieu of any testing under paragraphs (1) and (2) of this section.

(E) Compliance with the requirements of 40 CFR §60.18(b) will be considered to demonstrate compliance with the emission specifications and control efficiency requirements of §115.121 and §115.122 of this title.

(4) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.

(5) Alternate test methods. Test methods other than those specified in paragraphs (1) - (3) of this section may be used if validated by 40 CFR 63, Appendix A, Test Method 301 [~~(effective December 29, 1992)~~]. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.126. Monitoring and Recordkeeping Requirements.

The owner or operator of any facility which emits volatile organic compounds (VOC) through a stationary vent in Aransas, Bexar, Calhoun, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties or in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~], Dallas-Fort Worth [~~Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas shall maintain the following information at the facility for at least five years[~~, except that the five-year record retention requirement does not apply to records generated before December 31, 2000~~]. The owner or operator shall make the information available upon request to representatives of the executive director, the United States Environmental Protection Agency [~~EPA~~], or any local air pollution control agency having jurisdiction in the area.

(1) Vapor control systems. For vapor control systems used to control emissions in Victoria County and in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~], Dallas-Fort Worth [~~Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas from vents subject to the provisions of §115.121 of this title (relating to Emission Specifications), records of appropriate parameters to demonstrate compliance, including:

(A) continuous monitoring and recording of:

(i) the exhaust gas temperature immediately downstream of a direct-flame incinerator;

(ii) the inlet and outlet gas temperatures of a catalytic incinerator or chiller;

~~*[(iii)* the exhaust gas VOC concentration of any carbon adsorption system, as defined in §101.1 of this title (relating to Definitions); and]~~

(iii) [~~(iv)~~] the exhaust gas temperature immediately downstream of a vapor combustor. Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements specified in 40 Code of Federal Regulations (CFR) §60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter) for flares; and

(iv) for a carbon adsorption system or carbon adsorber, as defined in §101.1 of this title (relating to Definitions), the owner or operator shall:

(I) continuously monitor the exhaust gas VOC concentration of a carbon adsorption system that regenerates the carbon bed directly to determine breakthrough. For the purpose of this subclause, breakthrough is defined as a measured VOC concentration exceeding 100 parts per million by volume above background expressed as methane; and

(II) switch the vent gas flow to fresh carbon at a regular predetermined time interval for a carbon adsorber or carbon adsorption system that does not regenerate the carbon directly. The time interval must be less than the carbon replacement interval determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorption system or carbon adsorber.

(B) in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~], Dallas-Fort Worth [~~Dallas/Fort Worth~~], and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas, the requirements specified in 40 CFR §60.18(b) and Chapter 111 of this title for flares; and

(C) for vapor control systems other than those specified in subparagraphs (A) and (B) of this paragraph, records of appropriate operating parameters.

(2) Test results. A record of the results of any testing conducted in accordance with §115.125 of this title (relating to Testing Requirements).

(3) Records for exempted vents. Records for each vent exempted from control requirements in accordance with §115.127 of this title (relating to Exemptions) shall be sufficient to demonstrate compliance with the applicable exemption limit, including the following, as appropriate:

(A) the pounds of ethylene emitted per 1,000 pounds of low-density polyethylene produced;

(B) the combined weight of VOC of each vent gas stream on a daily basis;

(C) the concentration of VOC in each vent gas stream on a daily basis;

(D) the maximum design flow rate or VOC concentration of each vent gas stream exempt under §115.127(a)(4)(C) of this title; and

(E) the total design capacity of process units exempt under §115.127(a)(4)(B) of this title.

(4) Alternative records for exempted vents. As an alternative to the requirements of paragraph (3)(B) and (C) of this section, records for each vent exempted from control requirements in accordance with §115.127 of this title and having a VOC emission rate or concentration less than the applicable exemption limits at maximum actual operating conditions shall be sufficient to demonstrate continuous compliance with the applicable exemption limit. These records shall include complete information from either test results or appropriate calculations which clearly documents that the emission characteristics at maximum actual operating conditions are less than the applicable exemption limit. This documentation shall include the operating parameter levels that occurred during any testing, and the maximum levels feasible (either VOC concentration or mass emission rate) for the process.

(5) Bakeries. For bakeries subject to §115.122(a)(3)(A) - (B) of this title (relating to Control Requirements), the following additional requirements apply.

(A) The owner or operator of each bakery in the Houston-Galveston-Brazoria [~~Houston/Galveston~~] area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, shall submit a control plan no later than March 31, 2001, to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction. The plan shall demonstrate that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) will be at least 80% by December 31, 2001. At a minimum, the control plan shall include the emission point number (EPN) and the facility identification number (FIN) of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the 2000 VOC emission rates (consistent with the bakery's 2000 emissions inventory). The projected 2002 VOC emission rates shall be calculated in a manner consistent with the 2000 emissions inventory.

(B) All representations in control plans become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the bakery submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction within 30 days of the change. All control plans shall include documentation that the overall emission reduction from the uncontrolled VOC emission rate of the bakery's oven(s) continues to be at least the specified percentage reduction. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.

(6) Bakeries (contingency measures). For bakeries subject to §115.122(a)(3)(C) and (D) of this title, the following additional requirements apply.

(A) No later than six months after the commission publishes notification in the *Texas Register* as specified in §115.129(d) or (e) of this title (relating to Counties and Compliance Schedules), the owner or operator of each bakery shall submit an initial control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 emissions inventory will be at least 30%. At a minimum, the control plan shall include the EPN and the FIN of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the 1990 VOC emission rates (consistent with the bakery's 1990 emissions inventory). The projected VOC emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

(B) In order to document continued compliance with §115.122(a)(3) of this title, the owner or operator of each bakery shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 emissions inventory during the preceding calendar year is at least 30%. At a minimum, the report shall include the EPN and FIN of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the VOC emission rates. The emission rates for the proceeding calendar year shall be calculated in a manner consistent with the 1990 emissions inventory.

(C) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the bakery submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction within 30 days of the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions from the bakery's 1990 emissions inventory continues to be at least 30%. The emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

(7) Additional flare requirements. The owner or operator of a facility that uses a flare to meet the requirements of §115.122(a)(2) of this title shall install, calibrate, maintain, and operate according to the manufacturer's specifications, a heat-sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate continuous presence of a flame.

§115.127. Exemptions.

(a) For all persons in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~], Dallas-Fort Worth [~~Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas, the following exemptions apply. In cases where vent gas streams emanating from multiple process locations are combined, compliance with the exemptions of this section is determined after the combination of the streams but prior to the combined stream entering a control device, if present.

(1) A vent gas stream from a low-density polyethylene plant is exempt from the requirements of §115.121(a)(1) of this title (relating to Emission Specifications) if no more than 1.1 pounds of ethylene per 1,000 pounds [~~(1.1 kg/1,000 kg)~~] of product are emitted from all the vent gas streams associated with the formation, handling, and storage of solidified product.

(2) The following vent gas streams are exempt from the requirements of §115.121(a)(1) of this title:

(A) a vent gas stream having a combined weight of volatile organic compounds (VOC) equal to or less than 100 pounds [~~(45.4 kg)~~] in any continuous 24-hour period;

(B) a vent gas stream specified in §115.121(a)(1) of this title with a concentration of VOC less than 612 parts per million by volume (ppmv);

(C) a vent gas stream which is subject to §115.121(a)(2) or (3) of this title; and

(D) a vent gas stream which qualifies for exemption under paragraphs (3), (4)(B), (4)(C), (4)(D), (4)(E), or (5) of this subsection.

(3) The following vent gas streams are exempt from the requirements of §115.121(a)(2)(B) - (E) of this title:

(A) a vent gas stream having a combined weight of VOC equal to or less than 100 pounds [~~(45.4 kilograms)~~] in any continuous 24-hour period;

(B) a vent gas stream from any air oxidation synthetic organic chemical manufacturing process with a concentration of VOC less than 612 ppmv; and

(C) a vent gas stream from any liquid phase polypropylene manufacturing process, any liquid phase slurry high-density polyethylene manufacturing process, and any continuous polystyrene manufacturing process with a concentration of VOC less than 408 ppmv.

(4) For synthetic organic chemical manufacturing industry (SOCMI) reactor processes and distillation operations, the following exemptions apply.

(A) Any reactor process or distillation operation that is designed and operated in a batch mode is exempt from the requirements of §115.121(a)(2)(A) of this title. For the purposes of this subparagraph, batch mode means any noncontinuous reactor process or distillation operation which is not characterized by steady-state conditions, and in which the addition of reactants does not occur simultaneously with the removal of products.

(B) Any reactor process or distillation operation operating in a process unit with a total design capacity of less than 1,100 tons per year, for all chemicals produced within that unit, is exempt from the requirements of §115.121(a)(2)(A) of this title.

(C) Any reactor process or distillation operation vent gas stream with a flow rate less than 0.388 standard cubic feet [~~0.011 standard cubic meters~~] per minute or a VOC concentration less than 500 ppmv is exempt from the requirements of §115.121(a)(2)(A) of this title.

(D) Any distillation operation vent gas stream which meets the requirements of 40 Code of Federal Regulations (CFR) §60.660(c)(4) or §60.662(c) (concerning Subpart NNN--Standards of Performance for VOC Emissions From SOCMI Distillation Operations, December 14, 2000) is exempt from the requirements of §115.121(a)(2)(A) of this title.

(E) Any reactor process vent gas stream which meets the requirements of 40 CFR §60.700(c)(2) or §60.702(c) (concerning Subpart RRR--Standards of Performance for VOC Emissions From SOCMI Reactor Processes, December 14, 2000) is exempt from the requirements of §115.121(a)(2)(A) of this title.

(5) Bakeries are exempt from the requirements of §115.121(a)(3) and §115.122(a)(3) of this title (relating to Emission Specifications and Control Requirements) if the total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, is less than 25 tons per calendar year.

(6) A vent gas stream is exempt from this division [~~(relating to Vent Gas Control)~~] if all of the VOCs in the vent gas stream originate from a source(s) for which another division within Chapter 115 (for example, Storage of Volatile Organic Compounds) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.

(7) A combustion unit exhaust stream is exempt from this division provided that the unit is not being used as a control device for any vent gas stream which is subject to this division and which originates from a non-combustion source.

(8) As an alternative to complying with the requirements of this division (or, in the case of bakeries, as an alternative to complying with the requirements of §115.121(a)(1) and §115.122(a)(1) of this title) for a source that is addressed by a Chapter 115 contingency rule (i.e., one in which Chapter 115 requirements are triggered for that source by the commission publishing notification in the *Texas Register* that implementation of the contingency rule is necessary), the owner or operator of that source may instead choose to comply with the requirements of the contingency rule as though the contingency rule already had been implemented for that source. The owner or operator of each source choosing this option shall submit written notification to the executive director and any local air pollution control program with jurisdiction. When the executive director and the local program (if any) receive such notification, the source will then be considered subject to the contingency rule as though the contingency rule already had been implemented for that source.

(b) For all persons in Nueces and Victoria Counties, the following exemptions apply. In cases where vent gas streams emanating from multiple process locations are combined, compliance with the exemptions of this subsection is determined after the combination of the streams, but prior to the combined stream entering a control device, if present.

(1) A vent gas stream from a low-density polyethylene plant is exempt from the requirements of §115.121(b)(1) of this title if no more than 1.1 pounds of ethylene per 1,000 pounds [~~(1.1 kg/1,000 kg)~~] of product are emitted from all the vent gas streams associated with the formation, handling, and storage of the solidified product.

(2) The following vent gas streams are exempt from the requirements of §115.121(b) of this title:

(A) a vent gas stream having a combined weight of the VOC or classes of compounds specified in §115.121(b)(2) and (3) of this title equal to or less than 100 pounds [~~(45.4 kg)~~] in any continuous 24-hour period; and

(B) a vent gas stream with a concentration of the VOC or classes of compounds specified in §115.121(b)(2) and (3) of this title less than 30,000 ppmv.

(3) A vent gas stream is exempt from this division if all of the VOCs in the vent gas stream originate from a source(s) for which another division within Chapter 115 (for example, Storage of Volatile Organic Compounds) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.

(4) A combustion unit exhaust stream is exempt from this division provided that the unit is not being used as a control device

for any vent gas stream which is subject to this division and which originates from a non-combustion source.

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions apply. In cases where vent gas streams emanating from multiple process locations are combined, compliance with the exemptions of this subsection is determined after the combination of the streams, but prior to the combined stream entering a control device, if present.

(1) The following vent gas streams are exempt from the requirements of §115.121(c)(1) of this title:

(A) a vent gas stream from a low-density polyethylene plant provided that no more than 1.1 pounds of ethylene per 1,000 pounds [~~(1.1 kg/1,000 kg)~~] of product are emitted from all the vent gas streams associated with the formation, handling, and storage of solidified product;

(B) a vent gas stream having a combined weight of the VOC or classes of compounds specified in §115.121(c)(1)(B) - (C) of this title equal to or less than 100 pounds [~~(45.4 kg)~~] in any continuous 24-hour period; and

(C) a vent gas stream having a concentration of the VOC specified in §115.121(c)(1)(B) and (C) of this title less than 30,000 ppmv.

(2) A vent gas stream specified in §115.121(c)(2) of this title which emits less than or equal to five tons [~~(4,536 kg)~~] of total uncontrolled VOC in any one calendar year is exempt from the requirements of §115.121(c)(2) of this title.

(3) A vent gas stream is exempt from this division if all of the VOCs in the vent gas stream originate from a source(s) for which another division within Chapter 115 (for example, Storage of Volatile Organic Compounds) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.

(4) A combustion unit exhaust stream is exempt from this division provided that the unit is not being used as a control device for any vent gas stream which is subject to this division and which originates from a non-combustion source.

§115.129. Counties and Compliance Schedules.

(a) In [~~The owner or operator of each vent gas stream in~~] Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties, the compliance date has passed and the owner or operator of each vent gas stream shall continue to comply with this division [~~(relating to Vent Gas Control) as required by §115.930 of this title (relating to Compliance Dates)~~].

(b) The owner or operator of each bakery in Collin, Dallas, Denton, and Tarrant Counties subject to §115.122(a)(3)(C) of this title (relating to Control Requirements) shall comply with §§115.121(a)(3), 115.122(a)(3)(C), and 115.126(6) of this title (relating to Emission Specifications; Control Requirements; and Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard (NAAQS) for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in Federal Clean Air Act (FCAA), §172(c)(9).

(c) The owner or operator of each bakery in El Paso County subject to §115.122(a)(3)(D) of this title shall comply with §§115.121(a)(3), 115.122(a)(3)(D), and 115.126(6) of this title as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the NAAQS for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in FCAA, §172(c)(9).

(d) The owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

(e) The owner or operator of each vent gas stream in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(f) The owner or operator of a vent gas stream in the Dallas-Fort Worth area that becomes subject to this division on or after the applicable compliance date in this section shall comply with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(g) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each vent gas stream is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406009
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 3. WATER SEPARATION

30 TAC §115.139

Statutory Authority

The amended 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 amended 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; 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 amended 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 amended 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.139. Counties and Compliance Schedules.

(a) In [~~The owner or operator of each volatile organic compound (VOC) water separator in~~] Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties the compliance date has passed and the owner or operator of each volatile organic compound (VOC) water separator shall continue to comply with this division [~~(relating to Water Separation) as required by §115.930 of this title (relating to Compliance Dates)~~].

(b) The owner or operator of each VOC water separator 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 VOC water separator in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(d) The owner or operator of a water separator in the Dallas-Fort Worth area that becomes subject to this division on or after the applicable compliance date in subsection (a), (b) or (c) of this section, shall be in compliance with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(e) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each water separator is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406010
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §115.215, §115.219

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.215. Approved Test Methods.

Compliance with the emission specifications, vapor control system efficiency, and certain control requirements, inspection requirements, and exemption criteria of §§115.211 - 115.214 and 115.217 of this title (relating to Emission Specifications, Control Requirements, Alternate Control Requirements, Inspection Requirements, and Exemptions [~~Loading and Unloading of Volatile Organic Compounds~~]) must [~~shall~~] be determined by applying one or more of the following test methods and procedures, as appropriate.

(1) Flow rate. Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) are used for determining flow rates, as necessary.

(2) Concentration of volatile organic compounds (VOC).

(A) Test Method 18 (40 CFR Part 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography.

(B) Test Method 25 (40 CFR Part 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.

(C) Test Methods 25A or 25B (40 CFR Part 60, Appendix A) are used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.

(3) Performance requirements for flares and vapor combustors.

(A) For flares, the performance test requirements of 40 CFR §60.18(b) [~~shall~~] apply.

(B) For vapor combustors, the owner or operator may consider the unit to be a flare and meet the performance test requirements of 40 CFR §60.18(b) rather than the procedures of paragraphs (1) and (2) of this section.

(C) Compliance with the requirements of 40 CFR §60.18(b) will be considered to demonstrate compliance with the emission specifications and control efficiency requirements of §115.211 and §115.212 of this title [~~(relating to Emission Specifications; and Control Requirements)~~].

(4) Vapor pressure. Use standard reference texts or ASTM International [~~American Society for Testing and Materials (ASTM)~~] Test Methods D323-89, D2879, D4953, D5190, [~~or~~] D5191, or D6377 for the measurement of vapor pressure. 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 either the measured temperature or 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.

(5) Leak determination by instrument method. Use Test Method 21 (40 CFR Part 60, Appendix A) for determining VOC leaks.

(6) Gasoline terminal test procedures. Use the additional test procedures described in 40 CFR §60.503(b) - (d) (February 14, 1989), for pre-test leak determination, emission specifications test for vapor control systems, and pressure limit in transport vessel.

(7) Vapor-tightness test procedures for marine vessels. Use 40 CFR §63.565(c) (September 19, 1995) or 40 CFR §61.304(f) (October 17, 2000) for determination of marine vessel vapor tightness.

(8) Flash point. Use ASTM Test Method D93 for the measurement of flash point.

(9) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.

(10) Alternate test methods. Test methods other than those specified in paragraphs (1) - (8) of this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301 [~~(December 29, 1992)~~]. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.219. Counties and Compliance Schedules.

(a) In [~~The owner or operator of each volatile organic compound (VOC) transfer operation in~~] Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties, the compliance date has passed and the owner or operator of each volatile organic compound (VOC) transfer operation shall continue to comply with this division [~~(relating to Loading and Unloading of Volatile Organic Compounds) as required by §115.930 of this title (relating to Compliance Dates)~~].

(b) In [~~The owner or operator of each gasoline bulk plant in~~] the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the compliance date has passed and the owner or operator of each gasoline bulk plant shall continue to comply with this division [~~as of required by §115.930 of this title.~~]

(c) In [~~The owner or operator of each gasoline terminal in~~] the covered attainment counties, as defined in §115.10 of this title, the compliance date has passed and the owner or operator of each gasoline terminal shall continue to comply with this division [~~as required by §115.930 of this title.~~]

(d) The owner or operator of each gasoline terminal, gasoline bulk plant, or [~~and~~] VOC transfer operation in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009. [~~The owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation in these counties shall continue to comply with the applicable requirements in §§115.211(2), 115.212(b), and 115.214(b) of this title (relating to Emission Specifications; Control Requirements; and Inspection Requirements) until the facility achieves compliance with the newly applicable requirements in §§115.211(1), 115.212(a), and 115.214(a) of this title.~~]

(e) The owner or operator of each gasoline terminal, gasoline bulk plant, or VOC transfer operation in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017. The owner or operator of each gasoline terminal or gasoline bulk plant in Wise County shall continue to comply with the applicable requirements in §§115.211(2), 115.212(b), and 115.214(b) of this title (relating to Emission Specifications; Control Requirements; and Inspection Requirements) until the facility achieves compliance with the applicable requirements in §§115.211(1), 115.212(a), and 115.214(a) of this title.

(f) The owner or operator of an affected source in the Dallas-Fort Worth area that becomes subject to the requirements of this division on or after the applicable compliance date in subsection (a), (d), or (e) of this section, shall be in compliance with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(g) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each gasoline terminal, gasoline bulk plant, or VOC transfer operation is not required to comply with the requirements in §§115.211(1), 115.212(a), and 115.214(a) of this title and shall continue to comply with the requirements in §§115.211(2), 115.212(b), and 115.214(b) of this title.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406011
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 2. FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §115.229

Statutory Authority

The amended 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 amended 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; 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 amended 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 amended 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 amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.229. Counties and Compliance Schedules.

(a) The owner or operator of each gasoline dispensing facility in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas and in Collin, Dallas, Denton, and Tarrant Counties shall continue to comply with this division as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline dispensing facility in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall continue to comply with this division as required by §115.930 of this title.

(c) The owner or operator of each gasoline dispensing facility in Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties that has dispensed at least 25,000 gallons of gasoline but less than 125,000 gallons of gasoline in any calendar month after December 31, 2004 shall comply with this division as soon as practicable, but no later than December 31, 2005.

(d) The owner or operator of each gasoline dispensing facility in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties that has dispensed at least 10,000 gallons of gasoline but less than 125,000 gallons of gasoline in any calendar month after April 30, 2005, shall comply with this division as soon as practicable, but no later than June 15, 2007.

(e) The owner or operator of each gasoline dispensing facility in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(f) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each gasoline dispensing facility shall continue to comply with the requirements in this division applicable to the covered attainment counties. The requirements that apply in the Dallas-Fort Worth area no longer apply to gasoline dispensing facilities in Wise County.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406012
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 3. CONTROL OF VOLATILE ORGANIC COMPOUND LEAKS FROM TRANSPORT VESSELS

30 TAC §115.239

Statutory Authority

The amended 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 amended 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; 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 amended 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 amended 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 amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.239. Counties and Compliance Schedules.

(a) In [~~The owner or operator of each tank-truck tank in~~] Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties, the compliance date has passed and the owner or operator of each tank-truck tank shall continue to comply with this division [~~(relating to Control of Volatile Organic Compound Leaks from Transport Vessels) as required by §115.930 of this title (relating to Compliance Dates)~~].

(b) In [~~The owner or operator of each gasoline tank-truck tank in~~] the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the compliance date has passed and the owner or operator of each gasoline tank-truck tank shall continue to comply with this division [~~as required by §115.930 of this title~~].

(c) The owner or operator of each tank-truck tank in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009. [~~The owner or operator of each gasoline tank-truck tank in these counties shall continue to comply with the applicable requirements in §115.234(b) and §115.235(b) of this title (relating to Inspection Requirements and Approved Test Methods) until the facility achieves compliance with the newly applicable requirements in §115.234(a) and §115.235(a) of this title.~~]

(d) The owner or operator of each tank-truck tank in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017. The owner or operator of each gasoline tank-truck tank in Wise County shall continue to comply with the applicable requirements in §115.234(b) and §115.235(b) of this title (relating to Inspection Requirements and Approved Test Methods) until the facility achieves compliance with the newly applicable requirements in §115.234(a) and §115.235(a) of this title.

(e) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each gasoline terminal, gasoline bulk plant, or volatile organic compound transfer operation is not required to comply with the requirements in §115.234(a) and §115.235(a) of this title and shall continue to comply with the requirements in §115.234(b) and §115.235(b) of this title.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406013
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER D. PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES
DIVISION 3. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE NONATTAINMENT AREAS

30 TAC §115.359

Statutory Authority

The amended 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 amended 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; 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 amended 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 amended section is also proposed under Federal Clean 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 amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.359. Counties and Compliance Schedules.

(a) In [~~The owner or operator of each affected source in~~] Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties, the compliance date has passed and the owner or operator shall continue to comply with this division [~~(relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) as required by §115.930 of this title (relating to Compliance Dates)~~].

(b) The owner or operator of each affected source 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 affected source in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(d) The owner or operator of an affected source in the Dallas-Fort Worth area that becomes subject to this division on or after the applicable date specified in subsections (a) - (c) of this section shall comply with the requirements in this division no later than 60 days after becoming subject.

(e) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each affected source is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406014
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 1. DEGREASING PROCESSES

30 TAC §§115.410, 115.411, 115.415, 115.416, 115.419

Statutory Authority

The new and amended 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 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. 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 new and amended sections implement THSC, §§382.002, 382.011, 382.012, and 382.016, 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.410. Applicability and Definitions.

(a) Applicability. The provisions of this division 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) and in Bastrop, Bexar, Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson Counties to all persons using volatile organic compound-containing solvent for cold solvent degreasing processes, open-top vapor degreasing processes, and conveyorized degreasing processes.

(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.

§115.411. Exemptions.

The following exemptions apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Bastrop, Bexar, Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson.

(1) Any cold solvent cleaning system is exempt from the provisions of §115.412(1)(B) of this title (relating to Control Requirements) and may use an external drainage facility in place of an internal type drainage system, if the true vapor pressure of the solvent is less than or equal to 0.6 pounds per square inch absolute (psia) (4.1 kilo Pascals (kPa)) as measured at 100 degrees Fahrenheit (38 degrees Celsius) or if a cleaned part cannot fit into an internal drainage facility.

(2) The following are exempt from the requirements of §115.412(1)(E) of this title:

(A) a cold solvent cleaning system for which the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius), provided that the solvent is not heated above 120 degrees Fahrenheit (49 degrees Celsius); and

(B) remote reservoir cold solvent cleaners.

(3) Any conveyorized degreaser with less than 20 square feet (ft^2) (2 square meters (m^2)) of air/vapor interface is exempt from the requirement of §115.412(3)(A) of this title.

(4) An owner or operator who operates a remote reservoir cold solvent cleaner that uses solvent with a true vapor pressure equal to or less than 0.6 psia (4.1 kPa) measured at 100 degrees Fahrenheit (38 degrees Celsius) and that has a drain area less than 16 square inches (in^2) (100 square centimeters (cm^2)) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(1) of this title.

(5) In Gregg, Nueces, and Victoria Counties, degreasing operations located on any property that can emit, when uncontrolled, a combined weight of volatile organic compounds less than 550 pounds in any consecutive 24-hour period are exempt from the provisions of §115.412 of this title.

§115.415. Testing Requirements.

The testing requirements for degreasing processes in the Beaumont-Port Arthur, Dallas-Fort Worth, [~~Beaumont/Port Arthur, Dallas/Fort Worth,~~] El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas and in Bastrop, Bexar, Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson [~~Gregg, Nueces, Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson~~] Counties are as follows.

(1) Compliance with §115.412(1) of this title (relating to Control Requirements) must [shall] be determined by applying the following test methods, as applicable:

(A) determination of true vapor pressure using ASTM International [American Society for Testing Materials (ASTM)] Test Method D323-89, ASTM Test Method D2879, ASTM Test Method D4953, ASTM Test Method D5190, or ASTM Test Method D5191 for the measurement of Reid vapor pressure [(RVP)], adjusted for actual storage temperature in accordance with American Petroleum Institute [(API)] Publication 2517, Third Edition, 1989; [or]

(B) minor modifications to the [these] test methods and procedures listed in subparagraph (A) of this paragraph that are approved by the executive director;[.]

(C) using standard reference materials for the true vapor pressure of each volatile organic compound component; or

(D) using analytical data from the solvent supplier or manufacturer's material safety data sheet.

(2) Compliance with §115.412(2)(D)(iv) and (3)(A)(ii) of this title and §115.413(3) of this title (relating to Alternate Control Requirements) must [shall] be determined by applying the following test methods, as appropriate:

(A) Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates, as necessary;

(B) Test Method 18 (40 CFR Part 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(C) Test Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(D) Test Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(E) minor modifications to these test methods and procedures approved by the executive director.

(3) Test methods other than those specified in paragraphs (1) and (2) of this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.416. Recordkeeping Requirements.

The owner or operator of each degreasing process in Beaumont-Port Arthur, Dallas-Fort Worth, [Beaumont/Port Arthur, Dallas/Fort Worth,] El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas and in Bastrop, Bexar, Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson [Gregg, Nueces, Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson] Counties shall maintain the following records at the facility for at least two years and shall make such records available upon request to representatives of the executive director, the United States Environmental Protection Agency [EPA], or the local air pollution control agency having jurisdiction in the area:

(1) a record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit;

(2) the results of all tests conducted at the facility in accordance with the requirements described in §115.415(2) of this title (relating to Testing Requirements);

(3) for each degreasing process [operation] in Gregg, Nueces, and Victoria Counties which is exempt under §115.411(5) [§115.417(5)] of this title (relating to Exemptions), records of solvent usage in sufficient detail to document continuous compliance with this exemption; [.]

(4) for each degreasing process in the Dallas-Fort Worth area, records sufficient to demonstrate continuous compliance with:

(A) the vapor pressure testing described in §115.415(1)(A) - (D) of this title; and

(B) the applicable exemptions in §115.411 of this title.

§115.419. Counties and Compliance Schedules.

(a) In [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 passed and all affected persons shall continue to comply with [applicable sections of] this division [(relating to Degreasing Processes) as required by §115.930 of this title (relating to Compliance Dates)].

(b) All affected persons in Bastrop, Bexar, Caldwell, Comal, Guadalupe, [Wilson, Bastrop, Caldwell,] Hays, Travis, Wilson, and Williamson Counties shall [must] comply with [applicable sections of] this division [(relating to Degreasing Processes)] as soon as practicable, but no later than December 31, 2005.

(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with [the applicable sections of] this division as soon as practicable, but no later than March 1, 2009.

(d) All affected persons of a degreasing process in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(e) All affected persons of a degreasing process in the Dallas-Fort Worth area that becomes subject to this division on or after the applicable compliance date in subsection (a), (c), or (d) of this section shall comply with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(f) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each degreasing process is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406015
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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30 TAC §115.417

(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, 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; 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 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 repealed section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.417. Exemptions.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406016
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 2. SURFACE COATING PROCESSES

30 TAC §§115.420 - 115.423, 115.425 - 115.427, 115.429

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.420. Applicability and [~~Surface Coating~~] Definitions.

(a) The owner or operator of a surface coating process in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties, as specified in each paragraph below, is subject to this division. All owners and operators shall be in compliance with this division in accordance with the compliance schedules listed in §115.429 of this title (relating to Counties and Compliance Schedules).

(1) Large appliance coating. The requirements in this division apply in the Beaumont-Port Arthur and El Paso areas and in Gregg, Nueces, and Victoria Counties.

(2) Metal furniture coating. The requirements in this division apply in the Beaumont-Port Arthur and El Paso areas and in Gregg, Nueces, and Victoria Counties.

(3) Coil coating. The requirements in this division apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(4) Paper coating. The requirements in this division apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties. In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, applicability is determined by the volatile organic compound (VOC) emissions from each individual paper coating line.

(A) Each paper coating line in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas that has the potential to emit less than 25 tons per year (tpy) of VOC is subject to this division.

(B) Each paper coating line in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas that has the potential to emit equal to or greater than 25 tpy of VOC is subject to the requirements in Division 5 of this subchapter (relating to Control Requirements for Surface Coating Processes).

(5) Fabric coating. The requirements in this division apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(6) Vinyl coating. The requirements in this division apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(7) Can coating. The requirements in this division apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(8) Automobile and light-duty truck coating. The requirements in this division apply in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas.

(9) Vehicle refinishing coating (body shops). The requirements in this division apply in the Dallas-Fort Worth area, except in Wise County, and in the El Paso and Houston-Galveston-Brazoria areas.

(10) Miscellaneous metal parts and products coating. The requirements in this division apply in the Beaumont-Port Arthur and El Paso areas and in Gregg, Nueces, and Victoria Counties. In the Dallas-Fort Worth area, except in Wise County, and the Houston-Galveston-Brazoria area, the requirements in this division apply only to designated on-site maintenance shops as specified in §115.427(8) of this title (relating to Exemptions).

(11) Factory surface coating of flat wood paneling. The requirements in this division apply in the Beaumont-Port Arthur area, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(12) Aerospace coating. The requirements in this division apply in Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(13) Mirror backing coating. The requirements in this division apply in the Beaumont-Port Arthur area, the Dallas-Fort Worth area, except in Wise County, the El Paso area, and the Houston-Galveston-Brazoria area.

(14) Wood parts and products coating. The requirements in this division apply in the Dallas-Fort Worth area, except in Wise County, the El Paso area, and the Houston-Galveston-Brazoria area.

(15) Wood furniture manufacturing coatings. The requirements in this division apply in the Beaumont-Port Arthur area, the Dallas-Fort Worth area, except in Wise County, the El Paso area, and the Houston-Galveston-Brazoria area.

(16) Marine coatings. The requirements in this division apply in the Beaumont-Port Arthur and Houston-Galveston-Brazoria areas.

(b) [~~(a)~~] General surface coating definitions. The following terms, when used in this division [~~(relating to Surface Coating Processes), shall~~] 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) Aerosol coating (spray paint)--A hand-held, pressurized, nonrefillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.

(2) Coating--A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(3) 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.

(4) Coating line--An operation consisting of a series of one or more coating application systems and including associated flashoff area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.

(5) Coating solids (or solids)--The part of a coating that remains after the coating is dried or cured.

(6) Daily weighted average--The total weight of volatile organic compound (VOC) emissions from all coatings subject to the same emission standard in §115.421 of this title (relating to Emission Specifications), divided by the total volume of those coatings (minus water and exempt solvent) delivered to the application system each day. Coatings subject to different emission standards in §115.421 of this title must [~~shall~~] not be combined for purposes of calculating the daily weighted average. In addition, determination of compliance is based on each individual coating line.

(7) High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure at the air cap.

(8) Normally closed container--A container that is closed unless an operator is actively engaged in activities such as adding or removing material.

(9) Pounds of VOC per gallon of coating (minus water and exempt solvents)--Basis for emission limits for surface coating processes. Can be calculated by the following equation:
Figure: 30 TAC §115.420(b)(9)
[~~Figure: 30 TAC §115.420(a)(9)~~]

(10) Pounds of VOC per gallon of solids--Basis for emission limits for surface coating process. Can be calculated by the following equation:
Figure: 30 TAC §115.420(b)(10)
[~~Figure: 30 TAC §115.420(a)(10)~~]

(11) Spray gun--A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

(12) Surface coating processes--Operations which utilize a coating application system.

(13) Transfer efficiency--The amount of coating solids deposited onto the surface of a part or product divided by the total amount of coating solids delivered to the coating application system.

(c) [~~(b)~~] Specific surface coating definitions. The following terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aerospace coating.

(A) Ablative coating--A coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerodynamic heating. The ablative char surface serves as an insulative barrier, protecting adjacent components from the heat or open flame.

(B) Adhesion promoter--A very thin coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

(C) Adhesive bonding primer--A primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250 degrees Fahrenheit or below and primers with a design cure above 250 degrees Fahrenheit.

(D) Aerospace vehicle or component--Any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles.

(E) Aircraft fluid systems--Those systems that handle hydraulic fluids, fuel, cooling fluids, or oils.

(F) Aircraft transparency--The aircraft windshield, canopy, passenger windows, lenses, and other components which are constructed of transparent materials.

(G) Antichafe coating--A coating applied to areas of moving aerospace components that may rub during normal operations or installation.

(H) Antique aerospace vehicle or component--An aerospace vehicle or component thereof that was built at least 30 years ago. An antique aerospace vehicle would not routinely be in commercial or military service in the capacity for which it was designed.

(I) Aqueous cleaning solvent--A solvent in which water is at least 80% by volume of the solvent as applied.

(J) Bearing coating--A coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

(K) Bonding maskant--A temporary coating used to protect selected areas of aerospace parts from strong acid or alkaline solutions during processing for bonding.

(L) Caulking and smoothing compounds--Semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

(M) Chemical agent-resistant coating--An exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

(N) Chemical milling maskant--A coating that is applied directly to aluminum components to protect surface areas when chemically milling the component with a Type I or II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included. Maskants that are defined as specialty coatings are not included under this definition.

(O) Cleaning operation--Spray-gun, hand-wipe, and flush cleaning operations.

(P) Cleaning solvent--A liquid material used for hand-wipe, spray gun, or flush cleaning. This definition does not include solutions that contain no VOC.

(Q) Clear coating--A transparent coating usually applied over a colored opaque coating, metallic substrate, or placard to give improved gloss and protection to the color coat.

(R) Closed-cycle depainting system--A dust free, automated process that removes permanent coating in small sections at a time, and maintains a continuous vacuum around the area(s) being depainted to capture emissions.

(S) Coating operation--Using a spray booth, tank, or other enclosure or any area (such as a hangar) for applying a single type of coating (e.g., primer); using the same spray booth for applying another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

(T) Coating unit--A series of one or more coating applicators and any associated drying area and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating.

(U) Commercial exterior aerodynamic structure primer--A primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

(V) Commercial interior adhesive--Materials used in the bonding of passenger cabin interior components. These components must meet the Federal Aviation Administration (FAA) fireworthiness requirements.

(W) Compatible substrate primer--Either compatible epoxy primer or adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that:

(i) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application; or

(ii) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

(X) Confined space--A space that:

(i) is large enough and so configured that a person can bodily enter and perform assigned work;

(ii) has limited or restricted means for entry or exit (for example, fuel tanks, fuel vessels, and other spaces that have limited means of entry); and

(iii) is not suitable for continuous occupancy.

(Y) Corrosion prevention compound--A coating system or compound that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

(Z) Critical use and line sealer maskant--A temporary coating, not covered under other maskant categories, used to protect selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium, or high-strength steel, high-precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (i.e., line sealer) are also included in this category.

(AA) Cryogenic flexible primer--A primer designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (-275 degrees Fahrenheit and below).

(BB) Cryoprotective coating--A coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

(CC) Cyanoacrylate adhesive--A fast-setting, single component adhesive that cures at room temperature. Also known as "super glue."

(DD) Dry lubricative material--A coating consisting of lauric acid, cetyl alcohol, waxes, or other noncross linked or resin-bound materials that act as a dry lubricant.

(EE) Electric or radiation-effect coating--A coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are excluded.

(FF) Electrostatic discharge and electromagnetic interference coating--A coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

(GG) Elevated-temperature Skydrol-resistant commercial primer--A primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester hydraulic fluid (Skydrol 500b or equivalent) at the elevated temperature of 150 degrees Fahrenheit for 1,000 hours.

(HH) Epoxy polyamide topcoat--A coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

(II) Fire-resistant (interior) coating--For civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

(JJ) Flexible primer--A primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

(KK) Flight test coating--A coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

(LL) Flush cleaning--Removal of contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component or coating equipment by passing solvent over, into, or through the item being cleaned. The solvent may simply be poured into the item being cleaned and then drained, or assisted by air or hydraulic pressure, or by pumping. Hand-wipe cleaning operations where wiping, scrubbing, mopping, or other hand action are used are not included.

(MM) Fuel tank adhesive--An adhesive used to bond components exposed to fuel and must be compatible with fuel tank coatings.

(NN) Fuel tank coating--A coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.

(OO) Grams of VOC per liter of coating (less water and less exempt solvent)--The weight of VOC per combined volume of total volatiles and coating solids, less water and exempt compounds. Can be calculated by the following equation:
Figure: 30 TAC §115.420(c)(1)(OO)
[~~Figure: 30 TAC §115.420(b)(1)(OO)~~]

(PP) Hand-wipe cleaning operation--Removing contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component by physically rubbing it with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.

(QQ) High temperature coating--A coating designed to withstand temperatures of more than 350 degrees Fahrenheit.

(RR) Hydrocarbon-based cleaning solvent--A solvent which is composed of VOC (photochemically reactive hydrocarbons) and/or oxygenated hydrocarbons, has a maximum vapor pressure of seven millimeters of mercury (mm Hg) at 20 degrees Celsius (68 degrees Fahrenheit), and contains no hazardous air pollutant (HAP) identified in the 1990 Amendments to the Federal Clean Air Act (FCAA), §112(b).

(SS) Insulation covering--Material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

(TT) Intermediate release coating--A thin coating applied beneath topcoats to assist in removing the topcoat in depainting operations and generally to allow the use of less hazardous depainting methods.

(UU) Lacquer--A clear or pigmented coating formulated with a nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

(VV) Limited access space--Internal surfaces or passages of an aerospace vehicle or component that cannot be reached without the aid of an airbrush or a spray gun extension for the application of coatings.

(WW) Metalized epoxy coating--A coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

(XX) Mold release--A coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

(YY) Monthly weighted average--The total weight of VOC emission from all coatings divided by the total volume of those coatings (minus water and exempt solvents) delivered to the application system each calendar [~~calender~~] month. Coatings shall not be combined for purposes of calculating the monthly weighted average. In addition, determination of compliance is based on each individual coating operation.

(ZZ) Nonstructural adhesive--An adhesive that bonds nonload bearing aerospace components in noncritical applications and is not covered in any other specialty adhesive categories.

(AAA) Operating parameter value--A minimum or maximum value established for a control equipment or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has continued to comply with an applicable emission limitation.

(BBB) Optical antireflection coating--A coating with a low reflectance in the infrared and visible wavelength ranges that is used for antireflection on or near optical and laser hardware.

(CCC) Part marking coating--Coatings or inks used to make identifying markings on materials, components, and/or assemblies of aerospace vehicles. These markings may be either permanent or temporary.

(DDD) Pretreatment coating--An organic coating that contains at least 0.5% acids by weight and is applied directly to metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

(EEE) Primer--The first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent coatings. Primers that are defined as specialty coatings are not included under this definition.

(FFF) Radome--The nonmetallic protective housing for electromagnetic transmitters and receivers (e.g., radar, electronic countermeasures, etc.).

(GGG) Rain erosion-resistant coating--A coating or coating system used to protect the leading edges of parts such as flaps, stabilizers, radomes, engine inlet nacelles, etc. against erosion caused by rain impact during flight.

(HHH) Research and development--An operation whose primary purpose is for research and development of new processes and products and that is conducted under the close supervision of technically trained personnel and is not involved in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

(III) Rocket motor bonding adhesive--An adhesive used in rocket motor bonding applications.

(JJJ) Rocket motor nozzle coating--A catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

(KKK) Rubber-based adhesive--A quick setting contact cement that provides a strong, yet flexible bond between two mating surfaces that may be of dissimilar materials.

(LLL) Scale inhibitor--A coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

(MMM) Screen print ink--An ink used in screen printing processes during fabrication of decorative laminates and decals.

(NNN) Sealant--A material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

(OOO) Seal coat maskant--An overcoat applied over a maskant to improve abrasion and chemical resistance during production operations.

(PPP) Self-priming topcoat--A topcoat that is applied directly to an uncoated aerospace vehicle or component for purposes of corrosion prevention, environmental protection, and functional fluid resistance. More than one layer of identical coating formulation may be applied to the vehicle or component.

(QQQ) Semiaqueous cleaning solvent--A solution in which water is a primary ingredient [~~ingredent~~]. More than 60% by volume of the solvent solution as applied must be water.

(RRR) Silicone insulation material--An insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

(SSS) Solid film lubricant--A very thin coating consisting of a binder system containing as its chief pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene, or other solids that act as a dry lubricant between faying (i.e., closely or tightly fitting) surfaces.

(TTT) Space vehicle--A man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage, that through contamination can compromise the space vehicle performance.

(UUU) Specialty coating--A coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

(VVV) Specialized function coating--A coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other specialty coating categories.

(WWW) Structural autoclavable adhesive--An adhesive used to bond load-carrying aerospace components that is cured by heat and pressure in an autoclave.

(XXX) Structural nonautoclavable adhesive--An adhesive cured under ambient conditions that is used to bond load-carrying aerospace components or other critical functions, such as nonstructural bonding in the proximity of engines.

(YYY) Surface preparation--The removal of contaminants from the surface of an aerospace vehicle or component or the activation or reactivation of the surface in preparation for the application of a coating.

(ZZZ) Temporary protective coating--A coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

(AAAA) Thermal control coating--A coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

(BBBB) Topcoat--A coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

(CCCC) Touch-up and repair coating--A coating used to cover minor coating imperfections appearing after the main coating operation.

(DDDD) Touch-up and repair operation--That portion of the coating operation that is the incidental application of coating used to cover minor imperfections in the coating finish or to achieve complete coverage. This definition includes out-of-sequence or out-of-cycle coating.

(EEEE) VOC composite vapor pressure--The sum of the partial pressures of the compounds defined as VOCs, determined by the following calculation:
Figure: 30 TAC §115.420(c)(1)(EEEE)
[~~Figure: 30 TAC §115.420(b)(1)(EEEE)~~]

(FFFF) Waterborne (water-reducible) coating--A coating which contains more than 5.0% water by weight as applied in its volatile fraction.

(GGGG) Wet fastener installation coating--A primer or sealant applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

(HHHH) Wing coating--A corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

(2) Can coating--The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetables, and others), tennis balls, motor oil, paints, and other mass-produced cans.

(3) Coil coating--The coating of any flat metal sheet or strip supplied in rolls or coils.

(4) Fabric coating--The application of coatings to fabric, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms).

(5) Factory surface coating of flat wood paneling--Coating of flat wood paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tile board.

(6) 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.

(7) Metal furniture coating--The coating of metal furniture (tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.

(8) Mirror backing coating--The application of coatings to the silvered surface of a mirror.

(9) Miscellaneous metal parts and products coating.

(A) Clear coat--A coating which lacks opacity or which is transparent and which may or may not have an undercoat that is used as a reflectant base or undertone color.

(B) Drum (metal)--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).

(C) Extreme performance coating--A coating intended for exposure to extreme environmental conditions, such as continuous outdoor exposure; temperatures frequently above 95 degrees Celsius (203 degrees Fahrenheit); detergents; abrasive and scouring agents; solvents; and corrosive solutions, chemicals, or atmospheres.

(D) High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(E) Low-bake coatings--Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.

(F) Miscellaneous metal parts and products (MMPP) coating--The coating of MMPP in the following categories at original equipment manufacturing operations; designated on-site maintenance shops which recoat used parts and products; and off-site job shops which coat new parts and products or which recoat used 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 which 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) - (8) and (10) - (14) of this subsection.

(G) Pail (metal)--Any cylindrical metal shipping container with a nominal 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.

(10) Paper coating--The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).

(11) Marine coatings.

(A) Air flask specialty coating--Any special composition coating applied to interior surfaces of high pressure breathing air flasks to provide corrosion resistance and that is certified safe for use with breathing air supplies.

(B) Antenna specialty coating--Any coating applied to equipment through which electromagnetic signals must pass for reception or transmission.

(C) Antifoulant specialty coating--Any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA

as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

(D) Batch--The product of an individual production run of a coating manufacturer's process. (A batch may vary in composition from other batches of the same product.)

(E) Bitumens--Black or brown materials that are soluble in carbon disulfide, which consist mainly of hydrocarbons.

(F) Bituminous resin coating--Any coating that incorporates bitumens as a principal component and is formulated primarily to be applied to a substrate or surface to resist ultraviolet radiation and/or water.

(G) Epoxy--Any thermoset coating formed by reaction of an epoxy resin (i.e., a resin containing a reactive epoxide with a curing agent).

(H) General use coating--Any coating that is not a specialty coating.

(I) Heat resistant specialty coating--Any coating that during normal use must withstand a temperature of at least 204 degrees Celsius (400 degrees Fahrenheit).

(J) High-gloss specialty coating--Any coating that achieves at least 85% reflectance on a 60 degree meter when tested by the American Society for Testing and Materials (ASTM) Method D-523.

(K) High-temperature specialty coating--Any coating that during normal use must withstand a temperature of at least 426 degrees Celsius (800 degrees Fahrenheit).

(L) Inorganic zinc (high-build) specialty coating--A coating that contains 960 grams per liter (eight pounds per gallon) or more elemental zinc incorporated into an inorganic silicate binder that is applied to steel to provide galvanic corrosion resistance. (These coatings are typically applied at more than two mil dry film thickness.)

(M) Maximum allowable thinning ratio--The maximum volume of thinner that can be added per volume of coating without exceeding the applicable VOC limit of §115.421(15) [~~§115.421(a)(15)(A)~~] of this title.

(N) Military exterior specialty coating--Any exterior topcoat applied to military or United States Coast Guard vessels that are subject to specific chemical, biological, and radiological washdown requirements.

(O) Mist specialty coating--Any low viscosity, thin film, epoxy coating applied to an inorganic zinc primer that penetrates the porous zinc primer and allows the occluded air to escape through the paint film prior to curing.

(P) Navigational aids specialty coating--Any coating applied to Coast Guard buoys or other Coast Guard waterway markers when they are recoated aboard ship at their usage site and immediately returned to the water.

(Q) Nonskid specialty coating--Any coating applied to the horizontal surfaces of a marine vessel for the specific purpose of providing slip resistance for personnel, vehicles, or aircraft.

(R) Nonvolatiles (or volume solids)--Substances that do not evaporate readily. This term refers to the film-forming material of a coating.

(S) Nuclear specialty coating--Any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082-83), relatively easy to decontaminate (ASTM D4256-83), and resistant to various chemicals to which the coatings are likely to be exposed (ASTM 3912-80). (For nuclear coatings, see the general protective requirements outlined by the U.S. Atomic Energy Commission in a report entitled "U.S. Atomic Energy Commission Regulatory Guide 1.54" dated June 1973, available through the Government Printing Office at (202) 512-2249 as document number A74062-00001.)

(T) Organic zinc specialty coating--Any coating derived from zinc dust incorporated into an organic binder that contains more than 960 grams of elemental zinc per liter (eight pounds per gallon) of coating, as applied, and that is used for the expressed purpose of corrosion protection.

(U) Pleasure craft--Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters (65.6 feet) in length. A vessel rented exclusively to, or chartered for, individuals for such purposes shall be considered a pleasure craft.

(V) Pretreatment wash primer specialty coating--Any coating that contains a minimum of 0.5% acid by weight that is applied only to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion of subsequent coatings.

(W) Repair and maintenance of thermoplastic coating of commercial vessels (specialty coating)--Any vinyl, chlorinated rubber, or bituminous resin coating that is applied over the same type of existing coating to perform the partial recoating of any in-use commercial vessel. (This definition does not include coal tar epoxy coatings, which are considered "general use" coatings.)

(X) Rubber camouflage specialty coating--Any specially formulated epoxy coating used as a camouflage topcoat for exterior submarine hulls and sonar domes.

(Y) Sealant for thermal spray aluminum--Any epoxy coating applied to thermal spray aluminum surfaces at a maximum thickness of one dry mil.

(Z) Ship--Any marine or fresh-water vessel, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. Pleasure craft and offshore oil or gas drilling platforms are not considered ships.

(AA) Shipbuilding and ship repair operations--Any building, repair, repainting, converting, or alteration of ships or offshore oil or gas drilling platforms.

(BB) Special marking specialty coating--Any coating that is used for safety or identification applications, such as ship numbers and markings on flight decks.

(CC) Specialty interior coating--Any coating used on interior surfaces aboard United States military vessels pursuant to a coating specification that requires the coating to meet specified fire retardant and low toxicity requirements, in addition to the other applicable military physical and performance requirements.

(DD) Tack coat specialty coating--Any thin film epoxy coating applied at a maximum thickness of two dry mils to prepare an epoxy coating that has dried beyond the time limit specified by the manufacturer for the application of the next coat.

(EE) Undersea weapons systems specialty coating--Any coating applied to any component of a weapons system intended to be launched or fired from under the sea.

(FF) Weld-through preconstruction primer (specialty coating)--A coating that provides corrosion protection for steel during inventory, is typically applied at less than one mil dry film thickness, does not require removal prior to welding, is temperature resistant (burn back from a weld is less than 1.25 centimeters (0.5 inches)), and does not normally require removal before applying film-building coatings, including inorganic zinc high-build coatings. When constructing new vessels, there may be a need to remove areas of weld-through preconstruction primer due to surface damage or contamination prior to application of film-building coatings.

~~[(12) Vehicle coating.]~~

(12) [~~(A)~~] Automobile and light-duty truck manufacturing.

(A) [~~(i)~~] Automobile coating--The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(B) [~~(ii)~~] Light-duty truck coating--The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(13) [~~(B)~~] Vehicle refinishing (body shops).

(A) [~~(i)~~] Basecoat/clearcoat system--A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The VOC content of a basecoat (BCCA-AG)/clearcoat (cc) system shall be calculated according to the following formula.
Figure: 30 TAC §115.420(c)(13)(A)
[~~Figure: 30 TAC §115.420(b)(12)(B)(i)~~]

(B) [~~(ii)~~] Precoat--Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.

(C) [~~(iii)~~] Pretreatment--Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion of subsequent coatings.

(D) [~~(iv)~~] Primer or primer surfacers--Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

(E) [~~(v)~~] Sealers--Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.

(F) [~~(vi)~~] Specialty coatings--Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jambing clear coatings, gloss flatteners, and anti-glare/safety coatings.

(G) [~~(vii)~~] Three-stage system--A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The VOC content of a three-stage system shall be calculated according to the following formula:
Figure: 30 TAC §115.420(c)(13)(G)
[~~Figure: 30 TAC §115.420(b)(12)B)(vii)~~]

(H) [~~(viii)~~] Vehicle refinishing (body shops)--The coating of motor vehicles, as defined in §114.620 of this title (relating to Definitions), including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by an operation other than the original manufacturer. The coating of non-road vehicles and non-road equipment, as these terms are defined in §114.3 and §114.6 of this title (relating to Low Emission Vehicle Fleet Definitions; and Low Emission Fuel Definitions), and trailers is not included.

(I) [~~(ix)~~] Wipe-down solutions--Any solution used for cleaning and surface preparation.

(14) [~~(13)~~] Vinyl coating--The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.

~~[(14) Wood parts and products coating.]~~

(15) [~~(A)~~] Wood parts and products. The following terms apply to wood parts and products coating facilities subject to §115.421(14) [~~§115.421(a)(13)~~] of this title.

(A) [~~(i)~~] Clear coat--A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.

(B) [~~(ii)~~] Clear sealers--Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.

(C) [~~(iii)~~] Final repair coat--Liquids applied to correct imperfections or damage to the topcoat.

(D) [~~(iv)~~] Opaque ground coats and enamels--Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.

(E) [~~(v)~~] Semitransparent spray stains and toners--Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to, toners and non-grain-raising stains.

(F) [~~(vi)~~] Semitransparent wiping and glazing stains--Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.

(G) [~~(vii)~~] Shellacs--Coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

(H) [~~(viii)~~] Topcoat--A coating which provides the final protective and aesthetic properties to wood finishes.

(I) [~~(ix)~~] Varnishes--Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

(J) [~~(x)~~] Wash coat--A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.

(K) [~~(xi)~~] Wood parts and products coating--The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

(16) [~~(B)~~] Wood furniture manufacturing facilities. The following terms apply to wood furniture manufacturing facilities subject to §115.421(15) [~~§115.421(a)(14)~~] of this title.

(A) [~~(i)~~] Adhesive--Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means. Adhesives are not considered to be coatings or finishing materials for wood furniture manufacturing facilities subject to §115.421(15) [~~§115.421(a)(14)~~] of this title.

(B) [~~(ii)~~] Basecoat--A coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials and is usually topcoated for protection.

(C) [~~(iii)~~] Cleaning operations--Operations in which organic solvent is used to remove coating materials from equipment used in wood furniture manufacturing operations.

(D) [~~(iv)~~] Continuous coater--A finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor system. Finishing materials that are not transferred to the part are recycled to the finishing material reservoir. Several types of application methods can be used with a continuous coater, including spraying, curtain coating, roll coating, dip coating, and flow coating.

(E) [~~(v)~~] Conventional air spray--A spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than 10 pounds per square inch gauge (psig) at the point of atomization. Airless and air-assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air. Electrostatic spray technology is also not conventional air spray because an electrostatic charge is employed to attract the coating to the workpiece. In addition, high-volume low-pressure (HVLP) spray technology is not conventional air spray because its pressure is less than 10 psig.

(F) [~~(vi)~~] Finishing application station--The part of a finishing operation where the finishing material is applied (for example, a spray booth).

(G) [~~(vii)~~] Finishing material--A coating used in the wood furniture industry. For the wood furniture manufacturing industry, such materials include, but are not limited to, basecoats, stains, washcoats, sealers, and topcoats.

(H) [~~(viii)~~] Finishing operation--Those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

(I) [~~(ix)~~] Organic solvent--A liquid containing VOCs that is used for dissolving or dispersing constituents in a coating; adjusting the viscosity of a coating; cleaning; or washoff. When used in a coating, the organic solvent evaporates during drying and does not become a part of the dried film.

(J) [~~(x)~~] Sealer--A finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. Washcoats, which are used in some finishing systems to optimize aesthetics, are not sealers.

(K) [~~(xi)~~] Stain--Any color coat having a solids content of no more than 8.0% by weight that is applied in single or multiple coats directly to the substrate. Includes, but is not limited to, nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

(L) [~~(xii)~~] Strippable booth coating--A coating that is applied to a booth wall to provide a protective film to receive overspray during finishing operations; is subsequently peeled off and disposed; and reduces or eliminates the need to use organic solvents to clean booth walls.

(M) [~~(xiii)~~] Topcoat--The last film-building finishing material applied in a finishing system. A material such as a wax, polish, nonoxidizing oil, or similar substance that must be periodically reapplied to a surface over its lifetime to maintain or restore the reapplied material's intended effect is not considered to be a topcoat.

(N) [~~(xiv)~~] Touch-up and repair--The application of finishing materials to cover minor finishing imperfections.

(O) [~~(xv)~~] Washcoat--A transparent special purpose coating having a solids content of 12% by weight or less. Washcoats are applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

(P) [~~(xvi)~~] Washoff operations--Those operations in which organic solvent is used to remove coating from a substrate.

(Q) [~~(xvii)~~] Wood furniture--Any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434 (wood kitchen cabinets), 2511 (wood household furniture, except upholstered), 2512 (wood household furniture, upholstered), 2517 (wood television, radios, phonograph and sewing machine cabinets), 2519 (household furniture not elsewhere classified), 2521 (wood office furniture), 2531 (public building and related furniture), 2541 (wood office and store fixtures, partitions, shelving and lockers), 2599 (furniture and fixtures not elsewhere classified), or 5712 (custom kitchen cabinets).

(R) [~~(xviii)~~] Wood furniture component--Any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops. However, foam seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operation are excluded from this definition.

(S) [~~(xix)~~] Wood furniture manufacturing operations--The finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

§115.421. Emission Specifications.

[~~(a)~~] The owner or operator of the surface coating processes specified in §115.420(a) of this title (relating to Applicability and Definitions) shall not [~~No person in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions) may~~] cause, suffer, allow, or permit volatile organic compound (VOC) emissions [~~from the surface coating processes affected by paragraphs (1) - (15) of this subsection~~] to exceed the specified emission limits in paragraphs (1) - (16) of this subsection. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (9) [~~(10)~~] of this subsection which are based on paneling surface area, and those in paragraph (15) [~~(14)~~] of this subsection which, if using an averaging approach, must use one of the daily averaging equations within that paragraph. The owner or operator of a surface coating operation subject to paragraph (10) [~~(11)~~] of the subsection may choose to comply by using the monthly weighted average option as defined in §115.420(c)(1)(YY) [~~§115.420(b)(1)(XX)~~] of this title [~~(relating to Surface Coating Definitions)~~].

(1) Large appliance coating. VOC emissions from the application, flashoff, and oven areas during the coating of large appliances (prime and topcoat, or single coat) must [~~shall~~] not exceed 2.8 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.34 kilogram/liter (kg/liter)) [~~(0.34 kg/liter)~~].

(2) Metal furniture coating. VOC emissions from metal furniture coating lines (prime and topcoat, or single coat) must [~~shall~~] not exceed 3.0 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.36 kg/liter).

(3) Coil coating. VOC emissions from the coating (prime and topcoat, or single coat) of metal coils must [shall] not exceed 2.6 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.31 kg/liter).

(4) Paper coating. VOC emissions from the coating of paper (or specified tapes or films) must [shall] not exceed 2.9 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.35 kg/liter).

(5) Fabric coating. VOC emissions from the coating of fabric must [shall] not exceed 2.9 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.35 kg/liter).

(6) Vinyl coating. VOC emissions from the coating of vinyl fabrics or sheets must [shall] not exceed 3.8 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.45 kg/liter). Plastisol coatings should not be included in calculations.

(7) Can coating. The following VOC emission limits must [shall] be achieved, on the basis of VOC solvent content per unit of volume [gallon] of coating (minus water and exempt solvent) delivered to the application system:
Figure: 30 TAC §115.421(7)
[Figure: 30 TAC §115.421(a)(7)]

[(8) Vehicle coating.]

[(A) The following VOC emission limits shall be achieved for all automobile and light-duty truck manufacturing, on the basis of solvent content per gallon of coating (minus water and exempt solvents) delivered to the application system or for primer surfacer and top coat application, compliance may be demonstrated on the basis of VOC emissions per gallon of solids deposited as determined by §115.425(3) of this title (relating to Testing Requirements).]
[Figure: 30 TAC §115.421(a)(8)(A)]

[(B) VOC emissions from the coatings or solvents used in vehicle refinishing (body shops) shall not exceed the following limits, as delivered to the application system:]

[(i) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for primers or primer surfacers;]

[(ii) 5.5 pounds per gallon (0.66 kg/liter) of coating (minus water and exempt solvent) for precoat;]

[(iii) 6.5 pounds per gallon (0.78 kg/liter) of coating (minus water and exempt solvent) for pretreatment;]

[(iv) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for single-stage topcoats;]

[(v) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for basecoat/clearcoat systems;]

[(vi) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) for three-stage systems;]

[(vii) 7.0 pounds per gallon (0.84 kg/liter) of coating (minus water and exempt solvent) for specialty coatings;]

[(viii) 6.0 pounds per gallon (0.72 kg/liter) of coating (minus water and exempt solvent) for sealers; and]

[(ix) 1.4 pounds per gallon (0.17 kg/liter) of wipe-down solutions.]

[(C) Additional control requirements for vehicle refinishing (body shops) are referenced in §115.422 of this title (relating to Control Requirements).]

(8) [(9)] Miscellaneous metal parts and products (MMPP) coating.

(A) VOC emissions from the coating of MMPP must [shall] not exceed the following limits for each surface coating type:
Figure: 30 TAC §115.421(8)(A)

[(i) 4.3 pounds per gallon (0.52 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as a clear coat; or as an interior protective coating for pails and drums;]

[(ii) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as a low-bake coating; or that utilizes air or forced air driers;]

[(iii) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as an extreme performance coating, including chemical milling maskants; and]

[(iv) 3.0 pounds per gallon (0.36 kg/liter) of coating (minus water and exempt solvent) delivered to the application system for all other coating applications, including high-bake coatings, that pertain to MMPP.]

(B) If more than one emission limitation in subparagraph (A) of this paragraph applies to a specific coating, then the least stringent emission limitation applies [shall apply].

(C) All VOC emissions from non-exempt solvent washings must [shall] be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(9) [(10)] Factory surface coating of flat wood paneling. The following emission limits [shall] apply to each product category of factory-finished paneling (regardless of the number of coats applied):
Figure: 30 TAC §115.421(9)
[Figure: 30 TAC §115.421(a)(10)]

(10) [(11)] Aerospace coatings. The VOC content of coatings, including any VOC-containing materials added to the original coating supplied by the manufacturer, that [which] are applied to aerospace vehicles or components must [shall] not exceed the following limits (in grams of VOC per liter of coating, less water and exempt solvent). The following applications are exempt from the VOC content limits of this paragraph: manufacturing or re-work of space vehicles or antique aerospace vehicles or components of each; touchup; United States Department of Defense classified coatings; and separate coating formulations in volumes less than 50 gallons per year to a maximum of 200 gallons per year for all such formulations at an account.

(A) For the broad categories of primers, topcoats, and chemical milling maskants (Type I/II) which are not specialty coatings as listed in subparagraph (B) of this paragraph:

(i) primer, 350;

(ii) topcoats (including self-priming topcoats), 420; and

(iii) chemical milling maskants:

(I) Type I, 622; and

(II) Type II, 160.

(B) For specialty coatings:
Figure: 30 TAC §115.421(10)(B)
[Figure: 30 TAC §115.421(a)(11)(B)]

(11) Automobile and light-duty truck manufacturing coating. The following VOC emission limits must be achieved, on the basis of solvent content per unit volume of coating (minus water and exempt solvents) delivered to the application system or for primer surfacer and top coat application, compliance may be demonstrated on the basis of VOC emissions per unit volume of solids deposited as determined by §115.425(3) of this title (relating to Testing Requirements).
Figure: 30 TAC §115.421(11)

(12) Vehicle refinishing coating (body shops). VOC emissions from coatings or solvents must not exceed the following limits, as delivered to the application system. Additional control requirements for vehicle refinishing (body shops) are referenced in §115.422 of this title (relating to Control Requirements).
Figure: 30 TAC §115.421(12)

(13) [~~(12)~~] Surface coating of mirror backing.

(A) VOC emissions from the coating of mirror backing must [~~shall~~] not exceed the following limits for each surface coating application method:

(i) 4.2 pounds per gallon (0.50 kg/liter) of coating (minus water and exempt solvent) delivered to a curtain coating application system; and

(ii) 3.6 pounds per gallon (0.43 kg/liter) of coating (minus water and exempt solvent) delivered to a roll coating application system.

(B) All VOC emissions from solvent washings must [~~shall~~] be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(14) [~~(13)~~] Surface coating of wood parts and products. VOC emissions from the coating of wood parts and products must not exceed the following limits, as delivered to the application system, for each surface coating type. All VOC emissions from solvent washings must be included in determination of compliance with the emission limitations in this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.
Figure: 30 TAC §115.421(14)

~~[(A) In the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, VOC emissions from the coating of wood parts and products shall not exceed the following limits, as delivered to the application system, for each surface coating type:~~]

~~*[(i)* 5.9 pounds per gallon (0.71 kg/liter) of coating (minus water and exempt solvent) for clear topcoats;~~]

~~*[(ii)* 6.5 pounds per gallon (0.78 kg/liter) of coating (minus water and exempt solvent) for wash coats;~~]

~~*[(iii)* 6.0 pounds per gallon (0.72 kg/liter) of coating (minus water and exempt solvent) for final repair coats;~~]

~~*[(iv)* 6.6 pounds per gallon (0.79 kg/liter) of coating (minus water and exempt solvent) for semitransparent wiping and glazing stains;~~]

~~*[(v)* 6.9 pounds per gallon (0.83 kg/liter) of coating (minus water and exempt solvent) for semitransparent spray stains and toners;~~]

~~*[(vi)* 5.5 pounds per gallon (0.66 kg/liter) of coating (minus water and exempt solvent) for opaque ground coats and enamels;~~]

~~*[(vii)* 6.2 pounds per gallon (0.74 kg/liter) of coating (minus water and exempt solvent) for clear sealers;~~]

~~*[(viii)* for shellac:~~]

~~*[(I)* 5.4 pounds per gallon (0.65 kg/liter) of coating (minus water and exempt solvent) for clear shellac; and~~]

~~*[(II)* 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for opaque shellac;~~]

~~*[(ix)* 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for varnish; and~~]

~~*[(x)* 7.0 pounds per gallon (0.84 kg/liter) of coating (minus water and exempt solvent) for all other coatings.~~]

~~[(B) All VOC emissions from solvent washings shall be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.~~]

~~[(C) The requirements of §115.423(3) of this title (relating to Alternate Control Requirements) do not apply at wood parts and products coating facilities if:~~]

~~*[(i)* a vapor control system is used to control emissions from wood parts and products coating operations; and~~]

~~*[(ii)* all wood parts and products coatings comply with the emission limitations in subparagraph (A) of this paragraph.~~]

(15) [~~(14)~~] Surface coating at wood furniture manufacturing facilities. [~~The following requirements apply to wood furniture manufacturing facilities in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas.~~] For facilities which are subject to this paragraph, adhesives are not considered to be coatings or finishing materials.

(A) VOC emissions from finishing operations must [~~shall~~] be limited by:

(i) using topcoats with a VOC content no greater than 0.8 kilogram [~~kilograms~~] of VOC per kilogram of solids (0.8 pound [~~pounds~~] of VOC per pound of solids), as delivered to the application system; or

(ii) using a finishing system of sealers with a VOC content no greater than 1.9 kilograms of VOC per kilogram of solids (1.9 pounds of VOC per pound of solids), as applied, and topcoats with a VOC content no greater than 1.8 kilograms of VOC per kilogram of solids (1.8 pounds of VOC per pound of solids), as delivered to the application system; or

(iii) for wood furniture manufacturing facilities using acid-cured alkyd amino vinyl sealers or acid-cured alkyd amino conversion varnish topcoats, using sealers and topcoats that [~~which~~] meet the following criteria:

(I) if the wood furniture manufacturing facility uses acid-cured alkyd amino vinyl sealers and acid-cured alkyd amino conversion varnish topcoats, the sealer must [~~shall~~] contain no more than 2.3 kilograms of VOC per kilogram of solids (2.3 pounds of VOC per pound of solids), as applied, and the topcoat shall contain no more than 2.0 kilograms of VOC per kilogram of solids (2.0 pounds of VOC per pound of solids), as delivered to the application system; or

(II) if the wood furniture manufacturing facility uses a sealer other than an acid-cured alkyd amino vinyl sealer and acid-cured alkyd amino conversion varnish topcoats, the sealer must [~~shall~~] contain no more than 1.9 kilograms of VOC per kilogram of solids (1.9 pounds of VOC per pound of solids), as applied, and the topcoat must [~~shall~~] contain no more than 2.0 kilograms of VOC per kilogram of solids (2.0 pounds of VOC per pound of solids), as delivered to the application system; or

(III) if the wood furniture manufacturing facility uses an acid-cured alkyd amino vinyl sealer and a topcoat other than an acid-cured alkyd amino conversion varnish topcoat, the sealer must [~~shall~~] contain no more than 2.3 kilograms of VOC per kilogram of solids (2.3 pounds of VOC per pound of solids), as applied, and the topcoat must [~~shall~~] contain no more than 1.8 kilograms of VOC per kilogram of solids (1.8 pounds of VOC per pound of solids), as delivered to the application system; or

(iv) using an averaging approach and demonstrating that actual daily emissions from the wood furniture manufacturing facility are less than or equal to the lower of the actual versus allowable emissions using one of the following inequalities:
Figure: 30 TAC §115.421(15)(A)(iv)
[~~Figure: 30 TAC §115.421(a)(14)(A)(iv)~~]

(v) using a vapor control system that will achieve an equivalent reduction in emissions as the requirements of clauses (i) or (ii) of this subparagraph. If this option is used, the requirements of §115.423(3) of this title do not apply; or

(vi) using a combination of the methods presented in clauses (i) - (v) of this subparagraph.

(B) Strippable booth coatings used in cleaning operations must not [~~shall~~] contain [~~no~~] more than 0.8 kilogram [~~kilograms~~] of VOC per kilogram of solids (0.8 pound [~~pounds~~] of VOC per pound of solids), as delivered to the application system.

(16) [~~(15)~~] Marine coatings. [~~The following requirements apply to shipbuilding and ship repair operations in the Beaumont/Port Arthur and Houston/Galveston areas.~~]

(A) The following VOC emission limits apply to the surface coating of ships and offshore oil or gas drilling platforms at shipbuilding and ship repair operations, and are based upon the VOC content of the coatings as delivered to the application system.
Figure: 30 TAC §115.421(16)(A)
[~~Figure: 30 TAC §115.421(a)(15)(A)~~]

(B) For a coating to which thinning solvent is routinely or sometimes added, the owner or operator shall determine the VOC content as follows.

(i) Prior to the first application of each batch, designate a single thinner for the coating and calculate the maximum allowable thinning ratio (or ratios, if the shipbuilding and ship repair operation complies with the cold-weather limits in addition to the other limits specified in subparagraph (A) of this paragraph) for each batch as follows.
Figure: 30 TAC §115.421(16)(B)(i)
[~~Figure: 30 TAC §115.421(a)(15)(B)(i)~~]

(ii) If the volume fraction of solids in the batch as supplied V_s [~~(V_s)~~] is not supplied directly by the coating manufacturer, the owner or operator shall determine V_s [~~V_s~~] as follows.
Figure: 30 TAC §115.421(16)(B)(ii)
[~~Figure: 30 TAC §115.421(a)(15)(B)(ii)~~]

~~[(b) No person in Gregg, Nueces, and Victoria Counties may cause, suffer, allow, or permit VOC emissions from the surface coating processes affected by paragraphs (1) - (9) of this subsection to exceed the specified emission limits. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (9) of this subsection which are based on panel-ing surface area.]~~

~~[(1) Large appliance coating. VOC emissions from the application, flashoff, and oven areas during the coating of large appliances (prime and topcoat, or single coat) shall not exceed 2.8 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.34 kg/liter).]~~

~~[(2) Metal furniture coating. VOC emissions from metal furniture coating lines (prime and topcoat, or single coat) shall not exceed 3.0 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.36 kg/liter).]~~

~~[(3) Coil coating. VOC emissions from the coating (prime and topcoat, or single coat) of metal coils shall not exceed 2.6 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.31 kg/liter).]~~

~~[(4) Paper coating. VOC emissions from the coating of paper (or specified tapes or films) shall not exceed 2.9 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.35 kg/liter).]~~

~~[(5) Fabric coating. VOC emissions from the coating of fabric shall not exceed 2.9 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.35 kg/liter).]~~

~~[(6) Vinyl coating. VOC emissions from the coating of vinyl fabrics or sheets shall not exceed 3.8 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.45 kg/liter). Plastisol coatings should not be included in calculations.]~~

~~[(7) Can coating. The following VOC emission limits shall be achieved, on the basis of solvent content per gallon of coating (minus water and exempt solvent) delivered to the application system.]~~
~~[Figure: 30 TAC §115.421(b)(7)]~~

~~[(8) Miscellaneous metal parts and products (MMPP) coating.]~~

~~[(A) VOC emissions from the coating of MMPP shall not exceed the following limits for each surface coating type:]~~

~~*[(i)* 4.3 pounds per gallon (0.52 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as a clear coat; or as an interior protective coating for pails and drums;]~~

~~*[(ii)* 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as a low-bake coating; or that utilizes air or forced air driers;]~~

~~*[(iii)* 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) delivered to the application system as an extreme performance coating, including chemical milling maskants; and]~~

~~*[(iv)* 3.0 pounds per gallon (0.36 kg/liter) of coating (minus water and exempt solvent) delivered to the application system for all other coating applications, including high-bake coatings, that pertain to MMPP.]~~

~~[(B) If more than one emission limitation in subparagraph (A) of this paragraph applies to a specific coating, then the least stringent emission limitation shall apply.]~~

~~[(C) All VOC emissions from nonexempt solvent washings shall be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.]~~

~~[(9) Factory surface coating of flat wood paneling. The following emission limits shall apply to each product category of factory-finished paneling (regardless of the number of coats applied).]~~
~~[Figure: 30 TAC §115.421(b)(9)]~~

[(10) Aerospace coatings. Coatings applied to aerospace vehicles or components shall meet the requirements specified in subsection (a)(11) of this section and §115.422(5) of this title, unless exempted under §115.427(b) of this title (relating to Exemptions).]

§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 Applicability and Definitions) [(relating to Definitions)], the following control requirements apply. In Gregg, Nueces, and Victoria Counties, the control requirements in paragraph (5) of this section apply.

(1) The owner or operator of each vehicle refinishing (body shop) operation shall minimize volatile organic compounds (VOC) emissions during equipment cleanup by using the following procedures:

(A) install and operate a system that 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 20 degrees Celsius (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 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(15) [(§115.421(a)(14)] of this title (relating to Emission Specifications).

(A) No compounds containing more than 8.0% by weight of VOC may 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 be used to prepare the booth prior to applying the booth coating.

(B) Normally closed containers must be used for storage of finishing, cleaning, and washoff materials.

(C) Conventional air spray guns may 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 of VOC per kilogram of solids (1.0 pound 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 that [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 be pumped or drained into a normally closed container.

(E) Emissions from washoff operations must 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(16) [§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 be conducted in a manner that minimizes spills.

(B) All containers, tanks, vats, drums, and piping systems must 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 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(10) [§115.421(a)(11) or (b)(10)] of this title.

(A) One or more of the following application techniques must 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 meet the definition of aqueous cleaning solvent in §115.420(c)(1)(I) [~~§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 feet of energized electrical systems. Energized electrical systems means any alternating current or direct current 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) 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 be removed and the enclosed cleaner must 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 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 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 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(c)(1) [~~§115.420(b)(1)~~] of this title, are exempt from this subparagraph.

(6) Any surface coating operation in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas that becomes subject to §115.421 [~~§115.421(a)~~] of this title by exceeding the exemption limits in §115.427 [~~§115.427(a)~~] of this title (relating to Exemptions) is subject to the provisions in §115.421 [~~§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 [~~§115.421(a)~~] of this title and one of the following conditions is met.

(A) The project that caused the throughput or emission rate to fall below the exemption limits in §115.427 [~~§115.427(a)~~] 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 §115.421 [~~§115.421(a)~~] of this title 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.

(7) In [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.

§115.423. Alternate Control Requirements.

The alternate control requirements for surface coating processes in the Beaumont-Port Arthur, Dallas-Fort Worth, [Beaumont/Port Arthur, Dallas/Fort Worth,] El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas and in Gregg, Nueces, and Victoria Counties are as follows.

(1) Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title (relating to Alternate Emission Reduction ("Bubble") Policy), §115.910 of this title (relating to Availability of Alternate Means of Control), or other demonstrations of equivalency with the specified emission limits in this division must [(relating to Surface Coating Processes) shall] be based on the pounds of volatile organic compounds (VOC) per gallon of solids for all affected coatings. The owner or operator shall use the following equation [shall be used] to convert emission limits from pounds of VOC per gallon of coating to pounds of VOC per gallon of solids:

Figure: 30 TAC §115.423(1) (No change.)

(2) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division, such as use of improved transfer efficiency, may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.

(3) If a vapor control system is used to control emissions from coating operations:

(A) the capture and abatement system must [shall] be capable of achieving and maintaining emission reductions equivalent to the emission limitations of §115.421 of this title (relating to Emission Specifications) and an overall control efficiency of at least 80% of the VOC emissions from those coatings. The owner or operator shall use the following equation [shall be used] to determine the minimum overall control efficiency necessary to demonstrate equivalency with the emission limitations of §115.421 of this title:

Figure: 30 TAC §115.423(3)(A)
[Figure: 30 TAC §115.423(3)(A)]

(B) the owner or operator shall submit design data for each capture system and emission control device that [which] is proposed for use to the executive director for approval. In the Beaumont-Port Arthur, Dallas-Fort Worth [Beaumont/Port Arthur, Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, capture efficiency testing must [shall] be performed in accordance with §115.425(4) of this title (relating to Testing Requirements).

(4) For any surface coating process or processes at a specific property, the executive director may approve requirements different from those in §115.421(8) [§115.421(a)(9) or (b)(8)] of this title based upon his determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. When [he makes] such a determination is made, the executive director shall specify the date or dates by which such different requirements must [shall] 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 [shall] 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 [EPA] in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter.

§115.425. Testing Requirements.

The testing requirements for surface coating processes in the Beaumont-Port Arthur, Dallas-Fort Worth [Beaumont/Port Arthur, Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas and in Gregg, Nueces, and Victoria Counties are as follows.

(1) The owner or operator shall determine compliance [Compliance] with §115.421 of this title (relating to Emission Specifications) [shall be determined] by applying the following test methods, as appropriate, except as specified in paragraph (5) of this section. Where a test method also inadvertently measures compounds that are exempt solvent, an owner or operator may exclude these exempt solvents when determining compliance with an emission standard:

(A) Test Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) with a one-hour bake;

(B) ASTM International [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) [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)," [EPA-450/3-84-019,] as in effect December, 1984;

(D) additional test procedures described in 40 Code of Federal Regulations (CFR) §60.446; or

(E) minor modifications to these test methods approved by the executive director.

(2) Compliance with §115.423(3) of this title (relating to Alternate Control Requirements) must [shall] be determined by applying the following test methods, as appropriate:

(A) Test Methods 1-4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;

(B) Test Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(C) Test 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 §60.044; or

(E) minor modifications to these test methods approved by the executive director.

(3) Compliance with the alternative emission limits in §115.421(11) [~~§115.421(a)(8)(A)~~] of this title must [~~shall~~] be determined by applying the following test methods, as appropriate:

(A) Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Topcoat Operations (EPA 450/3-88-018); or

(B) The procedure contained in this paragraph for determining daily compliance with the alternative emission limitation in §115.421(11) [~~§115.421(a)(8)(A)~~] of this title for final repair. Calculation of occurrence weighted average for each combination of repair coatings (primer, specific basecoat, clearcoat) must [~~shall~~] be determined by the following procedure.

(i) The characteristics identified below, which are represented in the following equations by the variables shown, are established for each repair material as sprayed:
Figure: 30 TAC §115.425(3)(B)(i)
[~~Figure: 30 TAC §115.425(3)(B)(i)~~]

(ii) The relative occurrence weighted usage is calculated as follows:
Figure: 30 TAC §115.425(3)(B)(ii) (No change.)

(iii) The occurrence weighted average (Q) in pounds of VOC per gallon of coating (minus water and exempt solvents) as applied for each potential combination of repair coatings is calculated according to paragraph (4) of this section.
Figure: 30 TAC §115.425(3)(B)(iii) (No change.)

(4) In the Beaumont-Port Arthur, Dallas-Fort Worth [~~Beaumont/Port Arthur, Dallas/Fort Worth~~], El Paso, and Houston-Galveston-Brazoria [~~Houston/Galveston~~] areas, the owner or operator of surface coating processes subject to §115.423(3) of this title shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741 [~~Part 52.741~~], Subpart O, Appendix B. 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) Exemptions to capture efficiency testing requirements:

(i) If a source installs a permanent total enclosure (PTE) that [~~which~~] meets the specifications of Procedure T and [~~which~~] 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 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, 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 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 [~~shall~~] be calculated using one of the following four 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 §115.425(4)(B)(i) (No change.)

(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 §115.425(4)(B)(ii) (No change.)

(iii) Gas/gas method using the building or room in which the affected source is located as the enclosure (BE) and in which 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 capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.425(4)(B)(iii) (No change.)

(iv) Liquid/gas method using a BE in which L and F 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 §115.425(4)(B)(iv) (No change.)

(C) 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 must [~~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, except that all mirror backing coating facilities must [~~shall~~] accomplish the initial capture efficiency testing by July 31, 1994.

(iii) During an initial pretest meeting, the executive director and the source owner or operator shall identify those operating parameters that must [~~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.

(5) The following additional testing requirements apply to each aerospace vehicle or component coating facility subject to §115.421(10) [§115.421(a)(11) or (b)(10)] of this title.

(A) For coatings which are not waterborne (water-reducible), determine the VOC content of each formulation (less water and less exempt solvents) as applied using manufacturer's supplied data or Method 24 of 40 CFR Part 60, Appendix A. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance must [shall] be based on the results from the Method 24 analysis. For water-borne (water-reducible) coatings, manufacturer's supplied data alone can be used to determine the VOC content of each formulation.

(B) For aqueous and semiaqueous cleaning solvents, manufacturers' supplied data must [shall] be used to determine the water content.

(C) For hand-wipe cleaning solvents, manufacturers' supplied data or standard engineering reference texts or other equivalent methods shall be used to determine the vapor pressure or VOC composite vapor pressure for blended cleaning solvents.

(D) Except for specialty coatings, compliance with the test method requirements of 40 CFR §63.750, (National Emission Standards for Aerospace Manufacturing and Rework Facilities), is considered to represent compliance with the requirements of this section [(relating to Testing Requirements)].

(6) Test methods other than those specified in paragraphs (1) - (5) of this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.426. Monitoring and Recordkeeping Requirements.

The following recordkeeping requirements apply to the owner or operator of each surface coating process in the Beaumont-Port Arthur, Dallas-Fort Worth, [Beaumont/Port Arthur, Dallas/Fort Worth,] El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas and in Gregg, Nueces, and Victoria Counties. Records of non-exempt solvent washings are not required to be kept if the non-exempt solvent is directed into containers that prevent evaporation into the atmosphere.

(1) The owner or operator shall satisfy the following recordkeeping requirements.

(A) A material data sheet must [shall] be maintained that [which] documents the volatile organic compound (VOC) content, composition, solids content, solvent density, and other relevant information regarding each coating and solvent available for use in the affected surface coating processes sufficient to determine continuous compliance with applicable control limits.

(B) Records must [shall] 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 [shall] be sufficient to calculate the applicable weighted average of VOC for all coatings.

(i) As an alternative to the recordkeeping requirements of this subparagraph, the owner or operator of any vehicle refinishing (body shop) operation subject to §115.421(11) [§115.421(a)(8)(B)] of this title may substitute the recordkeeping requirements specified in §106.436 of this title (relating to Auto Body Refinishing Facility (Previously Standard Exemption 124)) provided that all coatings and solvents meet the emission limits of §115.421(11) [§115.421(a)(8)(B)] of this title. If the owner or operator of a vehicle refinishing (body shop) operation that uses any coating [coating(s)] or solvent [solvent(s)] which exceeds the limits of §115.421(11) [§115.421(a)(8)(B)] of this title, then the owner or operator [that vehicle refinishing (body shop) operation] shall maintain daily records of the quantity and type of each coating and solvent consumed in sufficient detail to calculate the daily weighted average of VOC for all coatings and solvents.

(ii) As an alternative to the recordkeeping requirements of this subparagraph, the owner or operator of any wood parts and products coating operation subject to §115.421(14) [§115.421(a)(13)] of this title may substitute the recordkeeping requirements specified in §106.231 of this title (relating to Manufacturing, Refinishing, and Restoring Wood Products) provided that all coatings and solvents meet the emission limits of §115.421(14) [§115.421(a)(13)] of this title. If the owner or operator of a wood parts and products coating operation uses any coating [coating(s)] or solvent [solvent(s)] which exceeds the limits of §115.421(14) [§115.421(a)(13)] of this title, then the owner or operator [that wood parts and products coating operation] shall maintain daily records of the quantity and type of each coating and solvent consumed in sufficient detail to calculate the daily weighted average of VOC for all coatings and solvents.

(iii) As an alternative to the recordkeeping requirements of this subparagraph, the owner or operator of any surface coating operation that qualifies for exemption under §115.427(3)(C) [§115.427(a)(3)(C)] of this title (relating to Exemptions) shall maintain records of total gallons of coating and solvent used in each month, and total gallons of coating and solvent used in the previous 12 months.

(C) Records shall be maintained of any testing conducted at an affected facility in accordance with the provisions specified in §115.425 of this title (relating to Testing Requirements).

(D) Records required by subparagraphs (A) - (C) of this paragraph [shall be maintained] for at least two years to [and shall be made available upon request by] representatives of the executive director, United States Environmental Protection Agency [EPA], or any local air pollution control agency with jurisdiction.

(2) The owner or operator of any surface coating facility that [which] utilizes a vapor control system approved by the executive director in accordance with §115.423(3) of this title (relating to Alternate Control Requirements) shall:

(A) 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:

(i) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;

(ii) the total amount of VOC recovered by carbon adsorption or other solvent recovery systems during a calendar month; [;]

(iii) continuous monitoring of carbon adsorption bed exhaust; and

(iv) appropriate operating parameters for vapor control systems other than those specified in clauses (i) - (iii) of this subparagraph;

(B) maintain records of any testing conducted in accordance with the provisions specified in §115.425(2) of this title; and

(C) maintain all records at the affected facility for at least two years and make such records available to representatives of the executive director, EPA, or any local air pollution control agency with jurisdiction, upon request.

(3) The owner or operator shall maintain, on file, the capture efficiency protocol submitted under §115.425(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 and/or control device destruction or removal efficiency test may be required.

(4) The owner or operator [~~Records~~] shall maintain records [~~be maintained~~] sufficient to document the applicability of the conditions for exemptions referenced in §115.427 of this title.

(5) The following additional requirements apply to each aerospace vehicle or component coating process subject to §115.421(10) [~~§115.421(a)(11) or (b)(10)~~] of this title. The owner or operator shall:

(A) for coatings:

(i) maintain a current list of coatings in use with category and VOC content as applied; and

(ii) record coating usage on an annual basis;

(B) for aqueous and semiaqueous hand-wipe cleaning solvents, maintain a list of materials used with corresponding water contents;

(C) for vapor pressure compliant hand-wipe cleaning solvents:

(i) maintain a current list of cleaning solvents in use with their respective vapor pressures or, for blended solvents, VOC composite vapor pressures; and

(ii) maintain a record cleaning solvent usage on an annual basis; and

(D) for cleaning solvents with a vapor pressure greater than 45 millimeters of mercury [~~mm Hg~~] at 20 degrees Celsius used in exempt hand-wipe cleaning operations:

(i) maintain a list of exempt hand-wipe cleaning processes; and

(ii) maintain a record cleaning solvent usage on an annual basis.

(6) Except for specialty coatings, compliance with the recordkeeping requirements of 40 Code of Federal Regulations [~~CFR~~] §63.752, (National Emission Standards for Aerospace Manufacturing and Rework Facilities), is considered to represent compliance with the requirements of this section [~~(relating to Monitoring and Recordkeeping Requirements)~~].

§115.427. 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) and in Gregg, Nueces, and Victoria Counties, the following exemptions apply.

(1) The following coating operations are exempt from the miscellaneous metal parts and products surface coating emission specifications in §115.421(8) [~~§115.421(a)(9)~~] of this title (relating to Emission Specifications):

(A) aerospace vehicles and components;

(B) in the Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, vehicle refinishing (body shops)[~~, except as required by §115.421(a)(8)(B) and (C) of this title~~]; and

(C) in the Beaumont-Port Arthur and Houston-Galveston-Brazoria areas, 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 the factory surface coating of flat wood paneling emission specifications in §115.421(9) [~~§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) In the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the [~~The~~] following exemptions apply to surface coating processes [~~operations~~], except for vehicle refinishing (body shops) controlled by §115.421(12) [~~§115.421(a)(8)(B) and (C)~~] of this title. Excluded from the volatile organic compounds (VOC) emission calculations are coatings and solvents used in surface coating activities that are not addressed by the surface coating categories of §115.421(1) - (16) [~~§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 pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from §115.421 [~~§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 [~~§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 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 [~~§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(15) [~~§115.421(a)(14)~~] of this title and §115.422(3) of this title (relating to Control Requirements) are exempt from §115.421(14) [~~§115.421(a)(13)~~] of this title. These wood furniture manufacturing facilities must continue to comply with §115.421(14) [~~§115.421(a)(13)~~] of this title until these

facilities are in compliance with §115.421(15) [§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 (tpy) are exempt from §115.421(15) [§115.421(a)(14)] and §115.422(3) of this title.

(G) In Hardin, Jefferson, and Orange Counties, wood [Wood] parts and products coating facilities [in Hardin, Jefferson, and Orange Counties] are exempt from §115.421(14) [§115.421(a)(13)] of this title.

(H) In Hardin, Jefferson, and Orange Counties, shipbuilding [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 tpy [tons per year] are exempt from §115.421(16) [§115.421(a)(15)] and §115.422(4) of this title.

(I) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, shipbuilding [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 tpy [tons per year] are exempt from §115.421(16) [§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(12) [§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(11)(B) [§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) In Gregg, Nueces, and Victoria Counties, surface coating operations located at any property that, when uncontrolled, will emit a combined weight of VOC less than 550 pounds (249.5 kilograms) in any continuous 24-hour period are exempt from §115.421 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(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.

(8) [(7)] In [Beginning March 1, 2013, in] the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, 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 tpy [tons per year] of VOC from all coatings applied; and

(E) automobile and light-duty truck manufacturing coating.

(9) [(8)] In the Dallas-Fort Worth area, except in Wise County, and the Houston-Galveston-Brazoria area [areas], the re-coating of used miscellaneous metal parts and products at a designated on-site maintenance shop that was exempt from §115.421(8) [§115.421(a)(9)] of this title prior to January 1, 2012, or that begins operation on or after January 1, 2012, is exempt from all requirements in this division. The re-coating of used miscellaneous metal parts and products at a designated on-site maintenance shop that was subject to §115.421(8) [§115.421(a)(9)] of this title prior to January 1, 2012, remains subject to this division. For purposes of this exemption, a designated on-site maintenance shop is an area at a site where used miscellaneous metal parts or products are re-coated on a routine basis. Miscellaneous metal parts and products coating processes in Wise County are not subject to this division.

[(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) 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) In [The owner or operator of each surface coating operation in] Brazoria, Chambers, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Tarrant, Victoria, and Waller Counties, the compliance date has passed and the owner or operator of a surface coating process shall continue to comply with this division [as required by §115.930 of this title (relating to Compliance Dates)].

[(b) In Ellis, Johnson, Kaufman, Parker, and Rockwall Counties the compliance date has already passed and the owner or operator of each surface coating operation shall continue to comply with this division.]

(b) [~~(c)~~] In Hardin, Jefferson, and Orange Counties the compliance date has [~~already~~] passed and the owner or operator of each shipbuilding and ship repair operation 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 continue to comply with this division.

(c) [~~(d)~~] The owner or operator of a paper surface coating process located in the Dallas-Fort Worth area, except Wise County, and Houston-Galveston-Brazoria area [~~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.

(d) The owner or operator of a surface coating process in Wise County shall comply with the requirements in this division as soon as practicable, but no later than January 1, 2017.

(e) The owner or operator of a surface coating process in the Dallas-Fort Worth area that becomes subject to this division on or after the applicable compliance date in this section shall comply with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(f) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each surface coating process is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406017
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

30 TAC §§115.440 - 115.442, 115.446, 115.449

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.440. Applicability and Definitions.

(a) Applicability. The provisions in this division [(~~relating to Offset Lithographic Printing~~)] apply to offset lithographic printing lines located in the Dallas-Fort Worth, El Paso, 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, and 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 unless the context clearly indicates otherwise.

(1) Alcohol--Any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12, which includes methanol, ethanol, propanol, and butanol.

(2) Alcohol substitutes--Nonalcohol additives that contain volatile organic compounds and are used in the fountain solution to reduce the surface tension of water or prevent ink piling.

(3) Batch--A supply of fountain solution or cleaning solution that is prepared and used without alteration until completely used or removed from the printing process.

(4) Cleaning solution--Liquids used to remove ink and debris from the operating surfaces of the printing press and its parts.

(5) Fountain solution--A mixture of water, nonvolatile printing chemicals, and a liquid additive that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the non-image areas so that the ink is maintained within the image areas.

(6) Heatset--Any operation where heat is required to evaporate ink oil from the printing ink.

(7) Lithography--A plane-o-graphic printing process where the image and non-image areas are on the same plane of the printing plate. The image and non-image areas are chemically differentiated so the image area is oil receptive and the non-image area is water receptive.

(8) Major printing source--All offset lithographic printing lines located on a property with combined uncontrolled emissions of volatile organic compounds (VOC) greater than or equal to:

(A) 50 tons of VOC per calendar year in the Dallas-Fort Worth area as defined in §115.10 of this title (relating to Definitions), except Wise County; [or]

(B) 25 tons of VOC per calendar year in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title; and [.]

(C) 100 tons of VOC per calendar year in Wise County.

(9) Minor printing source--All offset lithographic printing lines located on a property with combined uncontrolled emissions of volatile organic compounds (VOC) less than:

(A) 50 tons of VOC per calendar year in the Dallas-Fort Worth area, defined in §115.10 of this title (relating to Definitions), except Wise County; [or]

(B) 25 tons of VOC per calendar year in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title; and [.]

(C) 100 tons of VOC per calendar year in Wise County.

(10) Non-heatset--Any operation where the printing inks are set without the use of heat. For the purposes of this division, ultraviolet-cured and electron beam-cured inks are considered non-heatset.

(11) Offset lithography--A printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket) that, in turn, transfers the ink film to the substrate.

(12) Volatile organic compound (VOC) composite partial pressure--The sum of the partial pressures of the compounds that meet the definition of VOC in §101.1 of this title (relating to Definitions). The VOC composite partial pressure is calculated as follows.
Figure: 30 TAC §115.440(b)(12) (No change.)

§115.441. Exemptions.

(a) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the owner or operator of all offset lithographic printing lines located on a property with combined emissions of volatile organic compounds [(VOC)] less than 3.0 tons per calendar year [(tpy)] when uncontrolled, is exempt from the requirements in this division [(relating to Offset Lithographic Printing)] except as specified in §115.446 of this title (relating to Monitoring and Recordkeeping Requirements).

(b) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the owner or operator of a minor printing source, as defined in §115.440 of this title (relating to Applicability and Definitions) and in Wise County the owner or operator of a major printing source, as defined in §115.440 of this title, in addition to minor printing sources:

[(1) is exempt from the requirements in this division until March 1, 2012;]

(1) [(2)] may exempt up to 110 gallons of cleaning solution per calendar year from the content limits in §115.442(c)(1) of this title (relating to Control Requirements);

(2) [(3)] may exempt any press with a total fountain solution reservoir less than 1.0 gallons from the fountain solution content limits in §115.442(c)(2) - (4) of this title; and

(3) [(4)] may exempt any sheet-fed press with a maximum sheet size of 11.0 inches by 17.0 inches or less from the fountain solution content limits in §115.442(c)(2) of this title.

[(c) Beginning March 1, 2011, the requirements in §115.442(a) of this title and §115.446(a) of this title no longer apply in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas.]

§115.442. Control Requirements.

(a) In the [Dallas-Fort Worth,] El Paso area[, and Houston-Galveston-Brazoria areas,] as defined in §115.10 of this title (relating to Definitions), the following control requirements apply. [Beginning March 1, 2011, this subsection no longer applies in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas.]

(1) The owner or operator of an offset lithographic printing line that uses solvent-containing ink shall limit emissions of volatile organic compounds (VOC) as follows.

(A) The owner or operator of a heatset web offset lithographic printing press that uses alcohol in the fountain solution shall maintain total fountain solution alcohol to 5.0% or less (by volume). Alternatively, a standard of 10.0% or less (by volume) alcohol may be used if the fountain solution containing alcohol is refrigerated to less than 60 degrees Fahrenheit (15.5 degrees Celsius).

(B) The owner or operator of a non-heatset web offset lithographic printing press that prints newspaper and that uses alcohol in the fountain solution shall eliminate the use of alcohol in the fountain solution. Nonalcohol additives or alcohol substitutes can be used to accomplish the total elimination of alcohol use.

(C) The owner or operator of a non-heatset web offset lithographic printing press that does not print newspaper and that uses alcohol in the fountain solution shall maintain the use of alcohol at 5.0% or less (by volume). Alternatively, a standard of 10.0% or less (by volume) alcohol may be used if the fountain solution is refrigerated to less than 60 degrees Fahrenheit (15.5 degrees Celsius).

(D) The owner or operator of a sheet-fed offset lithographic printing press shall maintain the use of alcohol at 10.0% or less (by volume). Alternatively, a standard of 12.0% or less (by volume) alcohol may be used if the fountain solution is refrigerated to less than 60 degrees Fahrenheit (15.5 degrees Celsius).

(E) The owner or operator of any type of offset lithographic printing press shall be considered in compliance with the fountain solution limitations of this paragraph if the only VOC in the fountain solution are nonalcohol additives or alcohol substitutes, so that the concentration of VOC in the fountain solution is 3.0% or less (by weight). The fountain solution must not contain any isopropyl alcohol.

(F) The owner or operator of an offset lithographic printing press shall reduce VOC emissions from cleaning solutions by one of the following methods:

(i) using cleaning solutions with a VOC content of 50% or less (by volume, as used);

(ii) using cleaning solutions with a VOC content of 70% or less (by volume, as used) and incorporating a towel handling program that ensures that all waste ink, solvents, and cleanup rags are stored in closed containers until removed from the site by a licensed disposal/cleaning service; or

(iii) using cleaning solutions with a VOC composite partial vapor pressure less than or equal to 10.0 millimeters of mercury at 68 degrees Fahrenheit (20 degrees Celsius).

(2) The owner or operator of a heatset offset lithographic printing press shall operate a control device to reduce VOC emissions from the press dryer exhaust vent by 90% by weight or maintain a maximum dryer exhaust outlet VOC concentration of 20 parts per million by volume (ppmv), whichever is less stringent when the press is in operation. The dryer air pressure must be lower than the pressroom air pressure at all times when the press is operating to ensure the dryer has a capture efficiency of 100%.

(b) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following control requirements apply to the owner or operator of a major printing source, as defined in §115.440 of this title (relating to Applicability and Definitions), in accordance with the appropriate compliance date specified in §115.449 [~~§115.449(e) and (g)~~] of this title (relating to Compliance Schedules).

(1) The owner or operator of an offset lithographic printing press shall limit the VOC content of the cleaning solution, as applied, to:

(A) 50.0% VOC or less by volume;

(B) 70.0% VOC or less by volume if the facility has a towel handling program in place that ensures all waste ink, solvents, and cleanup rags are stored in closed containers until removed from the site by a licensed disposal or cleaning service; or

(C) a VOC composite partial vapor pressure less than or equal to 10.0 millimeters of mercury at 68 degrees Fahrenheit (20 degrees Celsius) if the facility has a towel handling program in place that ensures all waste ink, solvents, and cleanup rags are stored in closed containers until removed from the site by a licensed disposal or cleaning service.

(2) The owner or operator of a sheet-fed offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to:

(A) 5.0% alcohol or less by weight;

(B) 8.5% alcohol or less by weight if the fountain solution is refrigerated below 60 degrees Fahrenheit (15.5 degrees Celsius); or

(C) 3.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.

(3) The owner or operator of a non-heatset web offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to 3.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.

(4) The owner or operator of a heatset web offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to:

(A) 1.6% alcohol or less by weight;

(B) 3.0% alcohol or less by weight if the fountain solution is refrigerated below 60 degrees Fahrenheit (15.5 degrees Celsius); or

(C) 3.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.

(5) The owner or operator of a heatset offset lithographic printing press shall operate a control device to reduce VOC emissions from the press dryer exhaust vent by at least 90% by weight or maintain a maximum dryer exhaust outlet VOC concentration of 20 ppmv or less, whichever is less stringent when the press is in operation. The dryer air pressure must be lower than the pressroom air pressure at all times when the press is operating to ensure the dryer has a capture efficiency of 100%.

(c) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following control requirements apply to the owner or operator of a minor printing source, as defined in §115.440 of this title, in accordance with the appropriate compliance date specified in §115.449 [~~§115.449(f) and (g) of this title~~].

(1) The owner or operator of an offset lithographic printing press shall limit the VOC content of the cleaning solution, as applied, to:

(A) 50.0% VOC or less by volume;

(B) 70.0% VOC or less by volume if the facility has a towel handling program in place that ensures all waste ink, solvents, and cleanup rags are stored in closed containers until removed from the site by a licensed disposal or cleaning service; or

(C) a VOC composite partial vapor pressure less than or equal to 10.0 millimeters of mercury at 68 degrees Fahrenheit (20 degrees Celsius) if the facility has a towel handling program in place that ensures all waste ink, solvents, and cleanup rags are stored in closed containers until removed from the site by a licensed disposal or cleaning service.

(2) The owner or operator of a sheet-fed offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to:

(A) 5.0% alcohol or less by weight;

(B) 8.5% alcohol or less by weight if the fountain solution is refrigerated below 60 degrees Fahrenheit (15.5 degrees Celsius); or

(C) 5.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.

(3) The owner or operator of a non-heatset web offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to 5.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.

(4) The owner or operator of a heatset web offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to:

(A) 1.6% alcohol or less by weight;

(B) 3.0% alcohol or less by weight if the fountain solution is refrigerated below 60 degrees Fahrenheit (15.5 degrees Celsius); or

(C) 5.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.

§115.446. Monitoring and Recordkeeping Requirements.

(a) In the [~~Dallas-Fort Worth,~~] El Paso area[~~, and Houston-Galveston-Brazoria areas,~~] as defined in §115.10 of this title (relating to Definitions), the following monitoring and recordkeeping requirements apply. [~~Beginning March 1, 2011, this subsection no longer applies in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas.~~]

(1) The owner or operator of a heatset offset lithographic printing press shall install, calibrate, maintain, and operate a temperature monitoring device, according to the manufacturer's instructions, at the outlet of the control device. The temperature monitoring device must be equipped with a continuous recorder and must have an accuracy of ±0.5 degrees Fahrenheit, or alternatively ±1.0% of the temperature being monitored.

(2) The owner or operator of any offset lithographic printing press shall install and maintain monitors to continuously measure and record operational parameters of any emission control device installed to meet applicable control requirements on a regular basis. 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 the gas temperature immediately upstream and downstream of any catalyst bed;

(B) the total amount of volatile organic compounds (VOC) recovered by a carbon adsorption or other solvent recovery system during a calendar month; 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.

(3) The dryer pressure must be maintained lower than the press room air pressure such that air flows into the dryer at all times when the offset lithographic printing press is operating. A 100% emissions capture efficiency for the dryer must be demonstrated using an air flow direction measuring device.

(4) The owner or operator of any offset lithographic printing press shall monitor fountain solution alcohol concentration with a refractometer or a hydrometer that is corrected for temperature at least once per eight-hour shift or once per batch, whichever is longer. The refractometer or hydrometer must have a visual, analog, or digital readout with an accuracy of 0.5% VOC. A standard solution must be used to calibrate the refractometer for the type of alcohol used in the fountain. The VOC content of the fountain solution may be monitored with a conductivity meter if it is determined that a refractometer or hydrometer cannot be used for the type of VOC in the fountain solution. The conductivity meter reading for the fountain solution must be referenced to the conductivity of the incoming water.

(5) The owner or operator of any offset lithographic printing press using refrigeration equipment on the fountain solution in order to comply with §115.442(a)(1)(A), (C), or (D) of this title (relating to Control Requirements) shall monitor the temperature of the fountain solution reservoir at least once per hour. Alternatively, the owner or operator of any offset lithographic printing press using refrigeration equipment on the fountain solution shall install, maintain, and continuously operate a temperature monitor of the fountain solution reservoir. The temperature monitor must be attached to a continuous recording device such as a strip chart, recorder, or computer.

(6) For any offset lithographic printing press with automatic cleaning equipment, flow meters are required to monitor water and cleaning solution flow rates. The flow meters must be calibrated so that the VOC content of the mixed solution complies with the requirements of §115.442(a)(1) of this title.

(7) The owner or operator of any offset lithographic printing press shall maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.445 of this title (relating to Approved Test Methods).

(8) The owner or operator of any offset lithographic printing press 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 United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.

(b) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following monitoring and recordkeeping requirements apply in accordance with the appropriate compliance date specified in §115.449 [~~§115.449(e) - (g)~~] of this title (relating to Compliance Schedules).

(1) The owner or operator of an offset lithographic printing press claiming an exemption in §115.441 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. For example, maintaining records of ink, cleaning solvent, and fountain solution usage may be sufficient to demonstrate compliance with the exemption provided in §115.441(a) of this title for sources located on a property with combined VOC emissions less than 3.0 tons per year [~~tpy~~] when uncontrolled.

(2) The owner or operator of an offset lithographic printing press shall use one of the following options to demonstrate compliance with the cleaning solution content limits in §115.442(b)(1) or (c)(1) of this title.

(A) Flow meters must be used to monitor the water and cleaning solution flow rates on a press with automatic cleaning equipment. The flow meters must be installed, maintained, and operated according to the manufacturer's instructions. The flow meters must be calibrated so that the VOC concentration of the cleaning solution complies with the requirements of §115.442(b)(1) or (c)(1) of this title. Records must be sufficient to demonstrate continuous compliance with the cleaning solution content limits in §115.442(b)(1) or (c)(1) of this title.

(B) The VOC concentration of each batch of cleaning solution must be determined using analytical data derived from the material safety data sheet (MSDS) or equivalent information from the supplier that was derived using the approved test methods in §115.445 of this title. The concentration of all VOC used to prepare the batch and, if diluted prior to use, the proportions that each of these materials is used must be recorded for each batch of cleaning solution. Records must be sufficient to demonstrate continuous compliance with the cleaning solution content limits in §115.442(b)(1) or (c)(1) of this title.

(3) The owner or operator of an offset lithographic printing press shall use one of the following options to demonstrate compliance with the fountain solution content limits in §115.442(b)(2) - (4) or (c)(2) - (4) of this title.

(A) The VOC concentration of each batch of fountain solution must be monitored using a refractometer or a hydrometer that is corrected for temperature. The refractometer or hydrometer must have a visual, analog, or digital readout with an accuracy of 0.5% VOC. A standard solution must be used to calibrate the refractometer for the type of alcohol used in the fountain solution. The VOC content of the fountain solution may be monitored with a conductivity meter if it is determined that a refractometer or hydrometer cannot be used for the type of VOC in the fountain solution. The conductivity meter reading for the fountain solution must be referenced to the conductivity of the incoming water. Records must be sufficient to demonstrate continuous compliance with the fountain solution content limits in §115.442(b)(2) - (4) or (c)(2) - (4) of this title.

(B) The VOC concentration of each batch fountain solution must be determined using analytical data from the MSDS or equivalent information from the supplier that was derived using the approved test methods in §115.445 of this title. The concentration of all alcohols or alcohol substitutes used to prepare the batch and, if diluted prior to use, the proportions that each of these materials is used must be recorded for each batch of fountain solution. Records must be sufficient to demonstrate continuous compliance with the fountain solution content limits in §115.442(b)(2) - (4) or (c)(2) - (4) of this title.

(4) The owner or operator of an offset lithographic printing press using refrigeration equipment on the fountain solution reservoir shall monitor and record the fountain solution temperature at least once per hour. Temperature monitoring devices must be installed, maintained, and operated according to the manufacturer's specifications. Records must be sufficient to demonstrate continuous compliance with

the fountain solution content limits in §115.442(b)(2) and (4) or (c)(2) and (4) of this title.

(5) The owner or operator of a heatset web offset lithographic printing press shall comply with the following monitoring and recordkeeping requirements to demonstrate continuous compliance with the control requirements in §115.442(b)(5) of this title.

(A) Operational parameters of any emission control device installed to comply with the requirements in §115.442(b)(5) of this title must be continuously measured and recorded. Monitors must be installed, calibrated, maintained, and operated according to the manufacturer's instructions. Temperature monitors must be equipped with a continuous recorder and have an accuracy of ±0.5 degrees Fahrenheit or ±1.0% of the temperature being monitored, whichever is less stringent. Measuring and recording the operational parameters of the control device at least once every 15 minutes is sufficient to demonstrate compliance with this subparagraph. Records must be sufficient to demonstrate proper functioning of the device to design specifications and must include:

(i) the exhaust gas temperature of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;

(ii) the total amount of VOC recovered by a carbon adsorption system or other solvent recovery system per calendar month; and

(iii) the exhaust gas VOC concentration of any carbon adsorption system to determine if breakthrough has occurred.

(B) An air flow direction measuring device must be used to demonstrate the dryer meets the 100% capture efficiency required in §115.442(b)(5) of this title.

(6) The owner or operator of an offset lithographic printing press shall maintain the results of any tests conducted using the approved test methods in §115.445 of this title.

(7) The owner or operator of an offset lithographic printing press shall maintain all records 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, or any local air pollution agency with jurisdiction.

§115.449. Compliance Schedules.

(a) In the El Paso area [~~County~~], the owner or operator of all offset lithographic printing presses must be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title (relating to Control Requirements; Alternate Control Requirements; Approved Test Methods; and Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than November 15, 1996.

(b) In Collin, Dallas, Denton, and Tarrant Counties, the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of volatile organic compounds (VOC) equal to or greater than 50 tons per calendar year, must be in compliance with §§115.442(a), 115.443, 115.445, and 115.446(a) of this title as soon as practicable, but no later than December 31, 2000.

(c) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 25 tons per calendar year, must be in compliance with §§115.442(a), 115.443, 115.445, and 115.446(a) of this title as soon as practicable, but no later than December 31, 2002.

(d) In Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 50 tons per calendar year, shall comply with §§115.442(a), 115.443, 115.445, and 115.446(a) of this title as soon as practicable, but no later than March 1, 2009.

(e) The owner or operator of a major printing source, as defined in §115.440 of this title (relating to Applicability and Definitions), in the Dallas-Fort Worth area, except Wise County, or the Houston-Galveston-Brazoria area [~~areas~~], as defined in §115.10 of this title (relating to Definitions), shall comply with the requirements in this division no later than March 1, 2011, except as specified in subsections (b), (c), and (d) of this section.

(f) The owner or operator of a minor printing source, as defined in §115.440 of this title, in the Dallas-Fort Worth area, except Wise County, or the Houston-Galveston-Brazoria area [~~areas~~], shall comply with the requirements in this division no later than March 1, 2012.

(g) The owner or operator of a major or minor printing source, as defined in §115.440 of this title, in Wise County, shall comply with the requirements in this division as soon as practicable, but no later than January 1, 2017.

(h) [~~(g)~~] The owner or operator of an offset lithographic printing line in the Dallas-Fort Worth or Houston-Galveston-Brazoria areas that becomes subject to this division on or after the date specified in subsections (e) - (g) [~~(e) or (f)~~] of this section, shall comply with the requirements in this division no later than 60 days after becoming subject.

(i) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each offset lithographic printing line is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406018
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 5. CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

30 TAC §§115.450, 115.451, 115.453, 115.459

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; 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 (6) of this subsection:

(1) large appliance surface coating;

(2) metal furniture surface coating;

(3) miscellaneous metal parts and products surface coating, miscellaneous plastic parts and products surface coating, pleasure craft surface coating, and automotive/transportation and business machine plastic parts surface coating at the original equipment manufacturer and off-site job shops that coat new parts and products or that re-coat used parts and products;

(4) motor vehicle materials applied to miscellaneous metal and plastic parts specified in paragraph (3) of this subsection, at the original equipment manufacturer and off-site job shops that coat new metal and plastic parts or that re-coat used parts and products;

(5) 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

(6) in the Dallas-Fort Worth area, automobile and light-duty truck assembly surface coating processes conducted by the original equipment manufacturer and operators that conduct automobile and light-duty truck surface 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), where applicable, 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 solvent)--The basis for content limits for surface coating processes that can be calculated by the following equation:
Figure: 30 TAC §115.450(b)(11) (No change.)

(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)
[~~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 surface 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 multicomponent coating used in an automobile or light-duty truck assembly surface 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 surface 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 surface 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 surface 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 surface 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 an 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 surface 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 surface 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 surface 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 surface 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 surface 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 surface 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 surface 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) Automotive/transportation plastic parts--Interior and exterior plastic components of automobiles, trucks, tractors, lawnmowers, and other mobile equipment.

(C) [~~(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.

(D) [~~(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.

(E) [~~(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.

(F) [~~(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.

(G) [~~(F)~~] Coating of business machine plastic parts--The coating of any plastic part that is or will be assembled with other parts to form a business machine.

(H) [~~(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.

(I) [~~(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.

(J) [~~(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.

(K) [~~(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.

(L) [~~(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.

(M) [~~(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.

(N) [~~(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.

(O) [~~(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.

(P) [~~(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 D523 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);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(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 0.042 pounds of metal particles per gallon 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 is 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 furni-

ture 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 D523 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);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(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 is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(F) Solar-absorbent coating--A coating that has as its primary 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 but equal to or less than 110 gallons.

(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 D523 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, marine shipping containers, downhole drilling equipment, 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);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(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 that 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 include:

(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 §115.420(c)(1) - (8) and (10) - (16) [~~§115.420(b)(1) - (8) and (10) - (14)~~] of this title (relating to Surface Coating Definitions) and paragraphs (1) - (4) and (6) - (8) of this subsection.

(R) Miscellaneous plastic parts and products--Parts and products considered miscellaneous plastic parts and products include, but are not limited to:

(i) molded plastic parts;

(ii) small and large farm machinery;

(iii) commercial and industrial machinery and equipment;

(iv) interior or exterior automotive parts;

(v) construction equipment;

(vi) motor vehicle accessories;

(vii) bicycles and sporting goods;

(viii) toys;

(ix) recreational vehicles;

(x) lawn and garden equipment;

(xi) laboratory and medical equipment;

(xii) electronic equipment; and

(xiii) other industrial and household products. Excluded are those surface coating processes specified in §115.420(c)(1) - (16) [~~§115.420(b)(1) - (14)~~] of this title and paragraphs (1) - (4) and (6) - (8) of this subsection.

(S) Multi-colored coating--A coating that exhibits more than one color when applied, is packaged in a single container, and applied in a single coat.

(T) Off-site job shop--A non-manufacturer of metal or plastic parts and products that applies coatings to such products at a site under contract with one or more parties that operate under separate ownership and control.

(U) Optical coating--A coating applied to an optical lens.

(V) Pail (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 1 gallon but less than 12 gallons and constructed of 29 gauge or heavier material.

(W) 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.

(X) Prefabricated architectural component coating--A coating applied to metal parts and products that are to be used as an architectural structure.

(Y) 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 is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(Z) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.

(AA) Safety-indicating coating--A coating that changes physical characteristics, such as color, to indicate unsafe conditions.

(BB) 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.

(CC) Silicone-release coating--A coating that contains silicone resin and is intended to prevent food from sticking to metal surfaces such as baking pans.

(DD) Solar-absorbent coating--A coating that has as its primary purpose the absorption of solar radiation.

(EE) 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.

(FF) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.

(GG) Translucent coating--A coating that contains binders and pigment and formulated to form a colored, but not opaque, film.

(HH) 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 and is[,] 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 manufacturing [~~assembly~~] coating process and is 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 manufacturing [~~assembly~~] coating process and is 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 manufacturing [~~assembly~~] coating process and is 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 manufacturing [~~assembly~~] coating process and is 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 manufacturing [~~assembly~~] coating process and is 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 motor vehicle 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 manufacturing [~~assembly~~] coating process and is 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 manufacturing [~~assembly~~] coating process and is 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.

(A) 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:

(i) provide a covering, finish, or functional or protective layer to the substrate;

(ii) saturate the substrate for lamination; or

(iii) provide adhesion between two substrates for lamination.

(B) Paper, film, and foil coating excludes coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press; or size presses and on-machine coaters that function as part of an in-line papermaking system.

(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 in length. A vessel rented exclusively to, or chartered for, individuals for such purposes is considered a pleasure craft.

(A) Antifoulant coating--A 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) Antifoulant sealer/tie coating--A coating applied over an antifoulant coating to prevent the release of biocides into the environment or to promote adhesion between an antifoulant coating and a primer or other antifoulants.

(C) Extreme high-gloss coating--A coating that achieves at least 90% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Method D523-89.

(D) 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.

(E) 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.

(F) High-gloss coating--A coating that achieves at least 85% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Test Method D523-89.

(G) Pleasure craft coating--A marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.

(H) Pretreatment wash primer--A coating that contains no more than 25% solids by weight and at least 0.10% 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.

(I) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.

(J) Topcoat--A final coating applied to the interior or exterior of a pleasure craft.

(K) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.

§115.451. Exemptions.

(a) The volatile organic compounds (VOC) from coatings and solvents used in surface coating processes and associated cleaning operations not addressed by the surface coating categories in §115.421(3) - (7), (9), (10), and (13) - (16) [~~§115.421(a)(3), (5) - (7), and (10) - (15)~~] of this title (relating to Emission Specifications) or §115.453 of this title (relating to Control Requirements[~~,~~]) are excluded from the VOC emission calculations for the purposes of paragraphs (1) - (3) of this subsection. 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.

(1) 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.

(2) 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.

(3) 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.

(b) The following surface coating processes are exempt from the VOC limits for miscellaneous metal and plastic parts coatings in §115.453(a)(1)(C) - (F) [~~§115.453(a)(1)(C) and (D)~~] of this title and motor vehicle materials in §115.453(a)(2) of this title:

(1) large appliance surface coating;

(2) metal furniture surface coating;

(3) automobile and light-duty truck assembly surface coating; and

(4) surface coating processes specified in §115.420(a)(1) - (9) and (11) - (16) [~~§115.420(b)(1) - (8) and (10) - (14)~~] of this title (relating to Applicability and Definitions) [~~(relating to Surface Coating Definitions)~~].

(c) Paper, film, and foil surface 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.

(d) Automobile and light-duty truck assembly surface 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.

(e) Automobile and light-duty truck assembly surface 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.

(f) The following miscellaneous metal part and product surface coatings and surface coating processes are exempt from the coating application system requirements in §115.453(c) of this title:

(1) touch-up coatings, repair coatings, and textured finishes;

(2) stencil coatings;

(3) safety-indicating coatings;

(4) solid-film lubricants;

(5) electric-insulating and thermal-conducting coatings;

(6) magnetic data storage disk coatings; and

(7) plastic extruded onto metal parts to form a coating.

(g) All miscellaneous plastic part airbrush surface coatings and surface coating processes 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.

(h) 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.

(i) The following miscellaneous plastic parts surface coatings and surface coating processes are exempt from the coating VOC limits in §115.453(a)(1)(D) of this title:

(1) touch-up and repair coatings;

(2) stencil coatings applied on clear or transparent substrates;

(3) clear or translucent coatings;

(4) 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;

(5) reflective coating applied to highway cones;

(6) mask coatings that are less than 0.5 mil thick dried and the area coated is less than 25 square inches;

(7) electromagnetic interference/radio frequency interference (EMI/RFI) shielding coatings; and

(8) 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 property.

(j) The following automotive/transportation and business machine plastic part surface coatings and surface coating processes are exempt from the VOC limits in §115.453(a)(1)(E) of this title:

(1) texture coatings;

(2) vacuum-metalizing coatings;

(3) gloss reducers;

(4) texture topcoats;

(5) adhesion primers [~~prime~~];

(6) electrostatic preparation coatings;

(7) resist coatings; and

(8) stencil coatings.

(k) Powder coatings and ultraviolet curable coatings applied during metal and plastic parts surface coating processes specified in §115.453(a)(1)(C) - (F) and (2) of this title 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).

(l) Aerosol coatings (spray paint) are exempt from this division.

(m) 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.

(n) Pleasure craft touch-up and repair coatings supplied in containers less than or equal to 1.0 quart, are exempt from the VOC limits in §115.453(a)(1)(F) of this title provided that the total usage of all such coatings does not exceed 50 gallons per calendar year per property.

(o) Pleasure craft surface coating processes are exempt from the VOC limits in §115.453(a)(1)(C) and (D) of this title.

(p) Adhesives applied to miscellaneous metal and plastic parts listed in §115.453(a)(1)(C) - (F) and (2) of this title that meet a specific adhesive or adhesive primer application process definition in §115.470 of this title (relating to Applicability and Definitions) and are listed in Table 2 of §115.473(a) of this title (relating to Control Requirements) are not subject to the requirements in this division. Contact adhesives are not included in this exemption.

§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), as delivered to the application system.

(1) The following limits must be met by applying low-volatile organic compound (VOC) coatings to meet the specified VOC content limits on a pound of VOC per gallon of coating basis (lb VOC/gal coating) (minus water and exempt solvent), or by applying coatings in combination with the operation of 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). If a coating meets more than one coating type definition, then the coating with the least stringent VOC limit applies.

(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) (No change.)

(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) (No change.)

(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) (No change.)

(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) (No change.)

(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)
[~~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) (No change.)

(2) The coating VOC limits for motor vehicle materials applied to the metal and plastic parts in paragraph (1)(C) - (F) of this subsection, as delivered to the application system, must be met using low-VOC coatings (minus water and exempt solvent).
Figure: 30 TAC §115.453(a)(2) (No change.)

(3) The coating VOC limits for automobile and light-duty truck assembly surface coating processes must be met by applying low-VOC coatings.
Figure: 30 TAC §115.453(a)(3) (No change.)

(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 the daily weighted average, compliance may be demonstrated each day by meeting a standard of 4.8 lb VOC/gal coating (minus water and exempt solvent) 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 limits in Table 2 of this paragraph in accordance with §115.455(a)(1) or (2)(C) of this title, as appropriate.

(4) The coating VOC limits for paper, film, and foil surface coating processes 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 coatings in combination with the operation of a vapor control system to meet the specified VOC emission limits on a pound of VOC per pound of solids basis, as delivered to the application system.
Figure: 30 TAC §115.453(a)(4) (No change.)

(5) An owner or operator applying coatings in combination with the operation of 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) (No change.)

(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 hand-held paint rollers;

(7) for metal and plastic parts surface coating processes specified in §115.450(a)(3) and (4) of this title (relating to Applicability and Definitions), airless spray or air-assisted airless spray; or

(8) 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%. The owner or operator shall demonstrate that either the application system being used is equivalent to the transfer efficiency of an HVLP spray or that the application system being used has a transfer efficiency of at least 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 surface 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 surface 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.

§115.459. Compliance Schedules.

(a) The owner or operator of a surface coating process in the Dallas-Fort Worth area, except Wise County, and in the Houston-Galveston-Brazoria area subject to this division shall comply with the requirements of this division no later than March 1, 2013.

(b) The owner or operator of a surface coating process in Wise County shall comply with the requirements in this division as soon as practicable, but no later than January 1, 2017.

(c) [~~(b)~~] The owner or operator of a surface coating process that becomes subject to this division on or after the applicable compliance date of this section [~~March 1, 2013,~~] shall comply with the requirements in this division no later than 60 days after becoming subject.

(d) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each surface coating process is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406019
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 6. INDUSTRIAL CLEANING SOLVENTS

30 TAC §§115.460, 115.461, 115.469

Statutory Authority

The amended 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 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 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. The amended sections are also proposed under Federal Clean Air Act (FCAA), 42 United State 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; 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 and janitorial cleaning are not considered solvent cleaning operations.

(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--A volatile organic compound-containing liquid used to perform solvent cleaning operations.

(11) [~~(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 using a solvent.

(12) [~~(11)~~] Volatile organic compound (VOC) composite partial pressure--The sum of the partial pressures of the compounds that meet the definition of VOC in §101.1 of this title (relating to Definitions). The VOC composite partial pressure is calculated as follows. Figure: 30 TAC §115.460(b)(12)
[~~Figure: 30 TAC §115.460(b)(11)~~]

§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). When calculating the VOC emissions, solvents used for solvent cleaning operations that are exempt from this division under subsections (b) - (e) of this section are excluded.

(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) A solvent cleaning operation is exempt from this division if:

(1) the process or operation that the solvent cleaning operation is associated with is subject to another division in this chapter; and

(2) the VOC emissions from the solvent cleaning operation are controlled in accordance with an emission specification or control requirement of the division that the process or operation is subject to.

(d) The following are exempt from the VOC limits in §115.463(a) 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, resin, and adhesive manufacturing;

(14) polyester resin operations;

(15) flexographic and rotogravure printing processes;

(16) screen printing operations; and

(17) digital printing operations.

(e) Cleaning solvents supplied in aerosol cans are exempt from the VOC limits in §115.463(a) of this title if total aerosol use for the property is less than 160 fluid ounces per day.

§115.469. Compliance Schedules.

(a) The owner or operator of a solvent cleaning operation in Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties [~~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 in Wise County shall comply with the requirements in this division as soon as practicable, but no later than January 1, 2017.

(c) [~~(b)~~] The owner or operator of a solvent cleaning operation that becomes subject to this division on or after the applicable compliance date in this section [~~March 1, 2013,~~] shall comply with the requirements in this division no later than 60 days after becoming subject.

(d) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each solvent cleaning operation is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406022
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Earliest possible date of adoption: January 25, 2015
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DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

30 TAC §§115.471, 115.473, 115.479

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.471. Exemptions.

(a) The owner or operator of 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). When calculating the VOC emissions, adhesives and adhesive primers that are exempt under subsections (b) and (c) of this section are excluded.

(b) The following application processes are exempt from the VOC limits in §115.473(a) of this title (relating to Control Requirements) and the application system requirements in §115.473(b) of this title:

(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 components or undersea-based weapon system components;

(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 application processes listed in §115.473(a) of this title, is exempt from the requirements in this division. Adhesives and adhesive primers used for miscellaneous metal and plastic parts surface coating processes in §115.453(a)(1)(C) - (F) and (2) of this title (related to Control Requirements) meeting a specialty application process definition in §115.470 of this title (relating to Applicability and Definitions) are not included in this exemption. Contact adhesives are not included in this exemption. When an adhesive or adhesive primer meets more than one adhesive application process definition in §115.470 of this title, the least stringent VOC content limit applies.

§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 application processes to the following VOC content limits in pounds of VOC per gallon of adhesive (lb VOC/gal adhesive) (minus water and exempt solvent compounds), as delivered to the application system. These limits are based on the daily weighted average of all adhesives or adhesive primers delivered to the application system each day. If an adhesive or adhesive primer 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)
[~~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 or adhesive primers.

(B) The owner or operator shall apply adhesives or adhesive primers in combination with the operation of 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 adhesives or adhesive primers 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) (No change.)

(b) The owner or operator of any application process subject to this division shall not apply adhesives or adhesive primers 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 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%. The owner or operator shall demonstrate that either the application system being used is equivalent to the transfer efficiency of an HVLP spray or that the application system being used has a transfer efficiency of at least 65%.

(c) The following work practices apply to the owner or operator of each application process subject to this division.

(1) For the storage, mixing, and handling of all adhesives, adhesive primers, 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 captured in closed containers.

(d) An 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.

§115.479. Compliance Schedules.

(a) The owner or operator of an application process in Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller, Counties [~~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 application process in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(c) [~~(b)~~] The owner or operator of an application process that becomes subject to this division on or after the applicable compliance date in this section [~~March 1, 2013,~~] shall comply with the requirements in this division no later than 60 days after becoming subject.

(d) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of each application process is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406023
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Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES
DIVISION 1. CUTBACK ASPHALT

30 TAC §115.519

Statutory Authority

The amended 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 amended 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; 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 amended 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 amended 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 amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§115.519. Counties and Compliance Schedules.

(a) In [~~All affected persons in~~] Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, and Waller Counties, the compliance date has passed and all affected persons shall continue to comply with [~~applicable sections of~~] this division [~~(relating to Cutback Asphalt) as required by §115.930 of this title (relating to Compliance Dates)~~].

(b) All affected persons in Bastrop, Caldwell, Hays, Travis, and Williamson Counties shall comply with [~~applicable sections of~~] this division as soon as practicable, but no later than December 31, 2005.

(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with [~~applicable sections of~~] this division as soon as practicable, but no later than March 1, 2009.

(d) All affected persons in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(e) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator is not required to comply with any of the requirements in this division.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406024
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§117.10, 117.400, 117.403, 117.410, 117.423, 117.425, 117.430, 117.435, 117.440, 117.445, 117.450, 117.454, 117.456, 117.1303, 117.1310, 117.1325, 117.1335, 117.1340, 117.1345, 117.1350, 117.1354, 117.8000, 117.9030, 117.9130, 117.9800, and 117.9810; repeal of §§117.200, 117.203, 117.205, 117.210, 117.215, 117.223, 117.225, 117.230, 117.235, 117.240, 117.245, 117.252, 117.254, 117.256, 117.1100, 117.1103, 117.1105, 117.1110, 117.1115, 117.1120, 117.1125, 117.1135, 117.1140, 117.1145, 117.1152, 117.1154, 117.1156, 117.9010, and 117.9110; and new §117.405 and §117.452.

If adopted, the amended, repealed, and new sections of Chapter 117 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP), except for the following: §§117.210(c), 117.225, 117.405(d), 117.410(d), 117.425, 117.1110(b), 117.1125, 117.1310(b), and 117.1325. Sections 117.210(c), 117.225, 117.410(d), 117.425, 117.1110(b), 117.1125, 117.1310(b), and 117.1325 correspond to portions of the existing rule previously excluded from the EPA-approved Texas SIP and will not be submitted with this revision. Similarly, proposed new §117.405(d) will not be submitted to the EPA as a SIP revision.

Background and Summary of the Factual Basis for the Proposed Rules

General Background

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 as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once established by the EPA. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

On March 27, 2008, the EPA revised both the primary and secondary ozone standard (the eight-hour ozone NAAQS) to a level of 0.075 parts per million (ppm) with an effective date of May 27, 2008 (73 FR 16436). On May 21, 2012, the EPA established initial air quality designations for the 2008 eight-hour ozone NAAQS. Effective July 20, 2012, the Dallas-Fort Worth (DFW) 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area. The DFW area must attain the 2008 eight-hour ozone NAAQS by December 31, 2018 (77 FR 30088, May 21, 2012). Nonattainment areas classified as moderate and above are required to meet the mandates of the FCAA under FCAA, §172(c)(1) and §182(f). 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. FCAA, §182(f) requires the state to submit a SIP revision that implements RACT for all major sources of nitrogen oxides (NO_x).

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 FCAA requires the state to implement RACT, while EPA guidance provides states with the flexibility to determine the most technologically and economically feasible RACT requirements for a nonattainment area. The proposed rulemaking would revise Chapter 117 to implement RACT for all major sources of NO_x in the DFW area as required by FCAA, §172(c)(1) and §182(f). The state previously adopted Chapter 117 RACT rules for sources in the DFW area as part of the SIP submitted by the state on May 30, 2007 for the 1997 eight-hour ozone standard, and the EPA approved these rules on December 8, 2008 (73 FR 73562). However, Wise County was classified as attainment under the 1997 eight-hour ozone standard, so the Chapter 117 RACT rules do not currently apply in Wise County. The proposed rulemaking would therefore extend implementation of RACT to major sources of NO_x located in Wise County. If adopted, these rules would be submitted to the EPA as a SIP revision.

Under the 1997 eight-hour ozone NAAQS, the DFW eight-hour ozone nonattainment area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) and was classified as a serious nonattainment area. The EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold level for sources in an area to prevent backsliding (78 FR 34178, June 6, 2013). For this reason, the major source threshold for the nine counties remains the serious classification potential to emit (PTE) of 50 tons per year (tpy) of NO_x whereas for Wise County, the major source threshold is the moderate classification PTE of 100 tpy of NO_x.

The emission reduction requirements from this proposed rulemaking, if adopted, would result in reductions in ozone precursors in Wise County. The proposed compliance date for implementing control requirements and emission reductions for the DFW area is January 1, 2017, as required by the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS.

Proposed subchapters, divisions, and key sections with new requirements or modifications associated with the DFW 2008 eight-hour ozone RACT rulemaking include: Subchapter A, Definitions, §117.10; Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, §§117.400, 117.403, 117.405, 117.410, 117.423, 117.425, 117.430, 117.435, 117.440, 117.445, 117.450, 117.452, 117.454, and 117.456; Subchapter C, Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources, §§117.1303, 117.1310, 117.1325, 117.1335, 117.1340, 117.1345, 117.1350, and 117.1354; Subchapter G, General Monitoring and Testing Requirements, Division 1, Compliance Stack Testing and Report Requirements, §117.8000; and Subchapter H, Administrative Provisions, Division 1, Compliance Schedules, §117.9030 and §117.9130, and Division 2, Compliance Flexibility, §117.9800 and §117.9810.

Subchapters, divisions, and key sections proposed for repeal by the commission also associated with this rulemaking include all of Subchapter B, Division 2, Dallas-Fort Worth Ozone Nonattainment Area Major Sources and Subchapter C, Division 2, Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources.

The commission also proposes clarifications and minor revisions that would affect some sources in other areas covered by Chap-

ter 117, such as changes to definitions and testing provisions for compliance flexibility. Other changes are proposed to ensure the appropriate monitoring, testing, recordkeeping, and reporting requirements for demonstrating compliance are in the rule provisions in addition to providing clarity or additional compliance flexibility to owners or operators of affected units. These proposed changes are discussed in detail in the *Section by Section Discussion* section of this preamble.

Subchapter B: Combustion Control at Major Industrial, Commercial, and Institutional Sources In Ozone Nonattainment Areas

Division 2: Dallas-Fort Worth Ozone Nonattainment Area Major Sources

The commission proposes to repeal existing Subchapter B, Division 2 because compliance dates for sources of NO_x subject to this division have passed and are now considered obsolete. Furthermore, sources previously subject to this division are now required to comply with more stringent rules in existing Subchapter B, Division 4.

Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

The commissions is proposing a revised Subchapter B, Division 4 with new emission control requirements for major industrial, commercial, or institutional (ICI) sources of NO_x in Wise County and for major ICI sources of NO_x in the other nine counties that were not addressed in previous RACT rulemakings. For the other nine counties, one new major ICI source of NO_x was identified in Kaufman County. Proposed revised Subchapter B, Division 4 would require some owners or operators of major ICI sources of NO_x in Wise or Kaufman Counties to reduce NO_x emissions from certain stationary sources and source categories to satisfy RACT requirements. For Wise County, a major source of NO_x is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit equal to or greater than 100 tpy of NO_x. For the remaining nine counties, a major source of NO_x is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit equal to or greater than 50 tpy of NO_x. In the proposed rulemaking, the stationary source type categories with proposed controls in Wise County are process heaters, stationary internal combustion gas-fired engines, and stationary gas turbines. In Kaufman County, the stationary source type category with proposed controls is wood-fired boilers. Proposed revised Subchapter B, Division 4 would also extend applicability of existing monitoring, testing, recordkeeping, and reporting requirements associated with Subchapter B, Division 4 to the affected sources located in Wise and Kaufman Counties. These requirements would be necessary to ensure compliance with the proposed emission specifications and to ensure that the NO_x emission reductions are achieved. Specific discussion associated with the proposed emission specifications and other requirements in proposed revised Subchapter B, Division 4 is provided in the *Section by Section Discussion* section.

The commission estimates that this proposed rule would result in a 1.17 tons per day reduction of NO_x from major ICI sources in the DFW area. In the RACT rules adopted for the May 30, 2007 DFW SIP revision, the state fulfilled NO_x RACT requirements through adoption of emissions specifications in §117.410 to demonstrate attainment for the nine counties of the DFW 1997 eight-hour ozone nonattainment area. With this proposed rulemaking, the commission proposes to implement and fulfill NO_x RACT requirements for major sources in Wise County.

Subchapter C: Combustion Control at Major Utility Electric Generation Sources In Ozone Nonattainment Areas

Division 2: Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources

The commission proposes to repeal existing Subchapter C, Division 2 because compliance dates for sources of NO_x subject to this division have passed and are now considered obsolete. Furthermore, sources previously subject to this division are now required to comply with more stringent rules in existing Subchapter C, Division 4.

Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources

The commission is proposing a revised Subchapter C, Division 4 with revised requirements for utility electric generation sources in the DFW area. The commission is not proposing to change the existing RACT emission specifications that were adopted as emissions specifications for attainment demonstration in the previous RACT rulemaking, as adopted in the May 30, 2007 DFW SIP revision. The commission proposes to repeal an existing exemption for auxiliary steam boilers and stationary gas turbines that were placed into service after November 15, 1992. This revision is proposed to make the utility rules that apply to gas turbines in the DFW area consistent with the major source industrial rules in the DFW area and to provide a more efficient RACT demonstration for the affected utility sources. Specific discussion associated with the proposed emission specifications and other requirements in proposed revised Subchapter C, Division 4 is provided in the *Section by Section Discussion* section. With this proposed rulemaking, the commission proposes to implement and fulfill NO_x RACT requirements for major sources in Wise County.

This proposed rulemaking would include Wise County as part of the DFW 2008 eight-hour ozone nonattainment area since it was designated as nonattainment by the EPA in the final designations rule published in the *Federal Register* on May 21, 2012 (77 FR 30088). However, the TCEQ and other concerned parties are currently challenging whether the EPA's inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area was lawful. These challenges are currently pending in the United States Court of Appeals for the District of Columbia Circuit. If the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area is overturned before this rulemaking is adopted, the TCEQ will take action to revise this rulemaking appropriately. Because the TCEQ cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 attainment demonstration SIP. Should Wise County be removed from the DFW 2008 eight-hour ozone nonattainment area after the adoption of these rules, the proposed rules will allow the commission to exempt sources in Wise County from major source RACT requirements upon notice by the TCEQ via publication in the *Texas Register* that Wise County is no longer a part of the DFW 2008 eight-hour ozone nonattainment area.

Section by Section Discussion

In addition to the proposed amendments associated with implementing RACT for the DFW area and specific minor clarifications and corrections discussed in greater detail in this *Sec-*

tion by Section Discussion, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble. Comments received regarding sections and rule language associated only with reformatting and minor stylistic changes will not be considered, and no changes will be made based on such comments.

Subchapter A, Definitions

Section 117.10, Definitions

The commission proposes revising the definitions of applicable ozone nonattainment areas in §117.10(2). The commission proposes repeal of existing §117.10(2)(B), DFW ozone nonattainment area. The existing definition of DFW ozone nonattainment area includes Collin, Dallas, Denton, and Tarrant Counties. Divisions relating to this four-county DFW area have been made obsolete by the passing of compliance dates, and sources of NO_x previously subject to these divisions are now required to comply with more stringent rules in existing divisions relating to the expanded nine-county DFW area. The commission proposes re-lettering existing §117.10(2)(C), DFW eight-hour ozone nonattainment area, to §117.10(2)(B), and existing §117.10(2)(D), Houston-Galveston-Brazoria ozone nonattainment area, to §117.10(2)(C). The commission also proposes to revise the definition of DFW eight-hour ozone nonattainment area. The existing definition of DFW eight-hour ozone nonattainment area includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. For the purposes of Chapter 117, Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas, the proposed revised definition includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, and for all other divisions of Chapter 117, the proposed revised definition includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties. This proposed change to the definition of DFW eight-hour ozone nonattainment area is necessary because the commission is not proposing to apply the existing minor source rules to sources located in Wise County.

The commission proposes revising the definition of electric power generating system in §117.10(14), to clarify the applicability of independent power producers in the ozone nonattainment areas. Systems that are owned or operated by independent power producers and are located in the Beaumont-Port Arthur ozone nonattainment area or the 10-county DFW 2008 eight-hour ozone nonattainment area are subject to Chapter 117, Subchapter C. However, as the current definition in existing §117.10(14)(C) states, cogeneration units and independent power producers in the Houston-Galveston-Brazoria ozone nonattainment area are subject to the industrial, commercial, and institutional rules in Subchapter B.

The commission therefore proposes revising §117.10(14) to clarify this difference in applicability between the different ozone nonattainment areas for independent power producers. The proposed revisions to subparagraph (A) would add independent power producers but limit the applicability of the definition to only the Beaumont-Port Arthur and DFW areas. Proposed changes to §117.10(14)(A) include removal of existing §117.10(14)(A)(ii), DFW, consistent with the proposed removal of §117.10(2)(B). The commission proposes re-numbering existing §117.10(14)(A)(iii), DFW eight-hour, to §117.10(14)(A)(ii). Existing §117.10(14)(A)(iv), Houston-Galveston-Brazoria, is proposed for removal to coincide with changes proposed in §117.10(14)(B) and proposed revised §117.10(14)(C). The commission also proposes to remove existing §117.10(14)(B) and move it to amended §117.10(14)(D). To address electric power generating systems located in the Houston-Galveston-Brazoria ozone nonattainment area subject to Chapter 117, Subchapter C, the commission proposes a modified subparagraph (B) in §117.10(14). Proposed §117.10(14)(B) is necessary to address specific combustion unit types that are part of electric power generating systems located in the Houston-Galveston-Brazoria ozone nonattainment area that are subject to Subchapter C, Division 3 while maintaining the distinction established under §117.10(14)(C) for independent power producers. The commission also proposes revising §117.10(14)(C) to clarify that the provision only applies to Subchapter B, Division 3 and to update the reference from proposed revised §117.10(14)(A) to concurrent proposed §117.10(14)(B). These changes to §117.10(14) are proposed to clarify the existing definition of an electric power generating system and are not intended to expand the definition.

The commission proposes revising the definition of emergency situation in §117.10(15)(A)(ii) and (vii) to update the references to the Electric Reliability Council of Texas (ERCOT) Protocols to the most recent published version of the ERCOT Protocols, August 13, 2014.

The commission proposes revising the definition of large utility system in §117.10(24) to remove the reference to DFW ozone nonattainment area as an applicable ozone nonattainment area to be consistent with the proposed removal of existing §117.10(2)(B).

The commission proposes revising the definition of major source in §117.10(29). Proposed changes to §117.10(29)(B) include the removal of references to DFW and DFW eight-hour ozone nonattainment area and adding Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties as applicable counties. Proposed §117.10(29)(C) includes a new major source applicability threshold of at least 100 tpy of NO_x for sources located in Wise County. These changes are necessary to be consistent with proposed §117.10(2)(B), concerning the proposed revised definition of DFW eight-hour ozone nonattainment area and to reflect the difference in the applicability threshold because of the different classifications between Wise County and the other nine counties included in the ozone nonattainment area. The commission also proposes to re-letter existing §117.10(29)(C) to §117.10(29)(D) and re-letter existing §117.10(29)(D) to §117.10(29)(E).

Proposed revisions to the definition of small utility system in §117.10(44) include the removal of the reference to DFW ozone nonattainment area as an applicable ozone nonattainment area to be consistent with the proposed removal of existing §117.10(2)(B), DFW ozone nonattainment area.

The commission proposes revisions to the definition of unit in §117.10(51). Proposed changes to §117.10(51)(A) include a reference to proposed new §117.405, Emission Specifications for Reasonably Available Control Technology (RACT), to define unit as any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in §117.10. In addition, proposed revised §117.10(51)(A) includes removing references to sections proposed for repeal.

Finally, proposed changes to §117.10(51)(B) include deleting references to §117.210 and §117.1110 because these sections are proposed for repeal.

Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources In Ozone Nonattainment Areas

Division 2, Dallas-Fort Worth Ozone Nonattainment Area Major Sources

The commission proposes repeal of existing Subchapter B, Division 2, DFW which has been made obsolete by the passing of compliance dates because sources of NO_x previously subject to this division are now required to comply with more stringent rules in existing Subchapter B, Division 4.

Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

To address new RACT requirements for sources of NO_x located in Wise County, the commission is proposing a new section, §117.405, in proposed revised Subchapter B, Division 4 that would include new rules applicable to any major stationary source of NO_x in Wise County. New NO_x RACT requirements necessary for major stationary sources of NO_x in the other nine counties that are not already addressed under the current rules are included as proposed revisions to the existing §117.410. The commission is not proposing to expand the list of applicable unit types at major ICI stationary sources of NO_x as it currently exists in §117.400 in proposed revised Subchapter B, Division 4.

Section 117.400, Applicability

Proposed revisions to §117.400 clarify which unit types located in specific counties in the proposed revised DFW eight-hour ozone nonattainment area would be subject to the proposed revisions of Subchapter B, Division 4. Proposed §117.400(a) retains the list of applicable units located at major sources of NO_x in existing §117.400 and specifies that these units must be located at major sources of NO_x located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County. This change is necessary to clarify that specific units located in the existing nine-county DFW eight-hour ozone nonattainment area would be subject to proposed §117.410(a), with the exception of the one wood-fired boiler located in Kaufman County. The wood-fired boiler identified in Kaufman County in the calendar year 2012 TCEQ Point Source Emissions Inventory (2012 EI) would be an applicable unit under proposed §117.400(a) subject to the NO_x emission specification of proposed new §117.405(a) as an ICI boiler.

The commission proposes §117.400(b) to specify the units located at major sources of NO_x located in Wise County that would be subject to proposed §117.405(b). The proposed stationary source type categories are ICI process heaters, stationary gas turbines, and stationary internal combustion engines.

Section 117.403, Exemptions

Proposed revisions to §117.403 clarify exemption criteria of units that would be exempt from specified requirements of proposed revised Subchapter B, Division 4. To be consistent with the proposed revisions in §117.400, the commission proposes to revise §117.403(a), which retains the list of applicable unit types, sizes, and uses in existing §117.403(a). The commission proposes to specifically list Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County in subsection (a) to make clear that the list of exemptions provided in the subsection is only applicable in those counties and because exemptions applicable in Wise County are proposed to be listed separately. Changes to existing §117.403(a)(4) are proposed to facilitate consistency between the unit size exemption threshold in §117.403(a)(4) and the existing definition of maximum-rated capacity, as defined in §117.10. Proposed revisions to §117.403(a)(7)(A) and (B) are necessary to clarify that the exemption criteria for research and testing and performance verification and testing refer to research, testing, and performance verification of the stationary gas turbine or stationary internal combustion engine itself. Revisions to §117.403(a)(7)(D) are proposed in order to clarify that unit operation for testing or maintenance purposes up to 100 hours per year refers to testing and maintenance of the stationary gas turbine or stationary internal combustion engine itself. In addition, the commission proposes revising the operating hours limit for exemption criteria for stationary gas turbines and stationary internal combustion engines from a rolling 12-month average to a rolling 12-month basis. The owner or operator of an affected unit would sum all operating hours for a consecutive 12-month period, and continue doing so on a rolling 12-month basis, as opposed to calculating the average of all operating hours during a consecutive 12-month period. A 12-month rolling average would only apply to an hours per month limit, thus conflict with an hour per year limit while a 12-month rolling basis is the preceding 12-month total, which matches the 100 hours per year limit. This would more accurately reflect the intent of the rule and how an affected unit would demonstrate compliance with the operating restriction of a total of 100 hours per year. Similarly to more accurately reflect the intent of the rule, revisions to existing §117.403(a)(8)(A) and (9)(A) are proposed by the commission to specify that the operating hours limit for exemption criteria for stationary diesel engines would be on a rolling 12-month basis and not on a rolling 12-month average and thus how an affected unit would demonstrate compliance with the operating restriction of a total of 100 hours per year. The owner or operator of an affected unit would sum all operating hours for a consecutive 12-month period, and continue doing so on a rolling 12-month basis, as opposed to calculating the average of all operating hours during a consecutive 12-month period.

The commission proposes to delete existing §117.403(b), Concerning increment of progress (IOP) exemptions, because the provisions reference existing §117.410(a), which is concurrently proposed for deletion by the commission. The provisions of proposed deletion of §117.403(b) apply to gas-fired stationary, reciprocating internal combustion engines which, due to the passing of compliance dates, are now subject to more stringent rules in existing Subchapter B, Division 4.

Proposed §117.403(b) specifies the unit types, sizes, or uses for units located in Wise County that would be exempt from the requirements of this division. Units for which the unit type, maximum-rated capacity, or specific use would be technically or economically infeasible to comply with the proposed NO_x emission specifications are exempted from the provisions of this division, except as specified in proposed revised §§117.440(i), 117.445(f)(4), and 117.450 and in proposed new §117.452. The exceptions to the proposed exemptions are related to monitoring, recordkeeping, and control plan requirements associated with exempted units. Proposed amended §117.403(b)(1) specifies that ICI process heaters with a maximum-rated capacity of less than 40 million British thermal units per hour (MMBtu/hr) would be exempted. This exemption level is proposed to be consistent with previous RACT exemption approaches for

ICI process heaters located in the DFW area and the Houston-Galveston-Brazoria ozone nonattainment area.

The following stationary gas turbines and stationary internal combustion engines would be exempt in proposed §117.403(b)(2)(A) - (E): gas turbines and engines used in research and testing of the unit, used for purposes of performance verification and testing of the unit, used solely to power other gas turbines or engines during startups; used exclusively in emergency situations (except that operation for testing or maintenance purposes of the gas turbine or engine itself is allowed up to 100 hours per year, based on a rolling 12-month basis); or used in response to and during the existence of any officially declared disaster or state of emergency. These exemptions are proposed due to the limited number, if any, of these unit types used in this dedicated service.

Proposed §117.403(b)(3) specifies an exemption for any stationary diesel engine, and proposed §117.403(b)(4) specifies an exemption for any stationary dual-fuel engine. Both stationary diesel and dual-fuel engines would meet the applicability criterion of stationary internal combustion engine in proposed §117.400(b); however, no units of these types were identified in the 2012 EI for Wise County, and the commission is not proposing emission specifications for these unit types.

Proposed §117.403(b)(5) specifies an exemption for stationary gas-fired engines with a horsepower (hp) rating of less than 50 hp. This is consistent with the size exemption threshold currently provided for stationary gas-fired engines in the other nine counties of the nonattainment area previously established as a reasonable threshold to exempt smaller engines from the NO_x control requirements.

Finally, the commission proposes subsection (c) to contain new section cross-references to proposed §117.410(a)(1) and (c) and amendments to the cross-references to existing §117.410(b)(1) and (d).

Section 117.405, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission proposes new §117.405, which establishes proposed NO_x emission specifications to satisfy RACT requirements for units in the 10-county DFW 2008 eight-hour ozone nonattainment area that would be subject to this rulemaking.

Proposed new §117.405(a) includes the proposed new emission specification for wood-fired boilers located in the proposed revised DFW eight-hour ozone nonattainment area. The proposed 0.12 pounds per million British thermal units (lb/MMBtu) emission specification for wood fuel-fired boilers is based on the permitted Best Available Control Technology limit for the unit identified in the 2012 EI, and it is anticipated to require owners or operators of affected units to possibly install and operate selective catalytic reduction (SCR). The unit identified in Kaufman County in the 2012 EI currently operates with SCR for NO_x control and uses a continuous emissions monitoring system (CEMS) for monitoring NO_x emissions. While the commission is proposing this emission standard satisfies RACT for this particular wood fuel-fired boiler because the facility has already installed the controls necessary to meet the requirement, the commission is not proposing that SCR represents RACT on wood fuel-fired boilers in general.

Proposed new §117.405(b) includes the proposed new emission specifications that would apply to the following unit types at major ICI stationary sources of NO_x located in Wise County: ICI process heaters; stationary, reciprocating internal combustion engines; and stationary gas turbines. Proposed new §117.405(b)(1) would establish the NO_x emission specifications of 0.10 lb/MMBtu (or alternatively, 82 parts per million by volume (ppmv), at 3.0% oxygen (O_2), dry basis) for process heaters with a maximum-rated capacity equal to or greater than 40 MMBtu/hr. Combustion modifications such as dry low-NO_x combustors may be necessary for process heaters with a maximum-rated capacity equal to or greater than 40 MMBtu/hr to comply with the proposed 0.10 lb/MMBtu emission specification. No liquid-fired process heaters were identified in the 2012 EI in Wise County; however, combustion modifications may be necessary for a liquid-fired process heater to comply with the proposed NO_x emission specifications in proposed new §117.405(b)(1).

Proposed new §117.405(b)(2) provides NO_x emission specifications for stationary, reciprocating internal combustion engines. The proposed language in §117.405(b)(2)(A) and (B) would establish NO_x emission specifications for stationary, gas-fired rich-burn and lean-burn, reciprocating internal combustion engines. Gas-fired, rich-burn engines would be limited to 0.50 grams per horsepower-hour (g/hp-hr) in proposed new §117.405(b)(2)(A). The proposed emission specifications for some gas-fired, lean-burn engines in §117.405(b)(2)(B) would be based on specific engine process parameters and the date the engine was placed into service, modified, reconstructed, or relocated. Any White Superior, model 8GTL825, gas-fired, lean-burn four-cycle engines placed into service, modified, reconstructed, or relocated before June 1, 2015 would be limited to 12.0 g/hp-hr, and on or after June 1, 2015 would be limited to 2.0 g/hp-hr. Any Clark, model HBAGT or HBA-6, gas-fired, lean-burn two-cycle engines placed into service, modified, reconstructed, or relocated before June 1, 2015 would be limited to 12.0 g/hp-hr, and on or after June 1, 2015 would be limited to 2.0 g/hp-hr. Finally, any Fairbanks Morse, model MEP-8T, gas-fired, lean-burn two-cycle engines placed into service, modified, reconstructed, or relocated before June 1, 2015 would be limited to 4.0 g/hp-hr, and on or after June 1, 2015 would be limited to 2.0 g/hp-hr. All other gas-fired, lean-burn engines would be limited to 2.0 g/hp-hr.

Nonselective catalytic reduction (NSCR), with an air-to-fuel ratio (AFR) controller, is expected to be the primary control technology for gas-fired, rich-burn engines. In some cases, the addition of a secondary catalyst module may be required to meet the proposed emission specification. The commission proposes the 0.50 g/hp-hr emission specification represents RACT for gas-fired, rich-burn engines based on the low cost and wide-spread demonstrated effectiveness of NSCR with meeting this control level.

The commission proposes specific NO_x emission specifications based on engine make and model for the White Superior, Clark, and MEP units due to the following: engine manufacturers today produce few, if any, of these engine makes and models; retrofit options or kits to reduce NO_x emissions may not exist for some of these particular makes and models; some units may have already undergone combustion modifications, such as low-emission combustion technology, to reduce emissions and thus may be unable to further reduce NO_x emissions; and in some cases the cost to retrofit the unit may be more than the cost of a new unit. The commission therefore proposes that these proposed emission levels for these specific units would satisfy RACT requirements considering technological and economic feasibility. For all other lean-burn engines, the commission anticipates that affected units would require combustion modifications to comply with the proposed 2.0 g/hp-hr emission specification, if nec-

essary. Any new gas-fired, lean-burn engines installed in Wise County should be able to meet the proposed 2.0 g/hp-hr standard without modification or installation of additional controls.

The commission acknowledges that the current emission specifications for stationary gas-fired, lean-burn engines in the other nine counties of the DFW eight-hour ozone nonattainment area are between 0.50 and 0.70 g/hp-hr, and are more stringent than the emission specifications proposed for Wise County. However, the commission does not consider this control level to represent RACT for the gas-fired, lean-burn engines in Wise County. In proposing the emission specifications for gas-fired, lean-burn engines in the nine-county DFW 1997 eight-hour ozone nonattainment area in December 2006, the commission acknowledged that meeting this control level may necessitate the installation of SCR technology (31 TexReg 10599, December 29, 2006). SCR would cost more than the technologies already evaluated for the particular stationary engines in Wise County, and would likely result in the replacement of many of the gas-fired, lean-burn engines in Wise County. Such an outcome is contrary to the definition of RACT, i.e., 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. A control level cannot represent RACT for a "particular source" if it is more cost-effective to replace that source with an entirely new source in order to meet the emission limitation. The commission's adoption of the emission specifications for gas-fired, lean-burn engines in the nine-county DFW 1997 eight-hour ozone nonattainment area represented an appropriate control measure to help the area reach attainment with the 1997 eight-hour ozone NAAQS. However, control measures necessary to reach attainment can, and may, go beyond RACT requirements. Some of the NO_x control requirements adopted in 2007 for the DFW 1997 ozone NAAQS attainment demonstration were based only on RACT level of control and some, such as the emission specifications for gas-fired lean-burn engines, were beyond RACT. While the commission did not make this distinction in adopting the 2007 rulemaking and only indicated that the NO_x emission specifications would fulfill RACT, the distinction is necessary to make clear the commission's intent for RACT in Wise County. Additionally, the commission is allowed to make source-specific RACT determinations, as the definition of RACT states. The commission proposes that the NO_x emission specification in proposed §117.405(b)(2)(B) present RACT for the particular gas-fired lean-burn engines in Wise County.

The commission did not identify in Wise County any gas-fired engines fired on land-fill gas or any diesel fuel-fired or dual fuel-fired engines in the 2012 EI. Therefore, the commission is not proposing NO_x RACT requirements for these categories of stationary engines.

The commission proposes new §117.405(b)(3) for NO_x emission specifications for stationary gas turbines in Wise County. Stationary gas turbines with a hp rating of less than 4,500 hp would be limited to 0.45 lb/MMBtu; stationary gas turbines with a hp rating of 4,500 hp or greater, but less than 10,000 hp, would be limited to 0.20 lb/MMBtu; and stationary gas turbines with a hp rating of 10,000 hp or greater would be limited to 0.15 lb/MMBtu. These limits for industrial gas turbines are based on information identified in the 2012 EI similar to the approach used for gas-fired lean-burn engines: retrofit options or kits to reduce NO_x emissions may not exist for some of these particular makes and models; some units have already been retrofitted with dry low-NO_x combustors to reduce emissions and thus may be unable to further reduce NO_x emissions; and in some cases the cost to retrofit the unit may be more than the cost of a new unit. The commission therefore proposes that these proposed emission levels for these specific units would satisfy RACT requirements considering technological and economic feasibility.

Proposed new §117.405(c), concerning NO_x averaging time, specifies the averaging times for compliance with the emission specifications of proposed new §117.405(a) and (b). Proposed new §117.405(c)(1) specifies the averaging time for units equipped with CEMS or predictive emissions monitoring systems (PEMS) and provides three options under proposed subparagraphs (A) - (C). Proposed subparagraph (A) specifies a rolling 30-day average, in units of the applicable emission standard. Proposed subparagraph (B) specifies a block one-hour average basis, in the units of the applicable emission standard. Proposed subparagraph (C) specifies a block one-hour average, in pounds per hour, for boilers and process heaters, calculated based on the maximum-rated capacity and the applicable emission specification. For units not equipped with CEMS or PEMS, proposed new §117.405(c)(2) requires the averaging time to be a block one-hour average in the units of the applicable emission standard but allows the emission specifications for boilers and process heaters to be applied in pounds per hour as specified in proposed new §117.405(c)(1)(C).

The commission proposes new §117.405(d) that would establish emission specifications for related emissions from any unit subject to the emission specifications in proposed new §117.405(a) or (b). This is necessary to ensure that the NO_x reduction strategies of this proposed rulemaking do not result in a significant increase in emissions of other pollutants. Proposed new §117.405(d)(1) establishes a carbon monoxide (CO) emission specification of 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters) on a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO, and on a block one-hour averaging period for units not equipped with CEMS or PEMS for CO. Proposed new §117.405(d)(2) specifies that units that inject urea or ammonia into the exhaust stream for NO_x control must meet a 10 ppmv ammonia emission specification. The 10 ppmv ammonia emission specification is corrected to 3.0% O_2, dry, for boilers and process heaters, 15% O_2, dry, for stationary gas turbines and gas-fired lean-burn engines, and 3.0% O_2, dry, for all other units. The specified averaging time for the ammonia emission specification is on a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia, and on a block one-hour averaging period for units not equipped with CEMS or PEMS for ammonia. Proposed new subsection (d)(3) specifies that the correction of CO emissions to 3.0% O_2, dry basis, does not apply to boilers or process heaters operating at less than 10% of maximum load and with stack O_2 more than 15%.

Proposed new §117.405(e) specifies conditions for compliance flexibility with the NO_x emission specifications of proposed new §117.405. Proposed new §117.405(e)(1) specifies that owners or operators may use the source cap option under proposed revised §117.423, or emission reduction credits as specified in proposed revised §117.9800 to comply with the NO_x emission specifications of proposed new §117.405(a) or (b). Proposed new subsection (e)(2) prohibits using proposed revised §117.425 as a method of compliance with the NO_x emission specifications of proposed new §117.405(a) or (b). This prohibition is necessary to ensure that the NO_x reductions anticipated from this proposed

rulemaking would be realized. Proposed new subsection (e)(3) specifies that owners or operators may petition the executive director for an alternative to the CO and ammonia emission specifications of proposed new §117.405(d) according to proposed revised §117.425.

The commission proposes new §117.405(f) to establish provisions for prohibition of circumvention to ensure that the anticipated NO_x emission reductions associated with this proposed rulemaking would be realized. The proposed new subsection (f)(1) establishes that the maximum-rated capacity used to determine the applicability of the emission specifications in proposed new §117.405, the initial compliance demonstration in proposed revised §117.435, the monitoring and testing requirements in proposed revised §117.440, and the final control plan requirements in proposed new §117.452, respectively, must be the greater of the maximum-rated capacity as of December 31, 2012, the maximum-rated capacity after December 31, 2012, or the maximum-rated capacity authorized by a permit issued under 30 TAC Chapter 116 after December 31, 2012. Proposed new §117.405(f)(2) specifies that a unit's classification for the purposes of proposed revised new Subchapter B, Division 4, is determined by the most specific classification applicable to the unit as of December 31, 2012. Finally, proposed new §117.405(f)(3) specifies that a source that met the definition of a major source as of December 31, 2012 is always classified as a major source for the purposes of proposed revised Subchapter B, Division 4. A source that did not meet the definition of major source on December 31, 2012, but which at any time after December 31, 2012, becomes a major source, would from that time forward always be classified as a major source for purposes of proposed revised Subchapter B, Division 4.

Section 117.410, Emission Specifications for Eight-Hour Attainment Demonstration

The commission proposes amending existing §117.410(a) and to move existing §117.410(b), Emission specifications for eight-hour ozone attainment demonstration, to proposed §117.410(a). The commission established the emission specifications under existing §117.410(a) for stationary, gas-fired rich-burn and lean-burn reciprocating internal combustion engines with a maximum-rated capacity of 300 hp or greater under the 5% IOP plan for the nine counties in the existing DFW 1997 eight-hour ozone nonattainment area. With the passing of the compliance date for eight-hour ozone attainment demonstration emission specifications in existing §117.9030(b), these gas-fired engines are now subject to emission specifications for eight-hour ozone attainment demonstration in existing §117.410(b). In addition, the commission proposes to specifically list Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County in proposed subsection (a) to make clear that the emission specifications provided in the subsection are only applicable in those counties and because emission specifications applicable in Wise County are proposed to be listed separately.

Because of the amendment to subsection (a), all other subsections are being re-lettered accordingly.

Proposed revisions to existing §117.410(b)(7)(A) include updating the reference in the figure to proposed §117.410(a)(7)(A) to coincide with the proposed incorporation of existing §117.410(b) into proposed §117.410(a).

Proposed §117.410(c) establishes NO_x emission specifications for related emissions from any unit subject to the emission specifications in proposed §117.410(a). The commission proposes to delete existing subparagraph (A) of existing subsection (d)(4) to be concurrent with proposed the amendment of existing §117.410(a) and also because the IOP standards for the nine counties in the existing DFW area are being amended. In addition, the commission proposes to move the provisions in existing subparagraph (B) of existing subsection (d)(4) to proposed §117.410(c)(4)(A) - (C) because the restructuring of paragraph (4) is necessary to conform to Texas Register formatting requirements.

Proposed revisions to existing §117.410(f)(5) include updating the reference from existing §117.410(b)(14) to proposed §117.410(a)(14) to coincide with the proposed incorporation of existing §117.410(b) into proposed §117.410(a). Lastly, the commission proposes to delete existing §117.410(f)(6) since stationary gas-fired engines are no longer subject to existing §117.410(a). These gas-fired engines are now subject to provisions in existing §117.410(b), which is proposed to be moved to proposed §117.410(a).

In §117.410(f), the commission proposes to clarify that testing or maintenance associated with the operating restriction of any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon refers to testing or maintenance of the engine itself.

Section 117.423, Source Cap

The commission proposes revisions to §117.423(a) to incorporate references to proposed new §117.405, Emission Specifications for RACT. The source cap approach is an option provided to owners or operators of affected units for demonstrating compliance with the NO_x emission specifications of proposed new §117.405 in addition to those of proposed revised §117.410.

Proposed revised §117.423(b) specifies the equations and procedures for determining the source cap allowable NO_x mass emission rate. The equation in proposed revised §117.423(b)(1) specifies how to calculate the 30-day rolling average emission cap in pounds per day. Proposed revised §117.423(b)(1) would contain new section cross-references to proposed new §117.405. Proposed revised subsection(b)(1) would also define the averaging period for determining the historical average daily heat input, variable H_i, as the 24 consecutive months between January 1, 2012 and December 31, 2013 for units subject to proposed new §117.405. In addition, the effective date for an applicable permit emission limit for clause (ii) of variable R_i for units subject to proposed new §117.405 is December 31, 2012. The commission proposes the new date and date range to make clear the dates that would apply to units subject to proposed new §117.405 and the existing date and date range in existing subsection (b)(1) that apply to units subject to §117.410.

Proposed revised §117.423(b)(4) contains an update to the equation for calculating the source cap allowable emission rate, in pounds per hour, for stationary internal combustion engines. The commission proposes to revise the exponential power in the equation from a positive to a negative number. This change would allow the units, Btu and MMBtu, of the equation to properly cancel. Without this proposed change, the equation would calculate a value that would misrepresent the cap that is intended by the existing rule.

Proposed revised §117.423(b)(5) specifies the equations for calculating the source cap allowable emission rate, in pounds per hour, for stationary gas turbines. The commission proposes to delete the section cross-reference to existing §117.410(b) in the equation and to add new section cross-references to proposed

new §117.405 and proposed revised §117.410 to reflect changes proposed in those sections.

Proposed revised §117.423(g) includes section cross-references to proposed new §117.405 for conditions for including a permanently retired, decommissioned, or rendered inoperable unit in the source cap. Proposed revised subsection (g)(1) specifies that the shutdown must have occurred after December 31, 2012, for units subject to proposed new §117.405. In addition for units subject to proposed new §117.405, if the unit was not in service 24 consecutive months between January 1, 2012 and December 31, 2013, proposed revised subsection (g)(3) specifies the actual heat input must be the average daily heat input for the continuous time period that the unit was in service, consistent with the heat input used to represent the unit's emissions in the 2012 modeling inventory. The commission proposes the new date and date range to make clear the dates that would apply to units subject to proposed new §117.405 and the existing date and date range in existing subsection (g) that apply to units subject to §117.410. The years used for the rule represent the year associated with the level of activity of the units participating in the cap and the baseline that is established for modeling emissions at the time the regulations are developed. The cap is then based on that year.

Section 117.425, Alternative Case Specific Specifications

The commission proposes to revise existing §117.425(a), which provides procedures concerning alternative case specific specifications, by including new section cross-references to proposed new §117.405(d) and a corrected reference to §117.410(c). Proposed revisions to paragraph (2) include a section cross-reference to proposed new §117.405.

Section 117.430, Operating Requirements

The commission proposes revisions to existing §117.430, which establishes operating requirements for sources subject to proposed revised Subchapter B, Division 4. Proposed revised subsection (b) adds a section cross-reference to proposed new §117.405. Additional changes to proposed revised subsection (b) include deleting the reference to existing §117.410(a) and (b) and a proposed reference to revised §117.410.

Section 117.435, Initial Demonstration of Compliance

The commission proposes revisions to existing §117.435, which details the monitoring and testing procedures required to demonstrate compliance with the emission specifications of Subchapter B, Division 4. Proposed revised §117.435(c) replaces the reference to *"relative accuracy test audit"* (RATA) with the more general term, *"monitor certification."* This change clarifies that verification of operational status must include completion of the initial monitor certification, which includes not only the RATA but also the seven-day drift test.

Section 117.440, Continuous Demonstration of Compliance

Proposed revised §117.440(a)(1), which details the list of units that would be subject to the fuel metering requirements of proposed revised §117.440(a), adds a section cross-reference to proposed new §117.405, concerning emission specifications for RACT. The commission is also clarifying that operation of the totalizing fuel flow meter in conjunction with the unit operating time is not time averaged over a calendar year but instead continuous operating time during a calendar year that is representative of the total fuel meter operating time. This total fuel meter operating time must still be at least 95% of the time that the unit operates. In addition, the commission proposes revised §117.440(a)(1)(A) to provide an exemption for wood-fired boilers to the fuel flow metering requirements of existing subsection (a)(1). Instead of installing and operating a totalizing fuel flow meter, owners or operators of wood-fired boilers in the 10-county DFW 2008 eight-hour ozone nonattainment area would demonstrate compliance with the monitoring provisions of proposed revised Subchapter B, Division 4 through either fuel use records that would be required in proposed revised §117.445(f) or the alternative monitoring provision of existing §117.440(a)(2)(A). As mentioned previously in this preamble, the one wood-fired boiler identified in Kaufman County currently operates with SCR and a NO_x CEMS.

Provisions in existing subsection (c) specify the units for which owners and operators shall install and operate a CEMS or PEMS to monitor NO_x exhaust, criteria for exempt units, and methods to be used to provide substitute emissions compliance data during periods when the NO_x monitors are offline. Proposed revisions to subsection (c)(1) include adding section cross-references to proposed new §117.405(a) and (b) and proposed revised §117.410(a) and deleting references to existing §117.410(b). Proposed revised §117.440(d), concerning ammonia monitoring requirements, adds section cross-references to proposed new §117.405(a) and (b) and proposed new §117.410(a) and deletes a reference to existing §117.410(b). In addition, the commission proposes a reference to proposed new §117.405(d)(2) to be consistent with the proposed new §117.405.

The commission is also requesting comments during this rulemaking proposal on the NO_x monitoring requirements in existing §117.440(c) for ceramic kilns. It has come to the attention of the commission that issues associated with NO_x monitoring using a CEMS or PEMS may exist for owners or operators of ceramic kilns. Existing subsection (c) requires owners or operators of a ceramic kiln to install, calibrate, maintain, and operate a CEMS or PEMS to monitor exhaust NO_x. The commission therefore requests comments on alternatives, such as periodic testing, to the existing provisions of the NO_x monitoring requirements of existing §117.440(c) for ceramic kilns.

Proposed revised §117.440(j), concerning data used for compliance, specifies that the methods required in proposed revised §117.440 must be used to demonstrate compliance with the emission specifications after the initial demonstration of compliance required by proposed revised §117.435. The commission proposes references to proposed new §117.405(a) and (b) and proposed new §117.410(a) and repeal of the reference to existing §117.410(a) and (b).

Finally, proposed revised §117.440(k) specifies the testing and retesting requirements for units subject to the emission specifications of proposed new §117.405(a) or (b) or proposed revised §117.410(a). The commission proposes deleting existing paragraph (1), which has now been made obsolete by the passing of compliance dates in existing §117.9030(a) and also contains provisions for units subject to existing §117.410(a). The amendment of paragraph (1) would be concurrent with the proposed amendment of existing §117.410(a) and existing §117.9030(a), concerning IOP emission specifications. The commission proposes to move existing subsection (k)(2) to subsection (k)(1). In addition, the commission proposes new references to proposed new §117.405(a) and (b) and proposed revised §117.410(a) and remove the reference to existing §117.410(b). Proposed new paragraph (1) would require the owner or operator of units subject to the emission specifications of proposed new §117.405(a) or (b) or proposed revised §117.410(a) to test the units as specified in proposed revised §117.435, Initial Demonstration of Com-

pliance, in accordance with the schedule specified in proposed revised §117.9030.

The commission proposes to move existing paragraph (3) to proposed amended paragraph (2). Proposed changes also include references to proposed new §117.405(a) and (b) and proposed revised §117.410(a) with removal of the reference to existing §117.410(b). Proposed amended subsection (k)(2) is a retesting requirement for owners or operators to retest any unit subject to the emission specifications of proposed new §117.405(a) or (b) or proposed revised §117.410(a) after any modification that could be reasonably expected to increase the NO_x emission rate. This proposed retesting provision applies to units that are not equipped with CEMS or PEMS to monitor NO_x emissions.

Section 117.445, Notification, Recordkeeping, and Reporting Requirements

The commission proposes removing the requirements in existing §117.445(b)(1) and (2), which specify the notification requirements for units subject to the emission specifications of existing §117.410(a) and (b), respectively. As mentioned elsewhere in the *Section by Section Discussion* of this preamble, existing §117.410(a) is concurrently proposed for amendment due to the passing of compliance dates in existing §117.9030(a) and because affected units of existing §117.410(a) are now subject to emission specifications in existing §117.410(b), which is also concurrently proposed to be moved to proposed §117.410(a). In addition, the commission proposes §117.445(b) to contain the provisions of proposed amended §117.445(b)(2), which detail the notification requirements for units subject to existing §117.410(b). Proposed §117.445(b) would also include section cross-references to proposed new §117.405(a) and (b) and proposed revised §117.410(a). Under proposed new subsection (b), written notice is required at least 15 days in advance of the date of any CEMS or PEMS performance evaluation conducted under proposed revised §117.440 or stack test conducted under proposed revised §117.435.

Proposed revised §117.445(e), which specifies the semiannual reporting requirements for owners or operators of any gas-fired engines, includes a section cross-reference to proposed new §117.405. Written reports of excess emissions and the air-fuel ratio monitoring system performance must be submitted to the executive director.

Proposed revised §117.445(f) specifies requirements for written or electronic records for owners or operators of units subject to the requirements of this division. Proposed revised subsection (f)(4), which specifies that records of monthly hours of operation must be maintained for units claiming an exemption based on hours per year of operation, includes section cross-references to proposed §117.403(b)(2)(D) to reflect proposed changes in §117.403. The commission proposes to clarify that owners or operators of stationary gas turbines are also required to maintain records of the purpose of unit operation, such as the identification of the type of emergency situation.

The commission proposes revisions to existing subsection (f)(9) to clarify that records retention of each time a stationary diesel or dual-fuel engine is operated for testing and maintenance refers to testing and maintenance of the diesel or dual-fuel engine itself. Finally, proposed revised §117.445(f)(10) updates the existing section cross-reference from existing §117.410(b)(7)(A)(ii) to proposed §117.410(a)(7)(A)(ii), to coincide with the amendment of existing §117.410(a) and the proposed re-lettering of existing §117.410(b) to proposed §117.410(a).

Section 117.450, Initial Control Plan Procedures

The commission proposes revisions to existing §117.450, concerning the requirements and procedures for submitting an initial control plan. The commission proposes in §117.450(a), (a)(1), (1)(C), and (2) section cross-references to proposed new §117.405(a) and (b) and proposed revised §117.410(a) and to delete references to existing §117.410(b). Proposed revised §117.450(a) requires the owner or operator of any unit at a major source of NO_x in the 10-county DFW area that is subject to proposed new §117.405(a) or (b) or proposed revised §117.410(a) to submit an initial control plan and lists the content requirements for the initial control plans. Sources in the nine-county DFW area already subject to §117.410 would have previously been required to submit the initial control plans. Sources subject to proposed new §117.405 would be required to submit initial control plans by the applicable compliance date.

The commission proposes to revise existing subsection (b) to update the section cross-reference from existing §117.9030(b) to proposed revised §117.9030. Proposed revised §117.450(b) specifies the initial control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air by the applicable date specified for initial control plans in proposed revised §117.9030.

Finally, the commission proposes to delete existing §117.450(c), which specifies that for units located in Dallas, Denton, Collin, and Tarrant Counties, subject to existing Subchapter B, Division 2, the owner or operator may elect to submit the most recent revision of the final control plan required by proposed repealed §117.254 in lieu of the initial control plan required by existing subsection (a). The proposed deleted §117.450(c) would be concurrent with the proposed repeal of existing Subchapter B, Division 2 due to the passing of compliance dates and because sources of NO_x previously subject to Subchapter B, Division 2 are now required to comply with more stringent rules in existing Subchapter B, Division 4.

Section 117.452, Final Control Plan Procedures for Reasonably Available Control Technology

The commission proposes a new §117.452 that would require the owner or operator of any unit subject to proposed new §117.405(a) or (b) at a major source of NO_x to submit a final control report to show compliance with the requirements of proposed new §117.405. Proposed new §117.452(a)(1) - (5) specifies the content requirements of the report. The final control report must identify which sections are used to demonstrate compliance. The report must include: the method of NO_x control for each unit; the emissions measured by testing required in proposed revised §117.435; and the specific rule citation for any unit with a claimed exemption from the emission specifications of proposed new §117.405(a) or (b). In addition, if a compliance stack test report or monitor certification report required by proposed revised §117.435 is not being submitted concurrently with the final control report, the final control report must include the date the compliance stack test report or monitor certification report was submitted, and whether it was sent to the central office, the regional office, or both offices.

Proposed new §117.452(b)(1) - (3) specifies that for sources complying with proposed revised §117.423 in addition to the requirements of proposed new subsection (a), the owner or operator shall submit: the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates; the average daily heat input, variable H_i, specified in proposed

revised §117.423(b)(1); the maximum daily heat input, variable H_{mi}, specified in proposed revised §117.423(b)(2); the method of monitoring emissions; the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and an explanation of the basis of the values of variables H_i and H_{mi}.

Proposed new §117.452(c) specifies the report must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air by the applicable date specified for final control plans in proposed revised §117.9030(a). The plan must be updated with any emission compliance measurements submitted for units using a CEMS or PEMS and complying with the source cap rolling 30-day average emission limit, according to the applicable schedule in proposed revised §117.9030(a).

Section 117.454, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission proposes revisions to existing §117.454 which require the owner or operator of any unit subject to proposed revised §117.410 at a major source of NO_x to submit a final control report to show compliance with the requirements of proposed revised §117.410. Proposed revised §117.454(a)(4) updates the reference to *"relative accuracy test audit"* to *"monitor certification"* consistent with the concurrently proposed revision to §117.435(c). Proposed revised §117.454(b)(2)(B) corrects a section cross-reference from §117.423(b)(1) to §117.423(b)(2), for sources choosing the source cap compliance option.

Finally, proposed revised §117.454(c) specifies the report must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air by the applicable date specified for final control plans in proposed revised §117.9030.

Section 117.456, Revision of Final Control Plan

The commission proposes revisions to existing §117.456 by adding in paragraph (1) a section cross-reference to proposed new §117.405. The section specifies the conditions under which a revised final control plan may be submitted by the owner or operator, along with any required permit applications. Paragraphs (1) - (3) specify that such a plan must adhere to the requirements and the final compliance dates of the division, and that for sources complying with proposed new §117.405 or proposed revised §117.410, replacement new units may be included in the control plan. Also, for sources complying with proposed revised §117.423, any new unit must be included in the source cap if the unit belongs to an equipment category that is included in the source cap.

Subchapter C, Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas

Division 2, Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources

The commission proposes repeal of existing Subchapter C, Division 2, which has been made obsolete by the passing of compliance dates because sources of NO_x previously subject to this division are now required to comply with more stringent rules in existing Subchapter C, Division 4.

Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources

To address new RACT requirements for sources of NO_x located in Wise County, the commission is proposing revisions in Subchapter C, Division 4, that would revise existing rule language and requirements associated with any major utility electric generation source of NO_x in the 10-county DFW 2008 eight-hour ozone nonattainment area. The definition of a major source of NO_x in Wise County is in proposed revised §117.10(29)(C) and includes any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit 100 tpy of NO_x.

Section 117.1303, Exemptions

Proposed revisions to §117.1303 clarify exemption criteria of units that would be exempt from specified requirements of proposed revised Subchapter C, Division 4. The commission is proposing to remove the existing exemption in §117.1303(a)(1), which applies to any new auxiliary steam boiler or stationary gas turbine placed into service after November 15, 1992. This revision is proposed to make the utility rules that apply to gas turbines in the DFW area consistent with the major source industrial rules in the DFW area and to provide a simpler RACT demonstration for the affected utility sources. Affected auxiliary steam boilers and gas turbines would be required to meet the NO_x emission specifications and monitoring and testing requirements, which are not proposed for revision, of proposed revised Subchapter C, Division 4. Based on a TCEQ review of the 2012 EI and available air permit information, the TCEQ expects that all existing auxiliary steam boilers in the nine counties of the DFW 1997 eight-hour ozone nonattainment area were constructed prior to the exemption date of November 15, 1992. Therefore, the exemption in §117.1303(a)(1) did not apply to these existing units, and no impact is expected as a result of the proposed repeal of the exemption. New units would either qualify for the existing exemption in §117.1303(a)(2) based on annual heat input or would be required to comply with the provisions of proposed revised Subchapter C, Division 4. No auxiliary steam boilers were identified in Wise County.

After reviewing the 2012 EI and available air permit information for all existing gas turbines in the nine counties of the DFW 1997 eight-hour ozone nonattainment area, the TCEQ has concluded that all existing gas turbines in the nine counties of the DFW area were placed into service after November 15, 1992. Although the proposed removal of the exemption in §117.1303(a)(1) would affect these existing units, all of the affected turbines would already meet the NO_x emission specifications and monitoring requirements of proposed revised Subchapter C, Division 4. Existing monitoring provisions require owners or operators of units subject to the NO_x emission specifications to install, calibrate, maintain, and operate a NO_x emissions monitoring system. Because these units already meet the NO_x emission specifications and monitoring requirements of Subchapter C, Division 4, the commission does not expect adverse impacts to owners or operators of affected units in the nine counties of the DFW area as a result of deleting the requirement in §117.1303(a)(1). New units would either qualify for the existing exemption in §117.1303(a)(3)(B) based on unit operating hours or would be required to comply with the provisions of proposed revised Subchapter C, Division 4. One utility electric generation source in Wise County was identified as an affected source. Based on 2012 EI information, this source would already meet the NO_x emission specifications and monitoring requirements of proposed revised Subchapter C, Division 4. The remaining paragraphs will be renumbered accordingly.

The commission proposes revising the operating hours limit for exemption criteria for stationary gas turbines and stationary in-

ternal combustion engines in proposed §117.1303(a)(2)(B) from a rolling 12-month average to a rolling 12-month basis. The owner or operator of an affected unit would sum all operating hours for a consecutive 12-month period, and continue doing so on a rolling 12-month basis, as opposed to calculating the average of all operating hours during a consecutive 12-month period. This would more accurately reflect the intent of the rule and how an affected unit would demonstrate compliance with the operating restriction of a total of 850 hours per year.

Section 117.1310, Emission Specifications for Eight-Hour Attainment Demonstration

Proposed revised §117.1310(b) establishes emission specifications of related emissions for units that are subject to the emission specifications of subsection (a) of this section. The commission proposes deleting existing §117.1310(b)(1) and (2) due to removing ammonia emission specification found in existing subsection (b)(2)(B) and restructuring of subsection (b) that would be necessary to conform to current Texas Register formatting requirements. Existing paragraph (2) specifies ammonia emission specifications for units that are subject to the NO_x emission specifications of §117.1310(a). Existing paragraph (2)(A) applies only to units that inject urea or ammonia into the exhaust stream for NO_x control while existing paragraph (2)(B) applies to all units. Existing §117.1310(b)(2)(B) cites a RACT emission specification for ammonia that is now obsolete, and the commission proposes that an ammonia emission specification is needed only for units that use urea or ammonia for control of NO_x emissions.

In restructuring subsection (b), the commission proposes to move the existing provisions of §117.1310(b)(1)(A) to proposed §117.1310(b)(1)(A) and (B). The existing provisions of §117.1310(b)(1)(B) are proposed to be moved to proposed §117.1310(b)(2). The existing provisions of §117.1310(b)(2)(A) are proposed to be moved to proposed §117.1310(b)(3)(A) and (B).

Section 117.1325, Alternative Case Specific Specifications

Minor stylistic, non-substantive changes are proposed in existing subsection (a) of this section. No other changes are proposed.

Section 117.1335, Initial Demonstration of Compliance

The commission proposes a paragraph (4) in existing §117.1335(d) to specify the monitoring procedures to be followed for units complying with a NO_x emission specification in lb/MMBtu on a block one-hour average. Existing rule provisions address monitoring procedures for units complying with a NO_x emission specification in lb/MMBtu on a rolling 30-day average and on a rolling 24-hour average; however, they do not address how units must comply with a NO_x emission specification in lb/MMBtu on a block one-hour average. The commission proposes to renumber existing paragraph (4) to paragraph (5). In addition, the commission proposes a paragraph (6) to specify the monitoring procedures to be followed for units complying with a NO_x emission specification in lb/MMBtu on a rolling 168-hour average.

Similar to the approach for proposed paragraph (4), existing rule provisions do not address how units must comply with a NO_x emission specification in lb/MMBtu on a rolling 168-hour average. The commission proposes that the 168-hour average emission rate is calculated using the equation in §117.1310(a)(1)(D). In addition, the commission proposes to clarify that the system-wide heat input weighted average is calculated for each hour, and the average of that hourly data during the 168-hour test period is used to demonstrate compliance. Finally, the commission proposes to renumber existing paragraph (5) to proposed paragraph (7).

Section 117.1340, Continuous Demonstration of Compliance

The commission proposes changes to existing §117.1340, which details the operating, monitoring, and testing procedures required by owners or operators of units subject to the emission specifications of proposed revised §117.1310 in order to demonstrate continuous compliance. Proposed revised §117.1340(c), concerning ammonia monitoring requirements, updates a reference from existing §117.1310(b)(2)(A) and to proposed §117.1310(b)(3) to coincide with the changes proposed in §117.1310(b). Alternative NO_x monitoring provisions for auxiliary steam boilers are provided in existing subsection (f). Proposed revisions to §117.1340(f) include rule language to clarify that the alternative monitoring provisions for using a CEMS apply to monitoring only NO_x emissions. Proposed revised §117.1340(h)(2) includes additional rule language to clarify that stationary gas turbines that are not rated less than 30 megawatts (MW) or that are not peaking gas turbines that use steam or water injection must use either a CEMS or PEMS to comply with the monitoring requirements for stationary gas turbines that are subject to the stationary gas turbine emission specifications of §117.1310.

Section 117.1345, Notification, Recordkeeping, and Reporting Requirements

Proposed revised subsection (d) specifies the semiannual reporting requirements for owners or operators of units using a CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system under proposed revised §117.1340. Proposed changes to subsection (d)(5) add a PEMS to the list of monitoring systems for which the owner or operator must submit a summary report and an excess emission report if the monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period. Proposed revised subsection (e)(3) also clarifies that the owner or operator of each unit subject to the requirements of the division shall maintain records of the quantity and type of each fuel burned in the unit. All other proposed changes to existing §117.1345 are minor stylistic, non-substantive changes.

Section 117.1350, Initial Control Plan Procedures

The commission proposes to delete existing subsection (c), which contains references to existing §117.1110 and §117.1154, concurrently proposed for repeal, to be consistent with the proposed repeal of existing Subchapter C, Division 2.

Section 117.1354, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

Proposed revised §117.1354 requires the owner or operator of utility boilers listed in §117.1300 at a major source of NO_x to submit a final control plan to show compliance with the requirements of proposed revised §117.1310. Proposed §117.1354(a)(3) updates the reference to *"relative accuracy test audit"* to *"monitor certification"* consistent with the language in §117.1335(c). All other changes are minor revisions to update TCEQ office names and references.

Subchapter G, General Monitoring and Testing Requirements

Division 1, Compliance Stack Testing and Report Requirements

Section 117.8000, Stack Testing Requirements

The commission proposes §117.8000(e) to establish emission testing provisions for boilers and process heaters that are used on a temporary basis and are therefore installed or relocated to an account to be operated for a brief period of time. The owner or operator of a site that temporarily brings a unit on-site for short periods of time would not have sufficient amount of time to perform the testing requirements of the rule. These proposed requirements would be applicable to affected units in all areas covered by Chapter 117. Proposed subsection (e) would provide compliance flexibility to owners or operators that use temporary boilers or process heaters for less than 60 consecutive calendar days by allowing the owner or operator to use previous stack test results conducted on the boiler or process heater or a manufacturer's guarantee of performance. The previous testing results or manufacturer's guarantee must be for the unit that would be newly installed at the account and not testing results or guarantee of performance for a similar unit make or model. For the purposes of this proposed subsection, the term "relocate" or "relocated" means to newly install at an account, as defined in §101.1, Definitions, a boiler or process heater from anywhere outside of that account. Proposed subsection (e)(1) specifies that if previous testing results are used, testing must have been conducted on the same boiler or process heater in accordance with §117.8000(b) - (d). In addition, the owner or operator of the site temporarily installing the unit shall maintain a record of the previous test report as specified by the recordkeeping requirements under Chapter 117 applicable to the site.

Proposed subsection (e)(2) specifies that the owner or operator shall physically remove the unit from the account no later than 60 consecutive calendar days after installing the unit at the account. If the owner or operator chooses not to physically remove the unit from the account, the owner or operator shall comply with the testing requirements as specified in §117.8000(b) - (d). Lastly, the commission proposes that extensions to the 60 consecutive calendar days limitation of proposed subsection (e) would not be provided. This is to prevent circumvention of satisfying the applicable initial demonstration of compliance and testing requirements that would otherwise apply to the affected stationary boiler or stationary process heater subject to Chapter 117. In addition, the commission does not anticipate that these affected units would be using a CEMS or PEMS for demonstrating compliance with the requirements of Chapter 117.

Subchapter H, Administrative Provisions

Division 1, Compliance Schedules

Section 117.9010, Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources

The commission proposes the repeal of existing §117.9010, which has been made obsolete by the passing of compliance dates because sources of NO_x previously subject to this section are now required to comply with more stringent rules in proposed revised §117.9030.

Section 117.9030, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

The commission proposes deleting existing §117.9030(a), concerning compliance schedule for IOP emission specifications. With the passing of the compliance date for eight-hour ozone attainment demonstration emission specifications in existing §117.9030(b), these gas-fired engines are now subject to emission specifications for eight-hour ozone attainment demonstration in existing §117.410(b), which the commission is proposing as revised §117.410(a).

The commission proposes a new subsection (a) in §117.9030, concerning RACT emission specifications, to specify the compliance schedule requirements for units subject to the emission specifications of proposed new §117.405(a) and (b). Proposed §117.9030(a)(1) requires the owner or operator of any stationary source of NO_x in the 10-county DFW 2008 eight-hour ozone nonattainment area that is a major source of NO_x and is subject to proposed new §117.405(a) or (b) to submit the initial control plan required by proposed revised §117.450 no later than June 1, 2016, and to comply with all other requirements of proposed revised Subchapter B, Division 4 as soon as practicable, but no later than January 1, 2017. Proposed §117.9030(a)(2) specifies that the owner or operator of any stationary source of NO_x that becomes subject to the requirements of proposed revised Subchapter B, Division 4 on or after January 1, 2017, shall comply with the requirements of Subchapter B, Division 4 as soon as practicable, but no later than 60 days after becoming subject. For example, new units placed into service after January 1, 2017 would be required to comply within 60 days after startup of the unit. Existing units previously exempt from the rule but no longer qualifying for that exemption after January 1, 2017 would be required to comply with the proposed rule no later than 60 days after the unit no longer qualifies for the exemption.

Proposed §117.9030(a)(3) specifies that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner of operator of any unit located at a major stationary source of NO_x located in Wise County would not be required to comply with the applicable requirements of proposed revised Subchapter B, Division 4. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 attainment demonstration SIP.

Proposed revisions to existing §117.9030(b), concerning eight-hour ozone attainment demonstration emission specifications, include updates to section cross-references. Proposed revised §117.9030(b)(1), (1)(B), (B)(i) and (ii) include deleting the references to existing §117.410(b) and proposing references to §117.410(a). Proposed revised paragraph (1)(C) deletes the reference to existing §117.410(g) and adds a reference to proposed §117.410(f).

Section 117.9110, Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources

The commission proposes repeal of existing §117.9110, which has been made obsolete by the passing of compliance dates because sources of NO_x previously subject to this section are now required to comply with more stringent rules in proposed §117.9130.

Section 117.9130, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources

Proposed revised §117.9130 specifies the compliance schedule for owners or operators of electric utilities subject to proposed revised Subchapter C, Division 4. Proposed subsection (a), which specifies the compliance schedule for existing electric utilities subject to the existing rule, deletes a reference to

the existing DFW eight-hour ozone nonattainment area and proposes the following new list of counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. This change is proposed to be consistent with the proposed revised definition of DFW eight-hour ozone nonattainment area in §117.10 and to distinguish between the existing compliance schedule for sources currently subject to the rule and those that would be newly subject by the proposed rulemaking.

The commission proposes §117.9130(b) to detail the compliance schedule for auxiliary steam boilers and stationary gas turbines located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties that would be affected by the proposed amendment to the existing exemption in §117.1303(a)(1). Affected auxiliary steam boilers and stationary gas turbines would be units that were placed into service after November 15, 1992, and these affected units would be required to meet the NO_x emission specifications and monitoring and testing requirements, which are not proposed for revision, of proposed revised Subchapter C, Division 4. Proposed §117.9130(b)(1) requires the owner or operator to submit the initial control plan required by proposed revised §117.1350 by no later than June 1, 2016. Proposed §117.9130(b)(2) specifies that the owner or operator must comply with all other requirements of proposed revised Subchapter C, Division 4 as soon as practicable but no later than January 1, 2017.

The commission proposes §117.9130(c) to detail the compliance schedule for electric utilities located in Wise County subject to the proposed rule. Proposed §117.9130(c)(1) requires the owner or operator to submit the initial control plan required by proposed revised §117.1350 by no later than June 1, 2016. Proposed subsection (c)(2) specifies that the owner or operator must comply with all other requirements of proposed revised Subchapter C, Division 4 as soon as practicable but no later than January 1, 2017. The commission proposes to move existing subsection (b) to proposed subsection (d).

Proposed §117.9130(d) specifies that for electric utilities in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County that become subject to Subchapter C, Division 4 on or after March 1, 2009, and for electric utilities in Wise County that become subject to Subchapter C, Division 4 on or after January 1, 2017, the owner or operator must comply as soon as practicable but no later than 60 days after becoming subject.

Finally, proposed §117.9130(e) specifies that if Wise County is not designated a nonattainment county as part of the DFW 2008 eight-hour ozone nonattainment area, an owner of operator of an electric utility located in Wise County would not be required to comply with the applicable requirements of proposed revised Subchapter C, Division 4. The commission would publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 attainment demonstration SIP.

Division 2, Compliance Flexibility

Section 117.9800, Use of Emission Credits for Compliance

Proposed revised §117.9800 includes section cross-reference updates to be consistent with proposed repeal of Subchapter B, Division 2, and Subchapter C, Division 2. The commission proposes revisions to existing subsections (a)(1) - (5), (b), and (d) to reflect proposed changes in the other subchapters. Proposed revised subsection (a)(1) would also add a section cross-reference to proposed new §117.405.

Section 117.9810, Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP)

The commission proposes revisions to existing §117.9810, which would remove cross-references to be consistent with the proposed repeal of Subchapter B, Division 2, and Subchapter C, Division 2 and renumber paragraphs accordingly. Proposed revised subsection (a)(1) would add a new reference to proposed new §117.405. The commission proposes to renumber existing subsection (a)(6) to proposed subsection (a)(2) to reflect proposed subsection (a)(2) - (5).

Fiscal Note: Costs to State and Local Government

Jeff Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. The proposed rules would require some major ICI sources of NO_x in the DFW area to control emissions. Fiscal implications could be significant depending on the type of emission source, the size of the source, and the type of emission control technology chosen.

The proposed rules would revise Chapter 117 to implement RACT for all major sources of NO_x in the DFW area as required by the FCAA. The state previously adopted Chapter 117 RACT rules for sources in most of the DFW area as part of the SIP for the 1997 eight-hour ozone standard; however, Wise County was classified as unclassifiable/attainment under the 1997 eight-hour ozone standard so the current RACT rules do not apply in Wise County. Under the 2008 eight-hour ozone NAAQS, the DFW 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, is classified as a moderate nonattainment area with a December 31, 2018 attainment deadline. Nonattainment areas classified as moderate and above are required to meet the mandates of the FCAA. The FCAA requires that the SIP incorporate all reasonably available control measures, including RACT, for sources of relevant pollutants. The proposed rulemaking would therefore extend implementation of RACT to major sources of NO_x located in Wise County. If adopted, these rules would be submitted to the EPA as a SIP revision.

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. Although the FCAA requires the state to implement RACT, EPA guidance provides states with the flexibility to determine the most technologically and economically feasible RACT requirements for a nonattainment area.

The proposed rules are expected to affect 27 current sites in the DFW area including 20 oil and gas facilities, six electric generation facilities, and one paperboard mill. None of the these facilities are owned or operated by units of state or local government and therefore no fiscal implications are anticipated for state or local governments for the first five-year period the proposed rules would be in effect.

Public Benefits and Costs

Mr. Horvath has 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 would be the reduction of NO_x in the DFW area and the enhanced protection of the environment and public health and safety through the efficient and fair administration of NO_x emission standards for the DFW 2008 eight-hour ozone nonattainment area. It is estimated that the proposed rules would reduce the amount of NO_x in the DFW area by 1.17 tons per day.

Fiscal implications are anticipated for businesses in the DFW area as a result of the administration and enforcement of the proposed rules. The proposed rules are not expected to have a direct impact on individuals other than the added health benefits from a reduction in the amount of NO_x in the DFW area.

The proposed rulemaking would require affected businesses to comply with emission standards, conduct initial emissions testing or continuous emissions monitoring to demonstrate compliance, install and operate a totalizing fuel flow meter, perform quarterly and periodic annual emissions compliance testing on engines, submit compliance reports to the TCEQ, and maintain the appropriate records demonstrating compliance with the proposed rules, including but not limited to fuel usage, produced emissions, emissions-related control system maintenance, and emissions performance testing.

Emission sources that would be subject to the proposed rules include: industrial heaters; industrial engines; industrial turbines; utility turbines; and wood-fired boilers. There are an estimated 152 affected emission sources on 27 sites in the DFW area that would be affected by the proposed rules, with most of them in Wise County.

Oil and gas production and transmission sites and electric generating utilities in Wise County that own or operate gas-fired engines, gas-fired turbines, or gas-fired process heaters would be newly subject to the proposed rules and would be required to comply with the proposed rules. Due to proposed repeal of the existing exemption for auxiliary steam boilers and stationary gas turbines placed into service after 1992, electric generating utilities that own or operate gas-fired turbines in Collin, Ellis, Johnson, or Kaufman Counties would also be newly subject to the proposed rules and would be required to comply with the proposed rules. Proposed removal of the exemption would apply to all nine counties of the DFW area; however, affected stationary gas-fired turbines were identified in Collin, Ellis, Johnson, and Kaufman Counties. One paperboard mill with a wood-fired boiler in Kaufman County would be required to comply with the proposed rules.

Total capital and testing costs for all affected facilities identified to implement the proposed rules are estimated to be $1,456,725 in the first year the proposed rules are in effect. Compliance testing and monitoring and maintenance costs are estimated to be $109,500 in year two, $517,875 in year three, $109,500 in year four, and $517,875 in year five for all affected sites and facilities in the DFW area. Combined total capital and total annual costs for all affected units to comply with the proposed requirements for the five-year period covered by the fiscal note are estimated to be $2,711,475, with total capital estimated to be $881,350 and total annual testing, monitoring, and maintenance costs estimated to be $1,830,125. The cost-effectiveness for the proposed emission reductions from all affected units is estimated at $1,563 per ton of NO_x reduced.

Most of the costs from the proposed rules would be incurred by facilities in Wise County and would result from compliance with the requirements to control emissions under Subchapter B, Division 4.

Utility sources of NO_x in the DFW area would be affected by Subchapter C, Division 4 of the proposed rules and are expected to incur some additional initial compliance testing and continuous monitoring costs, but these costs are not expected to be significant (estimated to be $32,000 for all utility units subject to the emission specifications).

The following sections provide further detail on how each proposed subchapter is expected to affect the emission sources in the DFW area.

Subchapter B, Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

The proposed rules would require some major ICI sources of NO_x in the DFW area to control emissions. Fiscal implications could be significant for these sources, depending on the type of emission source, the size of the source, and the type of emission-control technology chosen by the affected business.

Staff has identified 37 rich-burn engines, 84 lean-burn engines, 11 industrial turbines, and two process heaters owned or operated by businesses that would be required to install and operate additional emission controls.

All 37 rich-burn engines, 84 lean-burn engines, 11 industrial turbines, and two process heaters (or 134 emission sources) would be required to install and operate a totalizing fuel flow meter to monitor fuel usage to demonstrate compliance with the proposed rules. The wood-fired boiler is expected to use solid fuel; therefore, the wood-fired boiler located in Kaufman County would not be expected to install a totalizing fuel flow meter.

The estimated cost to purchase and install a totalizing fuel flow meter is $2,500 per meter. No annual operating and maintenance costs are expected. Fuel metering costs, therefore, have a combined total capital cost of $335,000 ($2,500 x 134 emission sources) for all affected ICI units located in Wise County.

Emissions stack testing is estimated at $3,500 per test. All engines would be required to conduct initial and periodic compliance tests as well as quarterly tests, with quarterly emissions testing using a portable NO_x analyzer estimated at $125 per test. For the first five years the proposed rules are in effect, annual costs due to compliance testing for all affected ICI units could total $517,875 in year one; $121,000 in years two and four; and $937,750 in years three and five.

Twenty-seven of the total 37 rich-burn engines in the DFW area would be required to use NSCR with an AFR controller to reduce NO_x emissions. Of the total 84 lean-burn engines, some may require combustion modifications to meet the proposed NO_x standards. Some of the 11 industrial turbine units may also require modifications to combustion methods to meet the proposed NO_x standards. Two process heaters would be subject to the proposed NO_x emission specification, and these two heaters may require installation and operation of dry low NO_x (DLN) combustors along with a single burner test to verify burner design and operation in order to meet the proposed standard. The TCEQ expects the wood-fired boiler to not require additional controls or modifications in order to meet the proposed NO_x emission specification.

Capital costs for a new NSCR system are approximately $30/hp. For an existing system, the cost is approximately $10/hp to add catalyst elements to further reduce NO_x emissions. Three sources are anticipated to require new NSCR, and 24 are anticipated to require additional catalyst elements to meet the proposed NO_x emission specification for rich-burn gas-fired engines. The remaining ten units are expected to meet the proposed emission standard without additional controls or engine modifications. Annual costs for operation and maintenance are approximately $3,000 per year and assumed to be half of that for existing NSCR systems requiring additional catalyst elements. Capital cost associated with NSCR and secondary catalyst retrofits for 27 units are estimated to be $346,350 with annual maintenance costs of $45,000.

No capital costs due to retrofits or combustion modifications are expected for the 84 lean-burn gas-fired engines in order for these units to meet the proposed NO_x emission specifications for lean-burn engines. Analysis shows that additional controls are unnecessary in order for lean-burn engines to meet the proposed standards. Fuel meters, expected to be required for all rich-burn and lean-burn gas-fired engines that are not exempt, are estimated to total $302,500. For all 121 engines, initial and periodic compliance tests are required along with three quarterly checks. These are estimated to cost $468,875 in the first year and every other year. Quarterly checks, required for years where periodic testing is not required, is estimated to cost $60,500 per year for all 121 engines. The requirement to perform compliance testing would allow an owner or operator of an affected engine to verify the actual performance of the engine using actual emissions data to determine compliance with the proposed standards. Application of NSCR on rich-burn gas-fired engines is estimated to achieve a reduction in NO_x emissions of 1.12 tons per day. No reductions in NO_x emissions are anticipated from these monitoring and testing requirements on lean-burn gas-fired engines.

All 11 gas-fired industrial turbines are expected to install fuel meters with a capital cost of $27,500. No capital costs due to retrofits or combustion modifications are expected for these same 11 units in order for the units to meet the proposed NO_x emission specifications for industrial gas turbines. Initial compliance testing is estimated at $38,500 for all units subject to the proposed emission specifications. These activities on gas-fired industrial turbines are not expected to result in additional reductions in NO_x emissions.

To meet the proposed NO_x standard for gas-fired process heaters, as many as two units may need to install and operate DLN combustors which have a capital cost of approximately $7,500 per burner for a conventional-style burner. A single burner test to prove the design is efficient is usually required, and estimates for this single test total $25,000. A reasonable assumption for the number of burners to meet proposed emission levels is ten burners per heater for installation. Capital costs of the retrofit for these two non-exempt units are estimated at $150,000, with an additional capital cost of approximately $50,000 for the burner tests. Annual operating and maintenance costs associated with the DLN combustors are not expected to be significant considering the type of fuel combusted and sizes of the heaters. Fuel metering costs for the two units are estimated to be $5,000. Initial compliance testing is estimated at $7,000 for all units subject to the proposed emission specification. Combined capital costs are estimated at $205,000, and annual costs are estimated at $7,000. These burner retrofits are anticipated to achieve NO_x emission reductions of approximately 0.06 tons per day.

As the wood-fired boiler is already equipped with a SCR system for NO_x control, §117.440 requires the installation of either a CEMS or a PEMS for monitoring NO_x. However, the wood-fired boiler is already equipped with a NO_x CEMS under its permit requirements. Due to the NO_x monitoring requirement, §117.440 also requires CO monitoring using one of the methods available in Chapter 117 for CO monitoring. Furthermore due to use of an SCR system, §117.440 requires ammonia monitoring using one of the methods available in Chapter 117 for ammonia monitoring. Under its permit requirements, the wood-fired boiler is already equipped with a CO CEMS and must also test for and monitor ammonia emissions. Both the CO CEMS and ammonia monitoring methods in the permit satisfy CO and ammonia monitoring requirements of Chapter 117. Therefore, the owner or operator is not expected to incur any additional costs to comply with the NO_x, CO, and ammonia monitoring requirements of §117.440. It is expected that the owner or operator would also use the NO_x CEMS to satisfy initial compliance testing requirements and would therefore not perform a separate stack test. The owner or operator is not expected to incur any additional costs to comply with initial compliance testing requirements of §117.435.

While none of the other affected industrial sources are expected to be required to install a NO_x CEMS or PEMS as a result of the proposed rule, if an owner or operator does need to or elects to use a CEMS or PEMS to comply with the rule, the capital costs are estimated to be approximately $148,300 for equipment purchase and installation. Annual costs are estimated to be approximately $48,000 for equipment operation and maintenance.

Subchapter C, Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources

The proposed rules are expected to result in some costs for electric utility sources of NO_x in the DFW area, though these costs are not expected to be significant.

Based on a review of the point source emissions inventory, all 17 utility turbines are already equipped with SCR systems for NO_x control, and the TCEQ anticipates that none of the 17 utility turbines would require combustion modifications or additional controls in order to meet the proposed NO_x emission specifications. Furthermore, §117.1340 requires the installation of a CEMS, a PEMS, or another system specified in §117.1340 for monitoring NO_x, and it also requires the owner or operator of an affected unit to conduct CO monitoring using one of the methods available in Chapter 117 for CO monitoring. Since all affected utility turbines use SCR for NO_x control, §117.1340 further requires the owner or operator of an affected unit to conduct ammonia monitoring using one of the methods available in Chapter 117 for ammonia monitoring. Based on the same review of the emissions inventory, all 17 utility turbines are also already equipped with a NO_x and a CO CEMS. For all 17 units, both the NO_x and CO CEMS satisfy NO_x and CO monitoring requirements of Chapter 117. Therefore, the owner or operator is not expected to incur any additional costs to comply with the NO_x or CO monitoring requirements of §117.1340. It is expected that the owner or operator would also use the NO_x and CO CEMS to satisfy initial compliance testing requirements and would therefore not perform a separate stack test for either NO_x or CO. The owner or operator is not expected to incur any additional costs to comply with initial compliance testing requirements of §117.1335.

The same review of the inventory shows that 13 of the 17 utility turbines are also already equipped with an ammonia CEMS. For these 13 units, the ammonia CEMS satisfies ammonia mon-

itoring requirements of Chapter 117. Therefore, the owner or operator is not expected to incur any additional costs to comply with the ammonia monitoring requirements of §117.1340. For these 13 units, it is further expected that the owner or operator would also use the ammonia CEMS to satisfy initial compliance testing requirements and would therefore not perform a separate stack test for ammonia emissions. The owner or operator is not expected to incur any additional costs to comply with initial compliance testing requirements of §117.1335.

The remaining four utility turbines would be required to conduct initial stack testing and ammonia monitoring to comply with the corresponding rule provisions of the division. Initial stack testing costs are estimated at $3,000 per test for the first year the proposed rules are in effect. For ammonia monitoring, it is anticipated that owners or operators of affected units would use stain tube testing as the cheapest available method. With this method, annual compliance monitoring costs are estimated to be $1,000 per year for all five years the proposed rules are in effect. For the first five years the proposed rules are in effect, testing costs for these utility turbines could total $16,000 in year one and $4,000 in each of years two through five. Total testing costs for the first five years the rules are in effect for stationary gas-fired utility turbines are estimated to be $32,000.

Due to applicability of existing federal rules for gas turbines at electric generation facilities, the TCEQ anticipates that all 17 units more than likely already use totalizing fuel flow meters, thereby satisfying fuel meter operating requirements in the proposed rulemaking. In addition, the owner or operator can use an alternative fuel consumption monitoring method in lieu of installing a fuel meter. No capital costs due to retrofits, combustion modifications, or fuel meters are expected for these 17 units in order for the units to meet the proposed NO_x emission specifications or fuel flow monitoring requirements for utility gas turbines. Combined total capital and total annual costs for all affected units to comply with the proposed requirements of Subchapter C, Division 4 are estimated to total $32,000 with total capital estimated to be zero and total annual estimated to be $32,000. No reductions in NO_x emissions are anticipated from utility units located at electric generating utilities.

Subchapter G, Division 1: Compliance Stack Testing and Report Requirements

For owners or operators of boilers and process heaters that are used on a temporary basis, the proposed rulemaking would provide compliance flexibility by establishing compliance testing provisions that would be applicable to affected units in all areas covered by Chapter 117. Owners or operators of affected units can use previous stack test results or a manufacturer's guarantee to satisfy initial compliance demonstration requirements. For owners or operators of these units, no additional annual costs due to compliance testing are expected.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation or administration of the proposed rules. The proposed rules would apply to major ICI sources of NO_x and to electric utility sources of NO_x in the DFW area. Agency staff did not identify any small or micro-businesses that would be affected by the proposed rules.

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 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 and federal rules require the state to implement RACT.

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 state previously adopted RACT rules for NO_x sources in most of the DFW area as part of the SIP for the 1997 eight-hour ozone standard. On March 27, 2008, the EPA revised both the primary and secondary ozone standard (the eight-hour ozone NAAQS) to a level of 0.075 ppm with an effective date of May 27, 2008 (73 FR 16436). On May 21, 2012, the EPA established initial air quality designations for the 2008 eight-hour ozone NAAQS. Effective July 20, 2012, the DFW 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area for the 2008 eight-hour ozone NAAQS. Nonattainment areas classified as moderate and above are required to meet the mandates of FCAA, §172(c)(1) and §182(f). FCAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures, including RACT, for sources of relevant pollutants. FCAA, §182(f) requires the state to submit a SIP revision that implements RACT for all major sources of NO_x. The proposed rulemaking would revise Chapter 117 to implement RACT for all major sources of NO_x in the DFW area as required by FCAA, §172(c)(1) and §182(f). The proposed rulemaking would also extend implementation of RACT to major sources of NO_x located in Wise County, which was classified as unclassifiable/attainment under the 1997 eight-hour ozone standard but is now classified as nonattainment. The commission is also proposing rules that would allow the commission to remove the applicability of RACT requirements to sources in Wise County, if Wise County were to be removed from the DFW

2008 eight-hour ozone nonattainment area. These specific changes are proposed because Texas is currently in litigation over the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area, as discussed elsewhere in this preamble. As the commission cannot predict the outcome of this litigation at this time, the commission is proposing rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 attainment demonstration SIP. The proposed new rules update RACT requirements for the following source categories in Chapter 117: Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas, DFW Eight-Hour Ozone Nonattainment Area Major Sources; Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas, DFW Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources. The proposed rules also modify and update definitions; general monitoring and testing requirements; emission monitoring requirements; and administrative, scheduling, and compliance requirements.

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. The proposed rulemaking would revise Chapter 117 to implement RACT for all major sources of NO_x in the DFW area as required by FCAA, §172(c)(1) and §182(f).

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by SB 633 during the 75th Legislature, 1997. The intent of Senate Bill (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 exceeded 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 federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially 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 reduce the risks to human health by requiring control measures for NO_x emission sources that have been determined by the commission to be RACT for the DFW area. These revisions would result in NO_x emission reductions in the DFW 2008 eight-hour ozone nonattainment area, which may contribute to the timely attainment of the 2008 eight-hour ozone NAAQS and reduce public exposure to NO_x. The proposed rule-

making 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 all NO_x emission sources in the 2008 eight-hour ozone DFW nonattainment area, as required by FCAA, §172(c)(1) and §182(f). 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 would result in NO_x emission reductions in ozone nonattainment areas that may contribute to the timely attainment of the 2008 eight-hour ozone NAAQS and reduce public exposure to NO_x. 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 the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

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 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed revisions to Chapter 117 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 117 requirements.

Announcement of Hearing

The commission will hold two public hearings on this proposal: one in Arlington on January 15, 2015 at 6:30 p.m. in the City of Arlington Council Chamber at the Arlington Municipal Building located at 101 W. Abram Street, Arlington, Texas, 76010; and a second hearing in Austin on January 22, 2015 at 10:00 a.m. in Building E, Conference Room 201S, at the commission's central office located at 12100 Park 35 Circle, Austin, Texas, 78753. The hearings will be 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 Derek Baxter, 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.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-049-117-AI. The comment period closes January 30, 2015. Copies of the proposed rulemaking can be obtained from the commission's Website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Javier Galvan of the Air Quality Planning Section, at (512) 239-1492.

SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

Statutory Authority

The amended 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, §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 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 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;

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 amended 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 amended 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 amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.10. Definitions.

Unless specifically defined in the Texas Clean Air Act or Chapter 101 of this title (relating to General Air Quality Rules), the terms in this chapter have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Annual capacity factor--The total annual fuel consumed by a unit divided by the fuel that could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.

(2) Applicable ozone nonattainment area--The following areas, as designated under the 1990 Federal Clean Air Act Amendments.

(A) Beaumont-Port Arthur ozone nonattainment area--An area consisting of Hardin, Jefferson, and Orange Counties.

~~[(B) Dallas-Fort Worth ozone nonattainment area--An area consisting of Collin, Dallas, Denton, and Tarrant Counties.]~~

(B) [~~(C)~~] Dallas-Fort Worth eight-hour ozone nonattainment area--An area consisting of: [~~Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.~~]

(i) for the purposes of Subchapter D of this chapter (relating to Combustion Control at Minor Sources in Ozone Nonattainment Areas), Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties; or

(ii) for all other divisions of this chapter, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties.

(C) [~~(D)~~] Houston-Galveston-Brazoria ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(3) Auxiliary steam boiler--Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity. An auxiliary steam boiler produces steam as a replacement for steam produced by another piece of equipment that is not operating due to planned or unplanned maintenance.

(4) Average activity level for fuel oil firing--The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.

(5) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Btu--British thermal unit.

(8) Chemical processing gas turbine--A gas turbine that vents its exhaust gases into the operating stream of a chemical process.

(9) Continuous emissions monitoring system (CEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates in units of the applicable emission limitation.

(10) Daily--A calendar day starting at midnight and continuing until midnight the following day.

(11) Diesel engine--A compression-ignited two- or four-stroke engine that liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(12) Duct burner--A unit that combusts fuel and that is placed in the exhaust duct from another unit (such as a stationary gas turbine, stationary internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases.

(13) Electric generating facility (EGF)--A unit that generates electric energy for compensation and is owned or operated by a person doing business in this state, including a municipal corporation, electric cooperative, or river authority.

(14) Electric power generating system--One electric power generating system consists of either:

(A) for the purposes of Subchapter C, Divisions 1 and 4 of this chapter (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources; and Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources) [~~(relating to Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas)~~], all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at electric generating facility (EGF) accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, independent power producer, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in one of the following ozone nonattainment areas:

(i) Beaumont-Port Arthur; or

~~*(ii)* Dallas-Fort Worth;]~~

(ii) [~~(iii)~~] Dallas-Fort Worth eight-hour; [~~or~~]

~~*(iv)* Houston-Galveston-Brazoria;]~~

(B) for the purposes of Subchapter C, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in the Houston-Galveston-Brazoria ozone nonattainment area;

[(B) for the purposes of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas), all boilers, auxiliary steam boilers, and stationary gas turbines at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors; and are located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County; or]

(C) for the purposes of Subchapter B, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources) [(relating to Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas)], all units in the Houston-Galveston-Brazoria ozone nonattainment area that generate electricity but do not meet the conditions specified in subparagraph (B) [(A)] of this paragraph, including, but not limited to, cogeneration units and units owned by independent power producers; or[.]

(D) for the purposes of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas), all boilers, auxiliary steam boilers, and stationary gas turbines at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors; and are located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.

(15) Emergency situation--As follows.

(A) An emergency situation is any of the following:

(i) an unforeseen electrical power failure from the serving electric power generating system;

(ii) the period of time that an Electric Reliability Council of Texas, Inc. (ERCOT)-issued emergency notice or energy emergency alert (EEA) (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (August 13, 2014) [(June 1, 2012)] and issued as specified in *ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations* (August 13, 2014)) [(June 1, 2012))] is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT;

(iii) an unforeseen failure of on-site electrical transmission equipment (e.g., a transformer);

(iv) an unforeseen failure of natural gas service;

(v) an unforeseen flood or fire, or a life-threatening situation;

(vi) operation of emergency generators for Federal Aviation Administration licensed airports, military airports, or manned space flight control centers for the purposes of providing power in anticipation of a power failure due to severe storm activity; or

(vii) operation of an emergency generator as part of ERCOT's emergency response service (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (August 13, 2014)) [(June 1, 2012))] if the operation is in direct response to an instruction by ERCOT during the period of an ERCOT EEA as specified in clause (ii) of this subparagraph.

(B) An emergency situation does not include:

(i) operation for training purposes or other foreseeable events; or

(ii) operation for purposes of supplying power for distribution to the electric grid, except as specified in subparagraph (A)(vii) of this paragraph.

(16) Functionally identical replacement--A unit that performs the same function as the existing unit that it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.

(17) Heat input--The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming CO and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.

(18) Heat treat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to heat the metal so as to produce specific physical properties in that metal.

(19) High heat release rate--A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units per hour per cubic foot.

(20) Horsepower rating--The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

(21) Incinerator--As follows.

(A) For the purposes of this chapter, the term "incinerator" includes both of the following:

(i) a control device that combusts or oxidizes gases or vapors (e.g., thermal oxidizer, catalytic oxidizer, vapor combustor); and

(ii) an incinerator as defined in §101.1 of this title (relating to Definitions).

(B) The term "incinerator" does not apply to boilers or process heaters as defined in this section, or to flares as defined in §101.1 of this title.

(22) Industrial boiler--Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam or to heat water.

(23) International Standards Organization (ISO) conditions--ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.

(24) Large utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in [the Dallas-Fort Worth or] the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity equal to or greater than 500 megawatts.

(25) Lean-burn engine--A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(26) Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit--An industrial, commercial, or institutional boiler; process heater; or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

(A) greater than or equal to 40 million British thermal units per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to 2.8 (10^{11}) British thermal units per year (Btu/yr), based on a rolling 12-month average; or

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to 2.2 (10^{11}) Btu/yr, based on a rolling 12-month average.

(27) Low annual capacity factor stationary gas turbine or stationary internal combustion engine--A stationary gas turbine or stationary internal combustion engine that is demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(28) Low heat release rate--A ratio of boiler design heat input to firebox volume less than 70,000 British thermal units per hour per cubic foot.

(29) Major source--Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:

(A) at least 50 tons per year (tpy) of nitrogen oxides (NO_x) and is located in the Beaumont-Port Arthur ozone nonattainment area;

(B) at least 50 tpy of NO_x and is located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County [~~the Dallas-Fort Worth or Dallas-Fort Worth eight-hour ozone nonattainment area~~];

(C) at least 100 tpy of NO_x and is located in Wise County;

(D) [~~(C)~~] at least 25 tpy of NO_x and is located in the Houston-Galveston-Brazoria ozone nonattainment area; or

(E) [~~(D)~~] the amount specified in the major source definition contained in the Prevention of Significant Deterioration of Air Quality regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations §52.21 as amended June 3, 1993 (effective June 3, 1994), and is located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Comal, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Hays, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.

(30) Maximum rated capacity--The maximum design heat input, expressed in million British thermal units per hour, unless:

(A) the unit is a boiler, utility boiler, or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate must be used as the maximum rated capacity; or

(B) the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(C) the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(D) the unit is a stationary, internal combustion engine, in which case the manufacturer's rated heat consumption at Diesel Equipment Manufacturer's Association or ISO conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity.

(31) Megawatt (MW) rating--The continuous MW output rating or mechanical equivalent by a gas turbine manufacturer at International Standards Organization conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

(32) Nitric acid--Nitric acid that is 30% to 100% in strength.

(33) Nitric acid production unit--Any source producing nitric acid by either the pressure or atmospheric pressure process.

(34) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(35) Parts per million by volume (ppmv)--All ppmv emission specifications specified in this chapter are referenced on a dry basis. When required to adjust pollutant concentrations to a specified oxygen (O_2) correction basis, the following equation must be used. Figure: 30 TAC §117.10(35) (No change.)

(36) Peaking gas turbine or engine--A stationary gas turbine or engine used intermittently to produce energy on a demand basis.

(37) Plant-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(38) Plant-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(39) Predictive emissions monitoring system (PEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates using process or control device operating parameter measurements and a conversion equation or computer program to produce results in units of the applicable emission limitation.

(40) Process heater--Any combustion equipment fired with liquid and/or gaseous fuel that is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this section.

(41) Pyrolysis reactor--A unit that produces hydrocarbon products from the endothermic cracking of feedstocks such as ethane,

propane, butane, and naphtha using combustion to provide indirect heating for the cracking process.

(42) Reheat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to raise the temperature of that metal in the course of processing to a temperature suitable for hot working or shaping.

(43) Rich-burn engine--A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(44) Small utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in [~~the Dallas-Fort Worth or~~] the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity less than 500 megawatts.

(45) Stationary gas turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft must be treated as one unit.

(46) Stationary internal combustion engine--A reciprocating engine that remains or will remain at a location (a single site at a building, structure, facility, or installation) for more than 12 consecutive months. Included in this definition is any engine that, by itself or in or on a piece of equipment, is portable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine being replaced is included in calculating the consecutive residence time period. An engine is considered stationary if it is removed from one location for a period and then returned to the same location in an attempt to circumvent the consecutive residence time requirement. Nonroad engines, as defined in 40 Code of Federal Regulations §89.2, are not considered stationary for the purposes of this chapter.

(47) System-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission rate.

(48) System-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission specification.

(49) Thirty-day rolling average--An average, calculated for each day that fuel is combusted in a unit, of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.

(50) Twenty-four hour rolling average--An average, calculated for each hour that fuel is combusted (or acid is produced, for a nitric or adipic acid production unit), of all the hourly emissions data for the preceding 24 hours that fuel was combusted in the unit.

(51) Unit--A unit consists of either:

(A) for the purposes of §§117.105, [~~117.205,~~] 117.305, 117.405,117.1005, [~~117.1105,~~] and 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §§117.105, [~~117.205,~~] 117.305, 117.405,117.1005, [~~117.1105,~~] and 117.1205 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section;

(B) for the purposes of §§117.110, [~~117.210,~~] 117.310, 117.1010, [~~117.1110,~~] and 117.1210 of this title (relating to Emission Specifications for Attainment Demonstration) and each requirement of this chapter associated with §§117.110, [~~117.210,~~] 117.310, 117.1010, [~~117.1110,~~] and 117.1210 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of nitrogen oxides (NO_x) at a major source, as defined in this section;

(C) for the purposes of §117.2010 of this title (relating to Emission Specifications) and each requirement of this chapter associated with §117.2010 of this title, any boiler, process heater, stationary gas turbine (including any duct burner in the turbine exhaust duct), or stationary internal combustion engine, as defined in this section;

(D) for the purposes of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.2110 of this title, any stationary internal combustion engine, as defined in this section;

(E) for the purposes of §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.3310 of this title, any stationary internal combustion engine, as defined in this section; or

(F) for the purposes of §117.410 and §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.410 and §117.1310 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of NO_x at a major source, as defined in this section.

(52) Utility boiler--Any combustion equipment owned or operated by an electric cooperative, municipality, river authority, public utility, or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used to produce steam for the purpose of generating electricity. Stationary gas turbines, including any associated duct burners and unfired waste heat boilers, are not considered to be utility boilers.

(53) Wood--Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405979

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER B. COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2. DALLAS-FORT WORTH OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §§117.200, 117.203, 117.205, 117.210, 117.215, 117.223, 117.225, 117.230, 117.235, 117.240, 117.245, 117.252, 117.254, 117.256

(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, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repealed 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 repealed 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 repealed 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. The repealed 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 repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.200. Applicability.

§117.203. Exemptions.

§117.205. Emission Specifications for Reasonably Available Control Technology (RACT).

§117.210. Emission Specifications for Attainment Demonstration.

§117.215. Alternative Plant-Wide Emission Specifications.

§117.223. Source Cap.

§117.225. Alternative Case Specific Specifications.

§117.230. Operating Requirements.

§117.235. Initial Demonstration of Compliance.

§117.240. Continuous Demonstration of Compliance.

§117.245. Notification, Recordkeeping, and Reporting Requirements.

§117.252. Final Control Plan Procedures for Reasonably Available Control Technology.

§117.254. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

§117.256. Revision of Final Control Plan.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405980
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 4. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §§117.400, 117.403, 117.405, 117.410, 117.423, 117.425, 117.430, 117.435, 117.440, 117.445, 117.450, 117.452, 117.454, 117.456

Statutory Authority

The new and amended 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 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. 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 new and amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.400. Applicability.

(a) The provisions of this division [~~(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources),~~] apply to the following units located at any major stationary source of nitrogen oxides (NO_x) located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County [~~within the Dallas-Fort Worth eight-hour ozone nonattainment area~~]:

(1) industrial, commercial, or institutional boilers and process heaters;

(2) stationary gas turbines;

(3) stationary internal combustion engines;

(4) duct burners used in turbine exhaust ducts;

(5) lime kilns;

(6) metallurgical heat treating furnaces and reheat furnaces;

(7) incinerators;

(8) glass, fiberglass, and mineral wool melting furnaces;

(9) fiberglass and mineral wool curing ovens;

(10) natural gas-fired ovens and heaters;

(11) natural gas-fired dryers used in organic solvent, printing ink, clay, brick, ceramic tile, calcining, and vitrifying processes;

(12) brick and ceramic kilns; and

(13) lead smelting reverberatory and blast (cupola) furnaces.

(b) The provisions of this division apply to the following units located at any major stationary source of NO_x located in Wise County:

(1) industrial, commercial, or institutional process heaters;

(2) stationary gas turbines; and

(3) stationary internal combustion engines.

§117.403. Exemptions.

(a) Units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County exempted from the provisions of this division [~~(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources)~~], except as specified in §§117.440(i), 117.445(f)(4) and (9), 117.450, and 117.454 of this title (relating to Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; Initial Control Plan Procedures; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications), include the following:

(1) industrial, commercial, or institutional boilers or process heaters with a maximum rated capacity equal to or less than:

(A) 2.0 million British thermal units per hour (MMBtu/hr) for boilers; and

(B) 5.0 MMBtu/hr for process heaters;

(2) heat treating furnaces and reheat furnaces with a maximum rated capacity less than 20 MMBtu/hr;

(3) flares, incinerators with a maximum rated capacity less than 40 MMBtu/hr, pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers;

(4) dryers, heaters, or ovens with a maximum rated capacity of 5.0 MMBtu/hr or less;

(5) any dryers, heaters, or ovens fired on fuels other than natural gas. This exemption does not apply to gas-fired curing ovens used for the production of mineral wool-type or textile-type fiberglass;

(6) any glass, fiberglass, and mineral wool melting furnaces with a maximum rated capacity of 2.0 MMBtu/hr or less;

(7) stationary gas turbines and stationary internal combustion engines, that are used as follows:

(A) in research and testing of the unit;

(B) for purposes of performance verification and testing of the unit;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis [~~average~~]. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(F) directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or

(G) as chemical processing gas turbines;

(8) any stationary diesel engine placed into service before June 1, 2007, that:

(A) operates less than 100 hours per year, based on a rolling 12-month basis [~~average~~]; and

(B) has not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), re-

spectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(9) any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, that:

(A) operates less than 100 hours per year, based on a rolling 12-month basis [~~average~~], in other than emergency situations; and

(B) meets the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998), and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(10) boilers and industrial furnaces that were regulated as existing facilities by 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993;

(11) brick or ceramic kilns with a maximum rated capacity less than 5.0 MMBtu/hr;

(12) low-temperature drying and curing ovens used in mineral wool-type fiberglass manufacturing and wet-laid, non-woven fiber mat manufacturing in which nitrogen-containing resins, or other additives are used;

(13) stationary, gas-fired, reciprocating internal combustion engines with a horsepower (hp) rating less than 50 hp;

(14) electric arc melting furnaces used in steel production;

(15) forming ovens and forming processes used in mineral wool-type fiberglass manufacturing; and

(16) natural gas-fired heaters used exclusively for providing comfort heat to areas designed for human occupancy.

(b) Units located in Wise County exempted from the provisions of this division, except as specified in §§117.440(i), 117.445(f)(4), 117.450, and 117.452 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), include the following:

(1) industrial, commercial, or institutional process heaters with a maximum rated capacity less than 40 MMBtu/hr;

(2) stationary gas turbines and stationary internal combustion engines that are used as follows:

(A) in research and testing of the unit;

(B) for purposes of performance verification and testing of the unit;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis; and

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(3) stationary, diesel, reciprocating internal combustion engines;

(4) stationary, dual-fuel, reciprocating internal combustion engines; and

(5) stationary, gas-fired, reciprocating internal combustion engines with an hp rating less than 50 hp.

[~~(b) Increment of progress exemptions.~~]

[~~(1) Stationary, reciprocating internal combustion engines with a maximum rated capacity less than 300 horsepower are exempt from the emission specifications in §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration).~~]

[~~(2) The emission specifications in §117.410(a) of this title no longer apply to any stationary, reciprocating internal combustion engine subject to the emission specifications of §117.410(b) of this title after the compliance date specified in §117.9030(b) of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).~~]

[~~(3) Stationary engines that are demonstrated to operate less than 850 hours per year, based on a rolling 12-month average are exempt from the emission specifications in §117.410(a) of this title.~~]

(c) Emergency fuel oil firing exemption for gas-fired boilers. The emission specifications in §117.410(a)(1) and (c) [~~§117.410(b)(1) and (d)~~] of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) do not apply to gas-fired boilers during periods that the owner or operator is required to fire fuel oil on an emergency basis due to natural gas curtailment or other emergency, provided:

(1) the fuel oil firing occurs during the months of November, December, January, or February; and

(2) the fuel oil firing does not exceed a total of 72 hours in any calendar month specified in paragraph (1) of this subsection.

§117.405. Emission Specifications for Reasonably Available Control Technology (RACT).

(a) Reasonably Available Control Technology (RACT) emission specifications for wood-fired boilers. For units located in the Dallas-Fort Worth eight-hour ozone nonattainment area, no person shall allow the discharge into the atmosphere nitrogen oxides (NO_x) emissions in excess of 0.12 pounds per million British thermal units (lb/MMBtu) for wood-fired boilers, in accordance with the applicable schedule in §117.9030(a) of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources), except as provided in subsection (e) of this section.

(b) Emission specifications for RACT in Wise County. For units located in Wise County, no person shall allow the discharge into the atmosphere NO_x emissions in excess of the following emission specifications, in accordance with the applicable schedule in §117.9030(a) of this title, except as provided in subsection (e) of this section:

(1) process heaters with a maximum rated capacity equal to or greater than 40 million British thermal units per hour (MMBtu/hr), 0.10 lb/MMBtu (or alternatively, 82 parts per million by volume (ppmv), at 3.0% oxygen (O_2), dry basis);

(2) stationary, reciprocating internal combustion engines:

(A) gas-fired rich-burn engines, 0.50 grams per horsepower-hour (g/hp-hr); and

(B) gas-fired lean-burn engines:

(i) White Superior four-cycle units that have been placed into service, modified, reconstructed, or relocated:

(I) before June 1, 2015, 12.0 g/hp-hr; and

(II) on or after June 1, 2015, 2.0 g/hp-hr;

(ii) Clark two-cycle units that have been placed into service, modified, reconstructed, or relocated:

(I) before June 1, 2015, 12.0 g/hp-hr; and

(II) on or after June 1, 2015, 2.0 g/hp-hr;

(iii) Fairbanks Morse MEP two-cycle units that have been placed into service, modified, reconstructed, or relocated:

(I) before June 1, 2015, 4.0 g/hp-hr; and

(II) on or after June 1, 2015, 2.0 g/hp-hr; and

(iv) all others, 2.0 g/hp-hr; and

(3) stationary gas turbines:

(A) with a horsepower (hp) rating of less than 4,500 hp, 0.45 lb/MMBtu;

(B) with an hp rating of 4,500 hp or greater, but less than 10,000 hp, 0.20 lb/MMBtu; and

(C) with an hp rating of 10,000 hp or greater, 0.15 lb/MMBtu.

(c) NO_x averaging time. The emission specifications of subsections (a) and (b) of this section apply:

(1) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.440 of this title (relating to Continuous Demonstration of Compliance), either as:

(A) a rolling 30-day average, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable specification in lb/MMBtu; and

(2) if the unit is not operated with a NO_x CEMS or PEMS under §117.440 of this title, a block one-hour average, in the units of the applicable standard. Alternatively for boilers and process heaters, the emission specification may be applied in pounds per hour, as specified in paragraph (1)(C) of this subsection.

(d) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a) or (b) of this section, emissions in excess of the following, except as provided in §117.425 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection.

(1) Carbon monoxide (CO) emissions must not exceed 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a block one-hour averaging period, for units not equipped with CEMS or PEMS for CO.

(2) For units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines and gas-fired lean-burn engines; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; and

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(3) The correction of CO emissions to 3.0% O_2, dry basis, in paragraph (1) of this subsection does not apply to boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hot-standby mode).

(e) Compliance flexibility.

(1) An owner or operator may use any of the following alternative methods to comply with the NO_x emission specifications of this section:

(A) §117.423 of this title (relating to Source Cap); or

(B) §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(2) Section 117.425 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.425 of this title.

(f) Prohibition of circumvention.

(1) The maximum rated capacity used to determine the applicability of the emission specifications in this section and the initial compliance demonstration, monitoring, testing requirements, and final control plan in §§117.435, 117.440, and 117.452 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Final Control Plan Procedures for Reasonably Available Control Technology) must be the greater of the following:

(A) the maximum rated capacity as of December 31, 2012;

(B) the maximum rated capacity after December 31, 2012; or

(C) the maximum rated capacity authorized by a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) after December 31, 2012.

(2) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2012. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2012, but subsequently is authorized to operate as a dual-fuel engine, is classified as a stationary gas-fired engine for the purposes of this chapter.

(3) A source that met the definition of major source on December 31, 2012, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2012, but becomes a major source at any time after December 31, 2012, is from that time forward always classified as a major source for purposes of this chapter.

§117.410. Emission Specifications for Eight-Hour Attainment Demonstration.

~~[(a) Emission specifications for increment of progress. The owner or operator of any gas-fired stationary, reciprocating internal~~

~~combustion engine with a maximum rated horsepower (hp) of 300 hp or greater shall comply with the following emission specifications, in accordance with the applicable schedule in §117.9030(a) of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources), except as provided in subsection (e) of this section:~~

~~[(1) nitrogen oxides (NO_x), as follows:]~~

~~[(A) lean-burn engines, 2.0 grams per horsepower-hour (g/hp-hr); and]~~

~~[(B) rich-burn engines:]~~

~~*[(i)* placed into service before January 1, 2000, that have not been modified, reconstructed, or relocated on or after January 1, 2000, 2.0 g/hp-hr. For the purposes of this clause, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and]~~

~~*[(ii)* installed, modified, reconstructed, or relocated on or after January 1, 2000, 0.50 g/hp-hr; and]~~

~~[(2) carbon monoxide (CO), 3.0 g/hp-hr.]~~

(a) [~~(b)~~] Emission specifications for eight-hour ozone attainment demonstration. For units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Rockwall, or Tarrant County, no [~~No~~] person shall allow the discharge into the atmosphere nitrogen oxides (NO_x) [~~NO_x~~] emissions in excess of the following emission specifications, in accordance with the applicable schedule in §117.9030(b) of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources), except as provided in subsection (d) [~~(e)~~] of this section:

(1) gas-fired boilers:

(A) with a maximum rated capacity equal to or greater than 100 million British thermal units per hour (MMBtu/hr), 0.020 pounds per million British thermal units (lb/MMBtu);

(B) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, but less than 100 MMBtu/hr, 0.030 lb/MMBtu; and

(C) with a maximum rated capacity less than 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 parts per million by volume (ppmv) NO_x, at 3.0% oxygen (O_2), dry basis);

(2) liquid-fired boilers, 2.0 pounds per 1,000 gallons of liquid burned;

(3) process heaters:

(A) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, 0.025 lb/MMBtu; and

(B) with a maximum rated capacity less than 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 ppmv, at 3.0% O_2, dry basis);

(4) stationary, reciprocating internal combustion engines:

(A) gas-fired rich-burn engines:

(i) fired on landfill gas, 0.60 grams per horsepower-hour (g/hp-hr) [~~g/hp-hr~~]; and

(ii) all others, 0.50 g/hp-hr;

(B) gas-fired lean-burn engines:

(i) placed into service before June 1, 2007, that have not been modified, reconstructed, or relocated on or after June 1, 2007, 0.70 g/hp-hr; and

(ii) placed into service, modified, reconstructed, or relocated on or after June 1, 2007:

(I) fired on landfill gas, 0.60 g/hp-hr; and

(II) all others, 0.50 g/hp-hr;

(C) dual-fuel engines, 0.50 g/hp-hr;

(D) diesel engines, excluding dual-fuel engines, placed into service before March 1, 2009, that have not been modified, reconstructed, or relocated on or after March 1, 2009, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data;

(E) for diesel engines, excluding dual-fuel engines, not subject to subparagraph (D) of this paragraph:

(i) with a horsepower (hp) [~~hp~~] rating of less than 50 hp that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 5.0 g/hp-hr;

(ii) with a hp rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 3.3 g/hp-hr;

(iii) with a hp rating of 100 hp or greater, but less than 750 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 2.8 g/hp-hr; and

(iv) with an [~~a~~] hp rating of 750 hp or greater that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 4.5 g/hp-hr; and

(F) for the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) [~~CFR~~] §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(5) stationary gas turbines:

(A) rated at 10 megawatts (MW) or greater, 0.032 lb/MMBtu;

(B) rated at 1.0 MW or greater, but less than 10 MW, 0.15 lb/MMBtu; and

(C) rated at less than 1.0 MW, 0.26 lb/MMBtu;

(6) duct burners used in turbine exhaust ducts, the corresponding gas turbine emission specification of paragraph (5) of this subsection;

(7) kilns:

(A) lime kilns, 3.7 pounds per ton (lb/ton) of calcium oxide, demonstrated either:

(i) on an individual kiln basis; or

(ii) on a site-wide production rate weighted average basis, using the following equation:
Figure: 30 TAC §117.410(a)(7)(A)(ii)
[~~Figure: 30 TAC §117.410(b)(7)(A)(ii)~~]

(B) brick and ceramic kilns, one of the following:

(i) a 40% reduction from the daily NO_x emissions reported to the [~~Industrial~~] Emissions Assessment Section for the calendar year 2000 Emissions [~~Emission~~] Inventory. To ensure that this emission specification will result in a real 40% reduction in actual emissions, a consistent methodology must be used to calculate the 40% reduction;

(ii) 0.175 lb/ton of product for brick kilns; or

(iii) 0.27 lb/ton of product for ceramic kilns;

(8) metallurgical furnaces:

(A) heat treating furnaces, 0.087 lb/MMBtu. For heat treating furnaces equipped with NO_x continuous emissions monitoring systems (CEMS) [~~CEMS~~] or predictive emissions monitoring systems (PEMS) [~~PEMS~~] that comply with §117.440 of this title (relating to Continuous Demonstration of Compliance), this emission specification only applies from March 1 to October 31 of any calendar year;

(B) reheat furnaces, 0.10 lb/MMBtu. For reheat furnaces equipped with NO_x CEMS or PEMS that comply with §117.440 of this title, this emission specification only applies from March 1 to October 31 of any calendar year; and

(C) lead smelting blast (cupola) and reverberatory furnaces used in conjunction, the combined rate of 0.45 lb/ton product;

(9) incinerators, either of the following:

(A) an 80% reduction from the daily NO_x emissions reported to the [~~Industrial~~] Emissions Assessment Section for the calendar year 2000 Emissions [~~Emission~~] Inventory. To ensure that this emission specification will result in a real 80% reduction in actual emissions, a consistent methodology must be used to calculate the 80% reduction; or

(B) 0.030 lb/MMBtu;

(10) glass and fiberglass melting furnaces:

(A) container glass melting furnaces:

(i) 4.0 lb/ton of glass pulled during furnace operation equal to or greater than 25% of the permitted glass production capacity; and

(ii) the applicable maximum allowable pound per hour NO_x permit limit in a permit issued before June 1, 2007, during furnace operation less than 25% of the permitted glass production capacity;

(B) mineral wool-type cold-top electric fiberglass melting furnaces, 4.0 lb/ton of product pulled;

(C) mineral wool-type fiberglass regenerative furnaces, 1.45 lb/ton of product pulled; and

(D) mineral wool-type fiberglass non-regenerative gas-fired furnaces, 3.1 lb/ton product pulled;

(11) gas-fired curing ovens used for the production of mineral wool-type or textile-type fiberglass, 0.036 lb/MMBtu;

(12) natural gas-fired ovens and heaters, 0.036 lb/MMBtu;

(13) natural gas-fired dryers:

(A) dryers used in organic solvent, printing ink, clay, brick, ceramic tile, calcining, and vitrifying processes, 0.036 lb/MMBtu;

(B) spray dryers used in ceramic tile manufacturing processes, 0.15 lb/MMBtu; and

(14) as an alternative to the emission specifications in paragraphs (1) - (13) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb/MMBtu. The capacity factor as of December 31, 2000, must be used to determine whether the unit is eligible for the emission specification of this paragraph. A 12-month rolling average must be used to determine the annual capacity factor for units placed into service after December 31, 2000.

(b) [~~(c)~~] NO_x averaging time. The emission specifications of subsection [~~subsections~~] (a) [~~and (b)~~] of this section apply:

(1) if the unit is operated with a NO_x CEMS [~~continuous emissions monitoring system (CEMS)~~] or PEMS [~~predictive emissions monitoring system (PEMS)~~] under §117.440 of this title [~~(relating to Continuous Demonstration of Compliance)~~], either as:

(A) a rolling 30-day average period, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable specification in lb/MMBtu; and

(2) if the unit is not operated with a NO_x CEMS or PEMS under §117.440 of this title, a block one-hour average, in the units of the applicable standard. Alternatively for boilers and process heaters, the emission specification may be applied in pounds per hour, as specified in paragraph (1)(C) of this subsection.

(c) [~~(d)~~] Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a) [~~or (b)~~] of this section, emissions in excess of the following, except as provided in §117.425 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection.

(1) Carbon monoxide (CO) [~~CO~~] emissions must not exceed 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a block one-hour averaging period [~~average~~], for units not equipped with CEMS or PEMS for CO.

(2) For units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts) and gas-fired lean-burn engines; 7.0% O_2, dry, for incinerators; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; and [~~or~~]

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(3) The correction of CO emissions to 3.0% O_2, dry basis, in paragraph (1) of this subsection does not apply to boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hot-standby mode).

(4) The CO specifications in paragraph (1) of this subsection do not apply to incinerators subject to the CO limits of one of the following:

(A) §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);

(B) §113.2072 of this title (relating to Emission Limits) for hospital/medical/infectious waste incinerators; or

(C) 40 CFR Part 264 or 265, Subpart O, for hazardous waste incinerators.

[(A) stationary internal combustion engines subject to subsection (a) of this section; or]

[(B) incinerators subject to the CO limits of one of the following:]

[(i) §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);]

[(ii) §113.2072 of this title (relating to Emission Limits) for hospital/medical/infectious waste incinerators; or]

[(iii) 40 CFR Part 264 or 265, Subpart O, for hazardous waste incinerators.]

(d) [(c)] Compliance flexibility.

(1) An owner or operator may use any of the following alternative methods to comply with the NO_x emission specifications of this section:

(A) §117.423 of this title (relating to Source Cap); or

(B) §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(2) Section 117.425 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.425 of this title.

(e) [(f)] Prohibition of circumvention.

(1) The maximum rated capacity used to determine the applicability of the emission specifications in this section and the initial compliance demonstration, monitoring, testing requirements, and final control plan in §§117.435, 117.440, and 117.454 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications) must be the greater of the following:

(A) the maximum rated capacity as of December 31, 2000;

(B) the maximum rated capacity after December 31, 2000; or

(C) the maximum rated capacity authorized by a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) after December 31, 2000.

(2) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, is classified as a stationary gas-fired engine for the purposes of this chapter.

(3) Changes after December 31, 2000, to a unit subject to an emission specification in this section that result in increased NO_x emissions from a unit not subject to an emission specification of this section, such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator with a maximum rated capacity of less than 40 MMBtu/hr, or a flare, are [is] only allowed if:

(A) the increase in NO_x emissions at the unit not subject to this section is determined using a CEMS or PEMS that meets the requirements of §117.440 of this title, or through stack testing that meets the requirements of §117.435 of this title; and

(B) emission credits equal to the increase in NO_x emissions at the unit not subject to this section are obtained and used in accordance with §117.9800 of this title [(relating to Use of Emission Credits for Compliance)].

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

(5) The availability under subsection (a)(14) [(b)(14)] of this section of an emission specification for units with an annual capacity factor of 0.0383 or less is based on the unit's status as of [on] December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (a)(14) [(b)(14)] of this section than would otherwise apply to the unit.

[(6) This subsection does not apply to stationary, reciprocating internal combustion engines subject to subsection (a) of this section until the compliance date specified in §117.9030(b) of this title.]

(f) [(g)] Operating restrictions. No person may start or operate any stationary diesel or dual-fuel engine for testing or maintenance of the engine between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted from April 1 through October 31.

§117.423. Source Cap.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.405 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration), by achieving equivalent NO_x emission reductions obtained by compliance with a source cap emission limitation in accordance with the requirements of this section. Each equipment category at a source whose individual emission units would otherwise be subject to the NO_x emission specifications of §117.405 or §117.410 of this title may be included in the source cap. Any equipment category included in the source cap must include all emission units belonging to that category. Equipment categories include, but are not limited to, the following: steam generation, electrical generation, and units with the same product outputs, such as ethylene cracking furnaces. All emission units not included in the source cap must comply with the requirements of §117.405 or §117.410 of this title.

(b) The source cap allowable mass emission rate must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.423(b)(1)
[~~Figure: 30 TAC §117.423(b)(1)~~]

(2) A maximum daily cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.423(b)(2) (No change.)

(3) Each emission unit included in the source cap is subject to the requirements of both paragraphs (1) and (2) of this subsection at all times.

(4) For stationary internal combustion engines, the source cap allowable emission rate must be calculated in pounds per hour using the following equation.
Figure: 30 TAC §117.423(b)(4)
[~~Figure: 30 TAC §117.423(b)(4)~~]

(5) For stationary gas turbines, the source cap allowable emission rate must be calculated in pounds per hour using the following equations.
Figure: 30 TAC §117.423(b)(5)
[~~Figure: 30 TAC §117.423(b)(5)~~]

(c) The owner or operator who elects to comply with this section shall:

(1) for each unit included in the source cap, either:

(A) install, calibrate, maintain, and operate a continuous exhaust NO_x monitor, carbon monoxide (CO) monitor, an oxygen (O_2) (or carbon dioxide (CO_2)) diluent monitor, and a totalizing fuel flow meter in accordance with the requirements of §117.440 of this title (relating to Continuous Demonstration of Compliance). The required continuous emissions monitoring systems (CEMS) and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel use for each affected unit and must be used to demonstrate continuous compliance with the source cap;

(B) install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS) and a totalizing fuel flow meter in accordance with the requirements of §117.440 of this title. The required PEMS and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and must be used to demonstrate continuous compliance with the source cap; or

(C) for units not subject to continuous monitoring requirements, use the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.435(d) of this title (relating to Initial Demonstration of Compliance) in lieu of CEMS or PEMS. Emission rates for these units are limited to the maximum emission rates obtained from testing conducted under §117.435(d) of this title; and

(2) for each operating unit equipped with CEMS, either use a PEMS in accordance with §117.440 of this title, or the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.435(d) of this title, to provide emissions compliance data during periods when the CEMS is off-line. The methods specified in 40 Code of Federal Regulations §75.46 must be used to provide emissions substitution data for units equipped with PEMS.

(d) The owner or operator of any units subject to a source cap shall maintain daily records indicating the NO_x emissions from each unit [~~source~~] and the total fuel usage for each unit and include a total NO_x emissions summation and total fuel usage for all units under the source cap on a daily basis. Records must also be retained in accordance with §117.445 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(e) The owner or operator of any units operating under this provision shall report any exceedance of the source cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.445 of this title.

(f) The owner or operator shall demonstrate initial compliance with the source cap in accordance with the schedule specified in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(g) For compliance with §117.405 or §117.410 of this title, a unit that has been permanently retired or decommissioned and rendered inoperable may be included in the source cap under the following conditions.

(1) Permanent shutdowns must have occurred after December 31, 2012, for units subject to §117.405 of this title, and December 31, 2000, for units subject to §117.410 of this title.

(2) The source cap emission limit for retired units is calculated in accordance with subsection (b) of this section.

(3) The actual heat input must be calculated according to subsection (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 2012, and December 31, 2013, for units subject to §117.405 of this title, and between January 1, 2000, and December 31, 2001, for units subject to §117.410 of this title, the actual heat input must be the average daily heat input for the continuous time period that the unit was in service, consistent with the heat input used to represent the unit's emissions in the 2012 modeling inventory for units subject to §117.405 of this title, and in the 2000 attainment demonstration modeling inventory for units subject to §117.410 of this title. The maximum heat input must be the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period.

(4) The owner or operator shall certify the unit's operational level and maximum rated capacity.

(5) Emission reductions from permanent shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(h) An owner or operator who chooses to use the source cap option shall include in the initial control plan, if required to be filed under §117.450 of this title (relating to Initial Control Plan Procedures), a plan for initial compliance. The owner or operator shall include in the initial control plan the identification of the election to use the source cap procedure as specified in this section to achieve compliance with this section and shall specifically identify all sources that will be included in the source cap. The owner or operator shall also include in the initial control plan the method of calculating the actual heat input for each unit included in the source cap, as specified in subsection (b)(1) of this section.

(i) For the purposes of determining compliance with the source cap emission limit, the contribution of each affected unit that is operat-

ing during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate, as measured by the initial demonstration of compliance, for that unit, unless the owner or operator provides data demonstrating to the satisfaction of the executive director that actual emissions were less than maximum emissions during such periods.

§117.425. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of the carbon monoxide (CO) or ammonia specifications of §117.405(d) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.410(c) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstrations), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.405(d) or §117.410(c) [~~§117.410(d)~~] of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission specification the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.405 or §117.410 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through plant-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. 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 division [~~(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources)~~].

§117.430. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the source cap emission limits of §117.423 of this title (relating to Source Cap) in compliance with those limitations.

(b) All units subject to the emission specifications of §117.405 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.410 [~~§117.410(a) or (b)~~] of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) or §117.423 of this title must be operated so as to minimize nitrogen oxides (NO_x) [~~NO_x~~] emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each boiler, except for wood-fired boilers, must be operated with oxygen (O_2), carbon monoxide (CO), or fuel trim.

(2) Each boiler and process heater controlled with forced draft flue gas recirculation (FGR) to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(3) Each boiler and process heater controlled with induced draft FGR to reduce NO_x emissions must be operated such that the operation of FGR over the operating range is not restricted by artificial means.

(4) Each unit controlled with steam or water injection must be operated such that injection rates are maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity (corrected to 15% O_2 on a dry basis for stationary gas turbines).

(5) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(6) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission specifications.

(7) Each stationary internal combustion engine must be checked for proper operation of the engine according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).

§117.435. Initial Demonstration of Compliance.

(a) The owner or operator of any unit subject to the emission specifications of this division [~~(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources)~~] shall test the unit as follows.

(1) The unit must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions while firing gaseous fuel or, as applicable, liquid and solid fuel.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) Initial demonstration of compliance testing must be performed in accordance with the schedule specified in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(b) The initial demonstration of compliance tests required by subsection (a) of this section must use the methods referenced in subsection (d) or (e) of this section and must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods.

(c) Any continuous emissions monitoring system (CEMS) or any predictive emissions monitoring system (PEMS) required by §117.440 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before conducting testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification [~~relative accuracy test audit~~] and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Compliance with the emission specifications of this division for units operating without CEMS or PEMS must be demonstrated according to the requirements of §117.8000 of this title (relating to Stack Testing Requirements).

(e) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.440 of this title, must be demonstrated after monitor certification testing using the CEMS or PEMS as follows.

(1) For boilers and process heaters complying with a NO_x emission specification [~~specifications~~] in pounds per million British

thermal units (lb/MMBtu) on a rolling 30-day average, NO_x emissions from the unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) For units complying with a NO_x emission specification on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable is used to determine compliance with the NO_x emission specification.

(3) For units complying with a CO emission specification, on a rolling 24-hour average, any 24-hour period is used to determine compliance with the CO emission specification.

(4) For units complying with §117.423 of this title (relating to Source Cap) a rolling 30-day average of total daily pounds of NO_x emissions from the units are monitored (or calculated in accordance with §117.423(c) of this title) for 30 successive source operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission limit. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(f) Compliance stack test reports must include the information required in §117.8010 of this title (relating to Compliance Stack Test Reports).

§117.440. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator must continuously operate the totalizing fuel flow meter at least 95% of the time when the unit is operating during[~~, averaged over~~] a calendar year. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) The units are the following units subject to §117.405 (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstrations):

(A) boilers (excluding wood-fired boilers that must comply by maintaining records of fuel usage as required in §117.445(f) of this title (relating to Notification, Recordkeeping, and Reporting Requirements) or monitoring in accordance with paragraph (2)(A) of this subsection);

(B) process heaters;

(C) duct burners used in turbine exhaust ducts;

(D) stationary, reciprocating internal combustion engines;

(E) stationary gas turbines;

(F) lime kilns

(G) brick and ceramic kilns;

(H) heat treating furnaces;

(I) reheat furnaces;

(J) lead smelting blast (cupola) and reverberatory furnaces;

(K) glass and fiberglass/mineral wool melting furnaces;

(L) incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator, provided that fuel usage is quantified using good engineering practices, including calculation methods in general use and accepted in new source review permitting in Texas. All other fuel and vapor streams must be monitored in accordance with this subsection);

(M) gas-fired glass, fiberglass, and mineral wool curing ovens;

(N) natural gas-fired ovens and heaters; and

(O) natural gas-fired dryers used in organic solvent, printing ink, clay, brick, ceramic, and calcining and vitrifying processes.

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (f) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (f) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.

(D) Stationary reciprocating internal combustion engines and gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 million British thermal units per hour (MMBtu/hr); and

(B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except:

(i) as provided in subsection (g) of this section; and

(ii) for process heaters operating with a carbon dioxide (CO_2) CEMS for diluent monitoring under subsection (f) of this section.

(2) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (f) of this section if O_2 is the monitored diluent under that subsection.

However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (f) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) units with a rated heat input greater than or equal to 100 MMBtu/hr that are subject to §117.405(a) or (b) or §117.410(a) [~~§117.410(b)~~] of this title;

(B) stationary gas turbines with a megawatt (MW) rating greater than or equal to 30 MW operated more than 850 hours per year;

(C) units that use a chemical reagent for reduction of NO_x;

(D) units that the owner or operator elects to comply with the NO_x emission specifications of §117.405(a) or (b) of this title or §117.410(a) [~~§117.410(b)~~] of this title using a pound per MMBtu (lb/MMBtu) limit on a 30-day rolling average;

(E) lime kilns; and

(F) brick kilns and ceramic kilns.

(2) Units subject to the NO_x CEMS requirements of 40 CFR Part 75 are not required to install CEMS or PEMS under this subsection.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1340(d) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.435(e) of this title (relating to Initial Demonstration of Compliance).

(d) Ammonia monitoring requirements. The owner or operator of any unit subject to §117.405(a) or (b) or §117.410(a) [~~§117.410(b)~~] of this title and the ammonia emission specification of §117.405(d)(2) or §117.410(c)(2) of this title shall monitor ammonia emissions from the unit according to the requirements of §117.8130 of this title (relating to Ammonia Monitoring).

(e) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(f) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(2) The PEMS must meet the requirements of §117.8100(b) of this title.

(h) Engine monitoring. The owner or operator of any stationary gas engine subject to the emission specifications of this division shall stack test engine NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(i) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.403(a)(7)(D), (8), or (9) or (b)(2)(D) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.

(j) Data used for compliance. After the initial demonstration of compliance required by §117.435 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.405(a) or (b) or §117.410(a) [~~or (b)~~] of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the unit [~~source~~] is in compliance with applicable emission specifications.

(k) Testing requirements.

~~[(1) The owner or operator of units that are subject to the emission specifications of §117.410(a) of this title shall test the units as specified in §117.435 of this title in accordance with the schedule specified in §117.9030(a) of this title.]~~

(1) [~~(2)~~] The owner or operator of units that are subject to the emission specifications of §117.405(a) or (b) or §117.410(a) [~~§117.410(b)~~] of this title shall test the units as specified in §117.435 of this title in accordance with the applicable schedule specified in §117.9030 [~~§117.9030(b)~~] of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(2) [~~(3)~~] The owner or operator of any unit not equipped with CEMS or PEMS that are subject to the emission specifications of §117.405(a) or (b) of this title or §117.410(a) [~~§117.410(b)~~] of this title shall retest the unit as specified in §117.435 of this title within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

§117.445. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shut-

down events and maintained for a period of at least two years. Records must be available for inspection by the executive director, the United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b) Notification. The owner or operator of a unit subject to the emission specifications of §117.405(a) or (b) of this title (relating to Emission Specifications for Reasonably Available Control Technology) or §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall submit written notification of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.440 of this title (relating to Continuous Demonstration of Compliance) or any testing conducted under §117.435 of this title (relating to Initial Demonstration of Compliance) at least 15 days in advance of the date of the RATA or testing to the appropriate regional office and any local air pollution control agency having jurisdiction.

[(b) Notification. The owner or operator of an affected source shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:]

[(1) for units subject to the emission specifications of §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration):]

[(A) verbal notification of the date of any testing conducted under §117.435 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and]

[(B) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.440 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and]

[(2) for units subject to the emission specifications of §117.410(b) of this title, written notification of any CEMS or PEMS RATA conducted under §117.440 of this title or any testing conducted under §117.435 of this title at least 15 days in advance of the date of the RATA or testing.]

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.435 of this title and any CEMS or PEMS RATA conducted under §117.440 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the compliance schedule specified in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS or PEMS under §117.440 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division [(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources)] and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For units complying with §117.423 of this title (relating to Source Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period when the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or PEMS downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports)* must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Reporting for engines. The owner or operator of any gas-fired engine subject to the emission specifications in §117.405 or §117.410 of this title shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions (based on the quarterly emission checks of §117.430(b)(7) of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.440(h) of this title, computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division [(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources)] shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive

director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit subject to §117.440(a) of this title, records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with §117.440 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a block one-hour average; or

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a daily or rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units (lb/MMBtu) heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.430(b)(7) of this title; and

(ii) §117.440(h) of this title;

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken; and

(C) daily average horsepower and total daily hours of operation for each engine that the owner or operator elects to use the alternative monitoring system allowed under §117.440(a)(2)(D) of this title;

(4) for units claimed exempt from emission specifications using the exemption of §117.403(a)(7)(D), (8), or (9) or (b)(2)(D) of this title (relating to Exemptions), records of monthly hours of operation, for exemptions based on hours per year of operation. In addition, for each turbine or engine claimed exempt under §117.403(a)(7)(D) or (b)(2)(D) of this title, written records must be maintained of the purpose of turbine or engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;

(5) records of ammonia measurements specified in §117.440(d) of this title;

(6) records of carbon monoxide measurements specified in §117.440(e) of this title;

(7) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS or PEMS;

(8) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.435 of this title;

(9) for each stationary diesel or dual-fuel engine, records of each time the engine is operated for testing and maintenance of the engine, including:

(A) date(s) of operation;

(B) start and end times of operation;

(C) identification of the engine; and

(D) total hours of operation for each month and for the most recent 12 consecutive months; and

(10) for lime kilns that comply with the alternative site-wide production rate weighted average emission specification in §117.410(a)(7)(A)(ii) [~~§117.410(b)(7)(A)(ii)~~] of this title, daily records of:

(A) average NO_x emission rates in pounds per ton (lb/ton) of calcium oxide (CaO) for each kiln;

(B) production rate of CaO for each kiln in tons per day; and

(C) site-wide production rate weighted average NO_x emission rate in lb/ton of CaO.

§117.450. Initial Control Plan Procedures.

(a) The owner or operator of any unit at a major source of nitrogen oxides (NO_x) in the Dallas-Fort Worth eight-hour ozone nonattainment area that is subject to §117.405(a) or (b) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.410(a) [~~§117.410(b)~~] of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall submit an initial control plan. The control plan must include:

(1) a list of all combustion units at the account that are listed in §117.405(a) or (b) or §117.410(a) [~~§117.410(b)~~] of this title. The list must include for each unit:

(A) the maximum rated capacity;

(B) anticipated annual capacity factor;

(C) estimated or measured NO_x emission data in the units associated with the category of equipment from §117.405(a) or (b) or §117.410(a) [~~§117.410(b)~~] of this title;

(D) the method of determination for the NO_x emission data required by subparagraph (C) of this paragraph;

(E) the facility identification number and emission point number as submitted to the [~~Industrial~~] Emissions Assessment Section of the commission; and

(F) the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit;

(2) identification of all units with a claimed exemption from the emission specifications of §117.405(a) or (b) or §117.410(a) [~~§117.410(b)~~] of this title and the rule basis for the claimed exemption;

(3) identification of the election to use the source cap emission limit as specified in §117.423 of this title (relating to Source Cap) to achieve compliance with this rule and a list of the units to be included in the source cap;

(4) a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

(5) a list of units requiring operating modifications to comply with §117.430(b) of this title (relating to Operating Requirements) and the type of modification to be applied for all such units, including an anticipated construction schedule;

(6) for units required to install totalizing fuel flow meters in accordance with §117.440(a) of this title (relating to Continuous Demonstration of Compliance), indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter; and

(7) for units required to install continuous emissions monitoring systems or predictive emissions monitoring systems in accordance with §117.440 of this title, indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter.

(b) The initial control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the [~~Chief Engineer's~~] Office of Air by the applicable date specified for initial control plans in §117.9030 [~~§117.9030(b)~~] of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

[~~(c) For units located in Dallas, Denton, Collin, and Tarrant Counties subject to §117.210 of this title (relating to Emission Specifications for Attainment Demonstration), the owner or operator may elect to submit the most recent revision of the final control plan required by §117.254 of this title (relating to Final Control Plan Procedures for Attainment Demonstration Emission Specifications) in lieu of the initial control plan required by subsection (a) of this section.~~]

§117.452. Final Control Plan Procedures for Reasonably Available Control Technology.

(a) The owner or operator of any unit subject to §117.405 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.405 of this title. The report must include:

(1) the section used to demonstrate compliance, either:

(A) §117.405 of this title;

(B) §117.423 of this title (relating to Source Cap); or

(C) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(2) the method of NO_x control for each unit;

(3) the emissions measured by testing required in §117.435 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the central or the regional office (or both), of any compliance stack test report or monitor certification report required by §117.435 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any unit with a claimed exemption from the emission specification of §117.405 of this title.

(b) For sources complying with §117.423 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the average daily heat input, H_i, specified in §117.423(b)(1) of this title;

(B) the maximum daily heat input, H_{mi}, specified in §117.423(b)(2) of this title;

(C) the method of monitoring emissions; and

(D) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the values of H_i and H_{mi}, specified in §117.423(b)(1) and (2) of this title.

(c) The report must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air by the applicable date specified for final control plans in §117.9030(a) of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with the source cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9030(a) of this title.

§117.454. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of any unit subject to §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration [~~Demonstrations~~]) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.410 of this title. The report must include:

(1) the section used to demonstrate compliance, either:

(A) §117.410 of this title;

(B) §117.423 of this title (relating to Source Cap); or

(C) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(2) the method of NO_x control for each unit;

(3) the emissions measured by testing required in §117.435 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the central or the regional office (or both), of any compliance stack test report or monitor certification [~~relative accuracy test audit~~] report required by §117.435 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any unit with a claimed exemption from the emission specification of §117.410 of this title.

(b) For sources complying with §117.423 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the average daily heat input, H_i, specified in §117.423(b)(1) of this title;

(B) the maximum daily heat input, H_{mi}, specified in §117.423(b)(2) [~~§117.423(b)(1)~~] of this title;

(C) the method of monitoring emissions; and

(D) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the values of H_i and H_{mi}, specified in §117.423(b)(1) and (2) of this title.

(c) The report must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the [~~Chief Engineer's~~] Office of Air by the applicable date specified for final control plans in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitor-

ing system or predictive emissions monitoring system and complying with the source cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9030 of this title.

§117.456. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the requirements and the final compliance dates of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(1) For sources complying with §117.405 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration), replacement new units may be included in the control plan.

(2) For sources complying with §117.423 of this title (relating to Source Cap), any new unit must be included in the source cap, if the unit belongs to an equipment category that is included in the source cap.

(3) The revision of the final control plan is subject to the review and approval of the executive director.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405983
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER C. COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2. DALLAS-FORT WORTH OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

30 TAC §§117.1100, 117.1103, 117.1105, 117.1110, 117.1115, 117.1120, 117.1125, 117.1135, 117.1140, 117.1145, 117.1152, 117.1154, 117.1156

(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, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repealed 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 repealed 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 repealed 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. The repealed 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 repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.1100. Applicability.

§117.1103. Exemptions.

§117.1105. Emission Specifications for Reasonably Available Control Technology (RACT).

§117.1110. Emission Specifications for Attainment Demonstration.

§117.1115. Alternative System-Wide Emission Specifications.

§117.1120. System Cap.

§117.1125. Alternative Case Specific Specifications.

§117.1135. Initial Demonstration of Compliance.

§117.1140. Continuous Demonstration of Compliance.

§117.1145. Notification, Recordkeeping, and Reporting Requirements.

§117.1152. Final Control Plan Procedures for Reasonably Available Control Technology.

§117.1154. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

§117.1156. Revision of Final Control Plan.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405984
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 4. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

30 TAC §§117.1303, 117.1310, 117.1325, 117.1335, 117.1340, 117.1345, 117.1350, 117.1354

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.1303. Exemptions.

(a) Emission specifications for attainment demonstrations. Units exempt from the provisions of §117.1310 and §117.1340 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration; and Continuous Demonstration of Compliance), except as specified in §117.1340(i) or (j) of this title, include the following:

~~[(1) any new auxiliary steam boiler or stationary gas turbines placed into service after November 15, 1992;]~~

(1) [~~(2)~~] any auxiliary steam boiler with an annual heat input less than or equal to $2.2(10^{11})$ British thermal units per year; or

(2) [~~(3)~~] stationary gas turbines and engines that are:

(A) used solely to power other engines or gas turbines during startups; or

(B) demonstrated to operate less than 850 hours per year, based on a rolling 12-month basis [~~average~~].

(b) Emergency fuel oil firing.

(1) The emissions specifications of §117.1310 of this title do not apply during an emergency operating condition declared by the Electric Reliability Council of Texas, or any other emergency operating condition that necessitates oil firing. All findings that emergency operating conditions exist are subject to the approval of the executive director.

(2) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction verbal notification as soon as possible but no later than 48 hours after declaration of the emergency. Verbal notification must identify the anticipated date and time oil firing will begin, duration of the emergency period, affected oil-fired equipment, and quantity of oil to be fired in each unit, and must be followed by written notification containing this information no later than five days after declaration of the emergency.

(3) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction final written notification as soon as possible but no later than two weeks after the termination of emergency fuel oil firing. Final written notification must identify the actual dates and times that oil firing began and ended, duration of the emergency period, affected oil-fired equipment, and quantity of oil fired in each unit.

§117.1310. Emission Specifications for Eight-Hour Attainment Demonstration.

(a) Nitrogen oxides (NO_x) emission specifications. The owner or operator of any utility boiler, auxiliary steam boiler, or stationary gas turbine subject to this division [~~(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources)~~] shall not allow the discharge into the atmosphere, emissions of NO_x in excess of the following:

(1) utility boilers:

(A) 0.06 pounds per million British thermal units (lb/MMBtu) heat input from utility boilers that are part of a small utility system, as defined in §117.10 of this title (relating to Definitions):

(i) on a rolling 24-hour average basis during the months of March through October of each calendar year; and

(ii) on a rolling 30-day average basis during the months of November, December, January, and February of each calendar year;

(B) 0.033 lb/MMBtu heat input from utility boilers that are part of a large utility system, as defined in §117.10 of this title:

(i) on a rolling 24-hour average basis during the months of March through October of each calendar year; and

(ii) on a rolling 30-day average basis during the months of November, December, January, and February of each calendar year;

(C) 0.50 pounds per megawatt-hour output on an annual average basis; or

(D) 0.033 lb/MMBtu heat input on a system-wide heat input weighted average basis for utility boilers that are part of a large utility system, as defined in §117.10 of this title:

(i) on a rolling 168-hour average basis for each hour during which fuel was combusted in any unit in the system; and

(ii) determined according to the following equation: Figure: 30 TAC §117.1310(a)(1)(D)(ii) (No change.)

(2) auxiliary steam boilers:

(A) 0.26 lb/MMBtu heat input on a rolling 24-hour average and 0.20 lb/MMBtu heat input on a 30-day rolling average while firing natural gas or a combination of natural gas and waste oil;

(B) 0.30 lb/MMBtu heat input on a rolling 24-hour averaging period while firing fuel oil only;

(C) the heat input weighted average of the applicable emission specifications specified in subparagraphs (A) and (B) of this paragraph on a rolling 24-hour averaging period while firing a mixture of natural gas and fuel oil, as follows:
Figure: 30 TAC §117.1310(a)(2)(C) (No change.)

(D) for each auxiliary steam boiler that is an affected facility as defined by New Source Performance Standards (NSPS) 40 Code of Federal Regulations Part 60, Subparts D, Db, or Dc, the applicable NSPS NO_x emission limit, unless the boiler is also subject to a more stringent permit emission limit, in which case the more stringent emission limit applies. Each auxiliary steam boiler subject to an emission specification under this subparagraph is not subject to the emission specifications of subparagraphs (A), (B), or (C) of this paragraph.

(3) stationary gas turbines:

(A) with a megawatt (MW) rating greater than or equal to 30 MW and an annual electric output in megawatt-hr (MW-hr) of greater than or equal to the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of:

(i) 42 parts per million by volume (ppmv) at 15% oxygen (O_2), dry basis, while firing natural gas; and

(ii) 65 ppmv at 15% O_2, dry basis, while firing fuel oil; and

(B) used for peaking service with an annual electric output in MW-hr of less than the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of:

(i) 0.20 lb/MMBtu heat input while firing natural gas; and

(ii) 0.30 lb/MMBtu heat input while firing fuel oil.

(b) Related emissions. The owner or operator of any unit subject to the emission specifications of subsection (a) of this section shall not allow emissions [~~emission~~] in excess of the following, except as provided in §117.1325 of this title (relating to Alternative Case Specific Specifications):

(1) for utility boilers or auxiliary steam boilers, carbon monoxide (CO) emissions of 400 ppmv at 3.0% O_2, dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units and 0.31 lb/MMBtu heat input for oil-fired units), based on:

(A) a block one-hour averaging period for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; and

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO;

(2) for any stationary gas turbine with a MW rating greater than or equal to 10 MW, CO emissions in excess of a block one-hour average of 132 ppmv at 15% O_2, dry basis; and

(3) for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions of 10 ppmv, at 3.0% O_2, dry, for utility boilers or auxiliary steam boilers and 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; and

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

~~[(1) carbon monoxide (CO):]~~

~~[(A) for utility boilers or auxiliary steam boilers, 400 ppmv at 3.0% O_2, dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units and 0.31 lb/MMBtu heat input for oil-fired units), based on:]~~

~~*[(i)* a one-hour average for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or]~~

~~*[(ii)* a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO; and]~~

~~[(B) for any stationary gas turbine with a MW rating greater than or equal to 10 MW, CO emissions in excess of a block one-hour average of 132 ppmv at 15% O_2, dry basis; and]~~

~~[(2) ammonia:]~~

~~[(A) for units that inject urea or ammonia into the exhaust stream for NO_x control, 10 ppmv, at 3.0% O_2, dry, for boilers and 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), based on:]~~

~~*[(i)* a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or]~~

~~*[(ii)* a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia; and]~~

~~[(B) for all other units, 20 ppmv based on a block one-hour averaging period.]~~

(c) Compliance flexibility.

(1) An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to comply with the NO_x emission specifications of this section.

(2) Section 117.1325 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.1325 of this title.

§117.1325. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of the carbon monoxide (CO) or ammonia emission specifications of §117.1310(b) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.1310(b) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.1310 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where

the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. 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 division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

§117.1335. Initial Demonstration of Compliance.

(a) The owner or operator of all units subject to the emission specifications of this division [~~(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources)~~] shall test the units as follows.

(1) The units must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) Testing must be performed in accordance with the schedules specified in §117.9130 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

(b) The tests required by subsection (a) of this section must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(c) Continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117.1340 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before conducting testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(d) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.1340 of this title must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS as follows.

(1) To comply with the NO_x emission specification in pounds per million British thermal units (lb/MMBtu) on a rolling 30-day average, NO_x emissions from a unit are monitored for 30 consecutive [~~successive~~] unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) To comply with the NO_x emission specification in lb/MMBtu on a rolling 24-hour average, NO_x emissions from a unit are monitored for 24 consecutive unit operating hours and the 24-hour average emission rate is used to determine compliance with the NO_x emission specification. The 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period. Compliance with the NO_x emission specification for fuel oil firing must be determined based on the first 24 consecutive operating hours a unit fires fuel oil.

(3) To comply with the NO_x emission specification in pounds per hour or parts per million by volume (ppmv) at 15% O_2 dry basis, on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable, after CEMS or PEMS certification testing required in §117.1340 of this title is used to determine compliance with the NO_x emission specification.

(4) To comply with the NO_x emission specification in lb/MMBtu on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable, after CEMS or PEMS certification testing required in §117.1340 of this title is used to determine compliance with the NO_x emission specification.

(5) [~~(4)~~] To comply with the NO_x emission specification in pounds per megawatt-hour output on an annual average basis, NO_x emissions from the unit are monitored in accordance with §117.1340(a) and (k) of this title. The annual average is calculated as the average of all hourly emissions [~~emission~~] data recorded by the monitoring system. The averaging period for demonstrating initial compliance with the emission specification in §117.1310(a)(1)(C) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) is from March 1, 2009, through February 28, 2010.

(6) To comply with the NO_x emission specification in lb/MMBtu on a rolling 168-hour average, NO_x emissions from all units in the system are monitored for 168 consecutive unit operating hours and the 168-hour average emission rate is used to determine compliance with the NO_x emission specification. The 168-hour average emission rate is calculated using the equation in §117.1310(a)(1)(D) of this title by calculating the system-wide heat input weighted average for each hour and then averaging the hourly data during the 168-hour test period.

(7) [~~(5)~~] To comply with the CO emission specification in ppmv [~~parts per million by volume~~] on a rolling 24-hour average, CO emissions from a unit are monitored for 24 consecutive unit operating hours and the rolling 24-hour average emission rate is used to determine compliance with the CO emission specification. The rolling 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period.

§117.1340. Continuous Demonstration of Compliance.

(a) Nitrogen oxides (NO_x) monitoring. The owner or operator of each unit subject to the emission specifications of this division [~~(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources)~~], shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS), predictive emissions monitoring system (PEMS), or other system specified in this section to measure NO_x on an individual basis. Each NO_x monitor (CEMS or PEMS) is subject to the relative accuracy test audit relative accuracy requirements of 40 Code of Federal Regulations (CFR) Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and pound per million British thermal units (lb/MMBtu)) do not apply. Each NO_x monitor must meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of ± 2.0 ppmv from the reference method mean value.

(b) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit subject to the

emission specifications of this division using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(c) Ammonia monitoring requirements. The owner or operator of units that are subject to the ammonia emission specification of §117.1310(b)(3) [~~§117.1310(b)(2)(A)~~] of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the ammonia monitoring requirements of §117.8130 of this title (relating to Ammonia Monitoring).

(d) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8110(a) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).

(e) Acid rain peaking units. The owner or operator of each peaking unit as defined in 40 CFR §72.2, may:

(1) monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO_x emission rates based on those procedures; or

(2) use CEMS or PEMS in accordance with this section to monitor NO_x emission rates.

(f) Auxiliary steam boilers. The owner or operator of each auxiliary steam boiler shall comply with the following to monitor NO_x emission rates:

(1) install, calibrate, maintain, and operate a CEMS in accordance with this section; or

(2) comply with the appropriate (considering boiler maximum rated capacity and annual heat input) industrial boiler monitoring requirements of §117.440 of this title (relating to Continuous Demonstration of Compliance).

(g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following. The required PEMS and fuel flow meters must be used to demonstrate continuous compliance with the emission specifications of this division.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division.

(2) The PEMS must meet the requirements of §117.8110(b) of this title.

(h) Stationary gas turbine monitoring. The owner or operator of each stationary gas turbine subject to the emission specifications of §117.1310 of this title, instead of monitoring emissions in accordance with the monitoring requirements of 40 CFR Part 75, may comply with the following monitoring requirements:

(1) for stationary gas turbines rated less than 30 megawatts (MW) or peaking gas turbines (as defined in §117.10 of this title (relating to Definitions)) that use steam or water injection to comply with the emission specifications of §117.1310(a)(3) of this title:

(A) install, calibrate, maintain and operate a CEMS or PEMS in compliance with this section; or

(B) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption. The system must be accurate to within ± 5.0%. The steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of §117.1310 of this title; and

(2) for all other stationary gas turbines subject to the emission specifications of §117.1310 of this title, install, calibrate, maintain, and operate a CEMS or PEMS in compliance with this section.

(i) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. In lieu of installing a totalizing fuel flow meter on a unit, an owner or operator may opt to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation. The units are:

(1) any unit subject to the emission specifications of §117.1310 of this title;

(2) any stationary gas turbine with an MW rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(3) any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.1303(a)(2) of this title (relating to Exemptions).

(j) Run time meters. The owner or operator of any stationary gas turbine using the exemption of §117.1303(a)(3) of this title shall record the operating time with an elapsed run time meter.

(k) Monitoring for output-based NO_x emission specification. The owner or operator of any unit that complies with the optional output-based NO_x emission specification in §117.1310(a)(1)(C) of this title, shall comply with the following:

(1) install, calibrate, maintain, and operate a system to continuously monitor, at least once every 15 minutes, and record the gross energy production of the unit in megawatt-hours;

(2) for each hour of operation, determine the total mass emission of NO_x, in pounds, from the unit using the NO_x monitoring requirements of subsection (a) of this section and the fuel monitoring requirements of subsection (i) of this section; and

(3) for each hour of operation, calculate and record the NO_x emissions in pounds per megawatt-hour using the monitoring specified in paragraphs (1) and (2) of this subsection.

(l) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the exemptions in §117.1303(a)(2) or (3) of this title, shall notify the executive director within seven days if the applicable limit is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(m) Data used for compliance. After the initial demonstration of compliance required by §117.1335 of this title (relating to Initial Demonstration of Compliance), the methods required in this section must be used to determine compliance with the emission specifications of §117.1310 of this title. Compliance with the emission specifications may also be determined at the discretion of the executive director using any commission compliance method.

§117.1345. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type fuel burned; gross and net energy production in megawatt-hours (MW-hr); and the date, time, and duration of the event.

(b) Notification. The owner or operator of a unit subject to the emission specifications of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources) shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) written notification of the date of any testing conducted under §117.1335 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date; and

(2) written notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) performance evaluation conducted under §117.1340 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.1335 of this title or any CEMS or PEMS performance evaluation conducted under §117.1340 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the appropriate compliance schedules specified in §117.9130 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system under §117.1340 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission limitations in this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations (CFR) §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.1340 of this title, excess emissions are computed as each one-hour period that the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial demonstration of compliance test required by §117.1335 of this title;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the[. ~~The~~] nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period when [~~that~~] the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports)* must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period or the CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain records of the data specified in this subsection. Records must be kept for a period of at least five years and made available for inspection by the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction upon request. Operating records for each unit must be recorded and maintained at a frequency equal to the applicable emission specification averaging period, or for units claimed exempt from the emission specifications based on low annual capacity factor, monthly. Records must include:

(1) emission rates in units of the applicable standards;

(2) gross energy production in MW-hr (not applicable to auxiliary steam boilers), except as specified in paragraph (8) of this subsection;

(3) quantity and type of each fuel burned;

(4) the injection rate of reactant chemicals (if applicable); [~~and~~]

(5) emission monitoring data, in accordance with §117.1340 of this title, including:

(A) the date, time, and duration of any malfunction in the operation of the monitoring system, except for zero and span checks, if applicable, and a description of system repairs and adjustments undertaken during each period;

(B) the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or operating parameter monitoring systems; and

(C) actual emissions or operating parameter measurements, as applicable;

(6) the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.1335 of this title;

(7) records of hours of operation;

(8) for any unit that the owner or operator elects to comply with the output-based emission specification in §117.1310(a)(1)(C) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration):

(A) hourly records of the gross energy production in MW-hr;

(B) records of hourly and annual average nitrogen oxides (NO_x) [~~NO_x~~] emissions in pounds per megawatt-hour (lb/MW-hr); and

(C) the averaging period for the annual average NO_x emissions in lb/MW-hr, for demonstrating continuous compliance is from January 1 through December 31 of each calendar year, beginning on January 1, 2010; and

(9) for any unit that the owner or operator elects to comply with the system-wide heat input weighted average emission specification in §117.1310(a)(1)(D) of this title:

(A) hourly records of average NO_x emissions in pounds per million British thermal units (lb/MMBtu) for each utility boiler in the system;

(B) hourly records of average heat input in million British thermal units per hour (MMBtu/hr) for each utility boiler in the system;

(C) hourly records of system-wide heat input weighted [~~weight~~] average NO_x emissions in lb/MMBtu; and

(D) hourly records of the rolling 168-hour average of the system-wide heat input weighted average NO_x emissions in lb/MMBtu.

§117.1350. Initial Control Plan Procedures.

(a) The owner or operator of any unit at a major source of nitrogen oxides (NO_x) in the Dallas-Fort Worth eight-hour ozone nonattainment area that is subject to §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall submit an initial control plan. The control plan must include:

(1) a list of all combustion units at the account that are listed in §117.1310 of this title. The list must include for each unit:

(A) the maximum rated capacity;

(B) anticipated annual capacity factor;

(C) estimated or measured NO_x emission data in the units associated with the category of equipment from §117.1310 of this title;

(D) the method of determination for the NO_x emission data required by subparagraph (C) of this paragraph;

(E) the facility identification number and emission point number as submitted to the [~~Industrial~~] Emissions Assessment Section of the commission; and

(F) the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit;

(2) identification of all units with a claimed exemption from the emission specifications of §117.1310 of this title and the rule basis for the claimed exemption;

(3) a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

(4) for units required to install totalizing fuel flow meters in accordance with §117.1340 of this title (relating to Continuous Demonstration of Compliance), indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter; and

(5) for units required to install continuous emissions monitoring systems or predictive emissions monitoring systems in accordance with §117.1340 of this title, indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter.

(b) The initial control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the [~~Chief Engineer's~~] Office of Air by the applicable date specified for initial control plans in §117.9130 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

[~~(c) For units located in Dallas, Denton, Collin, and Tarrant Counties subject to §117.1110 of this title (relating to Emission Specifications for Attainment Demonstration), the owner or operator may elect to submit the most recent revision of the final control plan required by §117.1154 of this title (relating to Final Control Plan Procedures for Attainment Demonstration Emission Specifications) in lieu of the initial control plan required by subsection (a) of this section.~~]

§117.1354. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of utility boilers listed in §117.1300 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit to the Office of Compliance and Enforcement, the appropriate regional office, and the [~~Chief Engineer's~~] Office of Air, a final control report to show compliance with the requirements of §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration). The report must include:

(1) the methods of NO_x control for each utility boiler;

(2) the emissions measured by testing required in §117.1335 of this title (relating to Initial Demonstration of Compliance);

(3) the submittal date, and whether sent to the central [~~Austin~~] or the regional office (or both), of any compliance stack test report or monitor certification [~~relative accuracy test audit~~] report required by §117.1335 of this title that is not being submitted concurrently with the final compliance report; and

(4) the specific rule citation for any utility boiler with a claimed exemption from the emission specification of §117.1310 of this title.

(b) The report must be submitted by the applicable date specified for final control plans in §117.9130 of this title (relating to Compliance Schedule Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405985
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER G. GENERAL MONITORING AND TESTING REQUIREMENTS
DIVISION 1. COMPLIANCE STACK TESTING AND REPORT REQUIREMENTS

30 TAC §117.8000

Statutory Authority

The amended 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 amended 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; 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 amended 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 amended 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 amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.8000. Stack Testing Requirements.

(a) When required by this chapter, the owner or operator of a unit subject to this chapter shall conduct testing according to the requirements of this section.

(b) The unit must be operated at the maximum rated capacity, or as near as practicable. Compliance must be determined by the average of three one-hour emission test runs. Shorter test times may be used if approved by the executive director.

(c) Testing must be performed using the following test methods:

(1) Test Method 7E or 20 (40 Code of Federal Regulations (CFR), Part 60, Appendix A) for nitrogen oxides (NO_x);

(2) Test Method 10, 10A, or 10B (40 CFR Part 60, Appendix A) for carbon monoxide (CO);

(3) Test Method 3A or 20 (40 CFR Part 60, Appendix A) for oxygen (O_2);

(4) for units that inject ammonia or urea to control NO_x emissions, the Phenol-Nitroprusside Method, the Indophenol Method, or the United States Environmental Protection Agency Conditional Test Method 27 for ammonia;

(5) Test Method 2 (40 CFR Part 60, Appendix A) for exhaust gas flow and following the measurement site criteria of Test Method 1, §11.1 (40 CFR Part 60, Appendix A), or Test Method 19 (40 CFR Part 60, Appendix A) for exhaust gas flow in conjunction with the measurement site criteria of Performance Specification 2, §8.1.3 (40 CFR Part 60, Appendix B); or

(6) American Society for Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition; ASTM Method D1826-88 or ASTM Method D3588-91 for calorific value; or alternate methods as approved by the executive director and the United States Environmental Protection Agency.

(d) United States Environmental Protection Agency-approved alternate test methods or minor modifications to the test methods specified in subsection (c) of this section may be used, as approved by the executive director, as long as the minor modifications meet the following conditions:

(1) the change does not affect the stringency of the applicable emission specification;

(2) the change affects only a single source or facility application.

(e) An owner or operator that chooses to install or relocate a boiler or process heater temporarily at an account for less than 60 consecutive calendar days may substitute the following in lieu of the requirements of subsections (b) - (d) of this section for stack testing required by this chapter. For the purposes of this subsection, the term "relocate" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a boiler or process heater from anywhere outside of that account.

(1) The owner or operator may use the results of previous testing conducted on the same boiler or process heater conducted according to subsections (b) - (d) of this section or a manufacturer's guarantee of performance. If previous testing is used, the owner or operator of the site temporarily installing the boiler or process heater shall maintain a record of the previous test report as specified by the recordkeeping requirements under this chapter applicable to the site.

(2) The owner or operator shall physically remove the boiler or process heater from the account no later than 60 consecutive calendar days after the unit was installed at the account or comply with the testing requirements as specified in subsections (b) - (d) of this section.

(3) Extensions to the 60 consecutive calendar days limitation of this subsection will not be provided.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405987
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER H. ADMINISTRATIVE PROVISIONS
DIVISION 1. COMPLIANCE SCHEDULES

30 TAC §117.9010, §117.9110

(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, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repealed 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 repealed 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 repealed 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. The repealed 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 repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.9010. Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources.

§117.9110. Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405988
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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30 TAC §117.9030, §117.9130

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.9030. Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources.

(a) Reasonably available control technology emission specifications.

(1) The owner or operator of any stationary source of nitrogen oxides (NO_x) in the Dallas-Fort Worth eight-hour ozone nonattainment area that is a major source of NO_x and is subject to §117.405(a) or (b) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) shall comply with the requirements of Subchapter B, Division 4 of this chapter (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources) as follows:

(A) submit the initial control plan required by §117.450 of this title (relating to Initial Control Plan Procedures) no later than June 1, 2016; and

(B) for units subject to the emission specifications of §117.405(a) or (b) of this title, comply with all other requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than January 1, 2017; and

(2) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of §117.405 of this title on or after the applicable compliance date specified in paragraph (1) of this subsection, shall comply with the requirements of Subchapter B,

Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

(3) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of a unit located at a major stationary source of NO_x located in Wise County is not required to comply with the requirements of Subchapter B, Division 4 of this chapter.

~~[(a) Increment of progress emission specifications. The owner or operator of any stationary, reciprocating internal combustion engine subject to §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the requirements of §117.410(a) of this title as soon as practicable, but no later than June 15, 2007 (the final compliance date). The owner or operator shall:]~~

~~[(1) install all nitrogen oxides (NO_x) abatement equipment and implement all NO_x control techniques no later than June 15, 2007; and]~~

~~[(2) submit to the executive director:]~~

~~[(A) for units operating without a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the results of applicable tests for initial demonstration of compliance as specified in §117.435 of this title (relating to Initial Demonstration of Compliance) as early as practicable, but in no case later than June 15, 2007;]~~

~~[(B) for units operating with a CEMS or PEMS in accordance with §117.440 of this title (relating to Continuous Demonstration of Compliance), the results of:]~~

~~*[(i)* the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources);]~~

~~*[(ii)* the applicable tests for the initial demonstration of compliance as specified in §117.435 of this title; and]~~

~~*[(iii)* no later than:]~~

~~*[(I)* June 15, 2007, for units complying with the NO_x emission limit on an hourly average; and]~~

~~*[(II)* June 15, 2007, for units complying with the NO_x emission limit on a rolling 30-day average;]~~

~~[(C) a final control plan for compliance in accordance with §117.454 of this title (relating to Final Control Plan Procedures for Attainment Demonstration Emission Specifications), no later than January 1, 2008; and]~~

~~[(D) the first semiannual report required by §117.445(d) or (e) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), covering the period June 15, 2007, through December 31, 2007, no later than January 31, 2008.]~~

(b) Eight-hour ozone attainment demonstration emission specifications.

(1) The owner or operator of any stationary source of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area that is a major source of NO_x and is subject to §117.410(a) [~~§117.410(b)~~] of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the requirements of Subchapter B, Division 4 of this chapter [~~(relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources)~~] as follows:

(A) submit the initial control plan required by §117.450 of this title [~~(relating to Initial Control Plan Procedures)~~] no later than June 1, 2008; and

(B) for units subject to the emission specifications of §117.410(a) [~~§117.410(b)~~] of this title, comply with all other requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than:

(i) March 1, 2009, for units subject to §117.410(a)(1) [~~§117.410(b)(1)~~], (2), (4), (5), (6), (7)(A), (8), (10), and (14) of this title;

(ii) March 1, 2010, for units subject to §117.410(a)(3) [~~§117.410(b)(3)~~], (7)(B), (9), (11), (12), and (13) of this title;

(C) for diesel and dual-fuel engines, comply with the restriction on hours of operation for maintenance or testing in §117.410(f) [~~§117.410(g)~~] of this title, and associated recordkeeping in §117.445(f)(9) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), as soon as practicable, but no later than March 1, 2009; and

(D) for any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.403(a)(7)(D), (8), or (9) of this title (relating to Exemptions), comply with the run time meter requirements of §117.440(i) of this title (relating to Continuous Demonstration of Compliance), and recordkeeping requirements of §117.445(f)(4) of this title, as soon as practicable, but no later than March 1, 2009.

(2) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter B, Division 4 of this chapter on or after the applicable compliance date specified in paragraph (1) of this subsection, shall comply with the requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

§117.9130. Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources.

(a) Except as specified in subsection (b) of this section, the [~~The~~] owner or operator of each electric utility in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County [~~the Dallas-Fort Worth eight-hour ozone nonattainment area~~] shall comply with the requirements of Subchapter C, Division 4 of this chapter (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources) as soon as practicable, but no later than as follows:

(1) submit the initial control plan required by §117.1350 of this title (relating to Initial Control Plan Procedures) no later than June 1, 2008; and

(2) comply with all other requirements of Subchapter C, Division 4 of this chapter as soon as practicable, but no later than March 1, 2009.

(b) The owner or operator of each auxiliary steam boiler or stationary gas turbine placed into service after November 15, 1992 in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County shall comply with the requirements of Subchapter C, Division 4 of this chapter as soon as practicable, but no later than as follows:

(1) submit the initial control plan required by §117.1350 of this title no later than June 1, 2016; and

(2) comply with all other requirements of Subchapter C, Division 4 of this chapter as soon as practicable, but no later than January 1, 2017.

(c) The owner or operator of each electric utility in Wise County shall comply with the requirements of Subchapter C, Division 4 of this chapter as soon as practicable, but no later than as follows:

(1) submit the initial control plan required by §117.1350 of this title no later than June 1, 2016; and

(2) comply with all other requirements of Subchapter C, Division 4 of this chapter as soon as practicable, but no later than January 1, 2017.

(d) [~~(b)~~] The owner or operator of each electric utility [~~any unit~~] in the Dallas-Fort Worth eight-hour ozone nonattainment area of nitrogen oxides that becomes subject to the requirements of Subchapter C, Division 4 of this chapter on or after the applicable compliance date specified in subsection (a), (b), or (c) of this section [~~March 1, 2009~~], shall comply with the requirements of Subchapter C, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

(e) Upon the date the commission publishes notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard, the owner or operator of an electric utility located in Wise County is not required to comply with the requirements of Subchapter C, Division 4 of this chapter.

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405996
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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DIVISION 2. COMPLIANCE FLEXIBILITY

30 TAC §117.9800, §117.9810

Statutory Authority

The amended 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 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 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. 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 amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017; and FCAA, 42 USC, §§7401 *et seq.*

§117.9800. Use of Emission Credits for Compliance.

(a) An owner or operator of a unit not subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) may meet emission control requirements of the sections specified in paragraphs (1) - (8) of this subsection, in whole or in part, by obtaining an emission reduction credit (ERC), mobile emission reduction credit (MERC), discrete emission reduction credit (DERC), or mobile discrete emission reduction credit (MDERC) in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading), unless there are federal or state regulations or permits under the same commission account number that contain a condition or conditions precluding such use:

(1) §§117.105, 117.405, or [~~117.205, 117.305,~~] 117.1005[~~, 117.1105, or 117.1205~~] of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT));

(2) §117.110 or §117.1010 [~~§§117.110, 117.210, 117.1010, or 117.1110~~] of this title (relating to Emission Specifications for Attainment Demonstration);

(3) §117.1015 [~~§§117.1015, 117.1115, or 117.1215~~] of this title (relating to Alternative System-Wide Emission Specifications);

(4) §117.115 [~~§§117.115, 117.215, or 117.315~~] of this title (relating to Alternative Plant-Wide Emission Specifications);

(5) §§117.123, [~~117.223, 117.323,~~] 117.423, or 117.3120 [~~§117.3120~~] of this title (relating to Source Cap);

(6) §§117.2010, 117.3010, or 117.3110 of this title (relating to Emission Specifications);

(7) §§117.410, 117.1310, 117.2110, or 117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration); or

(8) §117.3123 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements).

(b) An owner or operator of a unit subject to §§117.320, 117.1020, [~~117.1120,~~] 117.1220, or 117.3020 of this title (relating to System Cap) may meet the emission control requirements of these sections in whole or in part, by complying with the requirements of Chapter 101, Subchapter H, Division 1 or 4 of this title, by obtaining an ERC, MERC, DERC, or MDERC, unless there are federal or state regulations or permits under the same commission account number that contain a condition or conditions precluding such use.

(c) For the purposes of this section, the term "reduction credit (RC)" refers to an ERC, MERC, DERC, or MDERC, whichever is applicable.

(d) Any lower nitrogen oxides (NO_x) emission specification established under this chapter for the unit or units using RCs requires the user of the RCs to obtain additional RCs in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title and/or otherwise reduce emissions prior to the effective date of such rule change. For units using RCs in accordance with this section that are subject to new, more stringent rule limitations, the owner or operator using the RCs shall submit a revised final control plan to the executive director in accordance with §§117.156, [~~117.256,~~] 117.356, 117.456, 117.1056, [~~117.1156,~~] 117.1256, and 117.1356 of this title (relating to Revision of Final Control Plan) to revise the basis for compliance with the emission specifications of this chapter. The owner or operator using the RCs shall submit the revised final control plan as soon as practicable, but no later than 90 days prior to the effective date of the new, more stringent rule. The owner or operator of the unit(s) currently using RCs shall calculate the necessary emission reductions per unit as follows.
Figure: 30 TAC §117.9800(d) (No change.)

§117.9810. Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP).

(a) An owner or operator of a unit located in the Dallas-Fort Worth eight-hour ozone nonattainment area or in the Houston-Galveston-Brazoria ozone nonattainment area that is not subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) may meet emission control requirements of the sections specified in paragraphs (1) and (2) [~~(1)~~ - ~~(6)~~] of this subsection, by obtaining emission reductions generated from the TERP as specified in subsection (b) of this section:

(1) §117.405 [~~§§117.205, 117.305, 117.1105, or 117.1205~~] of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT));

~~[(2) §117.210 or §117.1110 of this title (relating to Emission Specifications for Attainment Demonstration);]~~

~~[(3) §117.215 or §117.315 of this title (relating to Alternative Plant-Wide Emission Specifications);]~~

~~[(4) §117.1120 of this title (relating to System Cap);]~~

~~[(5) §117.223 or §117.323 of this title (relating to Source Cap); or]~~

(2) [~~(6)~~] §117.410 or §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration).

(b) An owner or operator may obtain emission reductions generated from TERP, as provided in subsection (a) of this section, if:

(1) the owner or operator of the site as defined in §122.10 of this title (relating to General Definitions) contributes to the TERP fund, $75,000 per ton of nitrogen oxides emissions used, not to exceed 25 tons per year or 0.5 tons per day on a site-wide basis;

(2) the owner or operator of the site demonstrates to the executive director that the site will be in full compliance with the applicable emission reduction requirements of this chapter no later than the fifth anniversary of the date that the emission reductions would otherwise be required;

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

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

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

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

(A) current technology;

(B) adaptability of technology to a particular source;

(C) age and projected useful life of a source; and

(D) cost benefits at the time of application.

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

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

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405997
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 239-2613

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER B. COMPENSATION

34 TAC §25.26

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.26 relating to annual compensation creditable for benefit calculation. Section 25.26 establishes how TRS will determine a member's annual compensation for benefit calculation purposes. The most basic requirement is that it is the sum of 12 months of compensation paid from September 1 through August 31 for 12 months of work. This rule describes the "standard" school year now used by TRS to determine annual compensation and service credit.

TRS adopted recent amendments to §25.26 as published in the December 12, 2014, issue of the *Texas Register* (39 TexReg 9705) and effective December 15, 2014 to minimize the impact on annual compensation caused by the change to a standard school year, which was enacted by the 83rd Legislature and codified at §821.001(15) of the Government Code. For salaries re-

ceived prior to the 2012-2013 school year, the current rule requires TRS to compare salary payments received during the standard school year with those received during the member's contract year, which may differ from the "standard" school year. Experience with the rule has proven the comparison of salaries received during the course of multiple school years to be complex and to substantially increase the amount of time required to manually prepare the member's retirement estimate.

The latest proposed amendments to §25.26 would limit the comparison of salaries to the 2012-2013 school year, which is the year of transition to the standard school year, to reduce the administrative burden of manually comparing prior contract year salaries and standard school year salaries for school years prior to the 2012-2013 school year. Specifically, the proposal would add subsection (f) to limit the comparison of salaries required in §25.26(b) to only the 2012-2013 school year rather than to all prior years. These proposed rule amendments will apply to the calculation of benefits for retirements and deaths occurring on or after April 1, 2015. The comparison will continue to be made for retirements and deaths occurring before April 1, 2015.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that proposed amended §25.26 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule. Any fiscal impact is a result of enacted legislation concerning the standard school year.

For each year of the first five years that the proposed amended rule will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to provide guidance in administering the provisions concerning standardized school year, which determines annual compensation.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amended rule will be in effect, there is minimal to no economic cost to entities or persons required to comply with the proposed amended rule. Although the rule as currently adopted was intended to minimize the impact to a member's annual compensation because of the legislative change in 2011 to the standard school year and the proposed amendments limit the comparison period from all years prior to the change to only the 2012-2013 school year, any economic costs to members primarily result from the enacted legislation. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposed amended rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments should be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter C, of the Government Code, concerning service retirement benefits.

§25.26. Annual Compensation Creditable for Benefit Calculation.

(a) Except as provided in subsection (b) of this section, for the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, annual compensation means creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year for service rendered during no more than a 12-month period. For the school year in which the member retires and except as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement shall be included in the annual compensation for that year. If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.

(b) For the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths before April 1, 2015 annual compensation paid prior to September 1, 2012 is the greater of:

(1) the amount of creditable compensation for service paid to a member of the retirement system during a 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(2) the amount of creditable compensation paid to the member during a 12-month period beginning September 1 and ending August 31 of the next calendar year.

(c) Unless otherwise provided by law or this chapter, a member shall receive credit only for annual compensation actually received.

(d) Compensation from which deductions for an Optional Retirement Program annuity were made shall not be included in annual compensation for benefit calculation purposes.

(e) If as a result of the requirement in §25.28(c) to report compensation in the month that it is paid rather than the month it is earned a member has only 11 months of salary credited by TRS in the 2014-2015 school year and that year of compensation would have been one of the years of compensation used in calculating the member's highest average salary for benefit calculation purposes, TRS will attribute an additional month of salary in the 2014-2015 school year for purposes of benefit calculation.

(f) For the purpose of computing the amount of retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths after March 31, 2015, annual compensation shall be calculated as follows:

(1) for the 2013-2014 school year and thereafter, annual compensation is the amount of creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year;

(2) for the 2012-2013 school year, annual compensation is the greater of:

(A) the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(B) the amount of creditable compensation paid to the member during a 12-month period beginning September 1, 2012 and ending August 31, 2013.

(3) for school years prior to the 2012-2013 school year annual compensation shall be the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year).

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406115
Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: January 25, 2015
For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.37

The Texas Board of Criminal Justice proposes amendments to §163.37, concerning Reports and Records. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years. The proposed amendments are necessary to clarify and provide more specific guidance to community supervision and corrections departments regarding required reports and other records.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, 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 each year of 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, will be to update and clarify the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. 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 §493.012 and §509.003.

Cross Reference to Statutes: Texas Government Code §492.013 and §509.003.

§163.37. Reports and Records.

(a) Case Records. Community Supervision and Corrections Department (CSCD) [~~CSCD~~] directors shall develop and maintain a case record management system for [~~on~~] offenders receiving any type of supervision by the CSCD. [~~Confidential items relating to medical and psychological information from any of these documents shall be handled in accordance with §163.41 of this title (relating to HIV-AIDS, Medical and Psychological information). All case records shall contain a written criminal history record or summary issued by a law enforcement agency. Confidentiality of case records shall be maintained in accordance with federal and state laws. Information may only be released under the circumstances as authorized by law or as directed by the court. Documentation of all sex offender registration shall be maintained as required by the Records Retention Act, Chapter 441, Texas Government Code.~~] Each case record shall contain:

(1) a court order placing the person on community supervision citing all conditions of community supervision;

(2) a chronological listing of all significant actions, decisions, services rendered, and assessments;

(3) a written criminal history record or summary issued by a law enforcement agency; [~~the pre/post-sentence investigation report (PSIR)~~];

(4) periodic evaluations; [~~and~~]

(5) if required, a pre-sentence investigation report (PSIR); and [~~other additional documents or information related to the offender as deemed appropriate by the CSO or CSCD Director.~~]

(6) other documents or information related to the defendant as deemed appropriate by the community supervision officer or CSCD director.

(b) Case Record Confidentiality. Confidentiality of case records shall be maintained in accordance with federal and state laws. Confidential items relating to medical and psychological information contained in the case record shall be handled in accordance with 37 Texas Administrative Code §163.41, relating to Medical and Psychological Information. Information shall only be released under the circumstances authorized by law or as directed by the court. [~~PSIR Confidentiality. Each PSIR prepared or approved by a CSO, and all information obtained in connection with PSIRs, is confidential and may be released only to those persons and under those circumstances as authorized by Texas Code of Criminal Procedure, article 42.12, §9 or as directed by the court having jurisdiction over the defendant.~~]

(c) Pre- and Post- Sentence Investigation Reports (Reports). Unless waived by the defendant, a PSIR shall be completed before the imposition of a sentence and in accordance with the Texas Code of Criminal Procedure, art. 42.12, §§9 and 9A. If a PSIR was not completed, a post sentence investigation report may be prepared, if directed by the judge, in accordance with Texas Code of Criminal Procedure, art. 42.12, §9(k). The reports and the information obtained in connection with them, are confidential and may be released only to those persons and under those circumstances as authorized by Texas Code of Criminal Procedure, art. 42.12, §9 or 9A. Information contained in the reports may be disclosed to the Department of Family and Protective Services to the extent that such information discloses that

a child's physical or mental health or welfare has been adversely affected by abuse or neglect. Copies of the completed reports shall be maintained in a defendant's case file and made available for periodic audits, reviews, or inspections by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) staff. [Pre/Post-Sentence Investigation Reports (PSIR). Pursuant to Texas Code of Criminal Procedure, article 42.12, §9 the CSCD director shall ensure a CSO prepares, (or approves, if prepared by others) a pre-sentence investigation report on a felony defendant unless the defendant's punishment is to be assessed by a jury, the defendant is convicted of or enters a plea of guilty or nolo contendere to capital murder, the only available punishment is imprisonment, or the judge is informed that a plea bargain agreement exists, under which the defendant agrees to a punishment of imprisonment, and the judge intends to follow the agreement. The CSCD director shall ensure that CSOs prepare (or review and approve), if prepared by another a post-sentence investigation report if the judge has requested the preparation of such a report in accordance with the provisions of Texas Code of Criminal Procedure, article 42.12 §9(k). A CSO shall prepare (or review and approve, if prepared by another) a PSIR on all misdemeanor defendants unless the defendant requests a report not be made and the court agrees, or if the court finds there is sufficient information in the record to permit the meaningful exercise of sentencing discretion.]

(d) PSIR Format. The TDCJ CJAD format shall be used for preparing PSIRs. A different format may be used if the content requirements comply with Texas Code of Criminal Procedure, art. 42.12., §§9 and 9A and the format is approved by both the TDCJ CJAD and the court having jurisdiction over the defendant. [CSCD directors shall ensure that CSOs and any other designated individuals who prepare, complete, review or approve PSIRs follow, at a minimum, an approved TDCJ-CJAD PSIR format in preparing felony PSIRs. CSOs may use a format other than the TDCJ-CJAD PSIR format as long as the content requirements outlined in Texas Code of Criminal Procedure, article 42.12, §9(a) and the preceding subsection (e) of this section are met and are in the format as approved both by TDCJ-CJAD and the court having jurisdiction of the defendant.]

[(e) Staffing for PSIR. CSCD directors shall have the necessary trained staff and resources to conduct pre-sentence investigations on all cases and shall provide written reports of the results for the courts for all felony and misdemeanor cases as required by the law and the court.]

[(f) Filing. Copies of the completed PSIRs shall be maintained in the individual offender's case file within the CSCD filing system and made available for periodic audits, reviews, or inspections by TDCJ-CJAD staff.]

(e) [(g)] Transfer to the TDCJ. Upon the revocation of community supervision or an adjudication of guilt, the CSCD shall forward to the county for inclusion in the defendant's penitentiary packet, a copy of the defendant's community supervision conditions, and if prepared, a copy of the victim's impact statement, and a copy of the pre- or post-sentence investigation report. The CSCD shall also forward any additional information that was prepared for a revocation or other hearing and information updating the PSIR. [If a PSIR has been prepared as set forth in subsections (c) and (d) of this section, the CSCD director shall forward to the county that transfers a defendant to the TDCJ that defendant's PSIR, as well as any other information required by law. To the extent it is available, CSOs shall also forward to the county that transfers the defendant any additional information that has been, prepared by a CSO for a revocation or other hearing updating information in the PSIRs.]

(f) [(h)] Interstate Transfer. CSCD directors shall use [utilize] uniform transfer procedures as provided by and approved by the TDCJ Interstate Compact Office [Unit].

(g) [(i)] Intrastate Transfer. CSCD directors shall use [utilize] uniform transfer procedures in accordance with 37 Texas Administrative Code §163.35(10), relating to Supervision. [as provided by and approved by the TDCJ-CJAD.]

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

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405951
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 25, 2015
For further information, please call: (936) 437-6700

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PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.3

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §211.3, concerning Public Information. Subsection (c)(2) is amended to remove the commission website address. Subsection (d) is amended to reflect the effective date of the changes.

This amendment is necessary to remove outdated information.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by removing outdated information.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission.

No other code, article, or statute is affected by this proposal.

§211.3. Public Information.

(a) All commission rules are published in the *Texas Register* as they are proposed and adopted.

(b) The commission will index, maintain, and make available for public inspection at the Austin headquarters a copy of:

(1) the current rules;

(2) all interpretive memoranda, policies, and procedures; and

(3) all final orders, decisions, and opinions of the commission.

(c) Members of the public may obtain:

(1) copies of the rules and other documents published by the commission at the cost recovery rate established in the fee schedule for printed documents which is available upon request from the commission;

(2) the rules and many other documents published by the commission are also available free of charge on the commission website[: ~~www.tcleose.state.tx.us~~];

(3) unpublished materials available under the Public Information Act at the rate established by the Texas Facilities Commission for such materials; and

(4) the jurisdictional complaint process, including:

(A) complaint intake;

(B) investigation;

(C) adjudication and relevant hearings;

(D) appeals;

(E) the imposition of sanctions; and

(F) public disclosure.

(d) The effective date of this section is May 1, 2015 [~~January 14, 2010~~].

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406109
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: May 1, 2015
For further information, please call: (512) 936-7713

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CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.43

The Texas Commission on Law Enforcement (Commission) proposes new §221.43, concerning Special Weapons and Tactics Proficiency.

The proposed new rule adds a special weapons and tactics proficiency certificate.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by recognizing proficiency based on law enforcement training, education, and experience.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.402, Proficiency Certificates, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.43. Special Weapons and Tactics Proficiency.

(a) To qualify for a special weapons and tactics proficiency certificate, an applicant must meet all proficiency requirements including:

(1) successful completion of an approved course; and

(2) certification from the appointing chief administrator as a special weapons and tactics unit member.

(b) To qualify for an intermediate special weapons and tactics proficiency certificate, an applicant must meet all proficiency requirements including:

(1) basic special weapons and tactics certification;

(2) at least two years experience on a special weapons and tactics unit; and

(3) 240 hours of training after the basic certificate.

(c) To qualify for an advanced special weapons and tactics proficiency certificate, an applicant must meet all proficiency requirements including:

(1) intermediate special weapons and tactics certificate;

(2) at least four years experience in special weapons and tactics; and

(3) successful completion of courses required by the commission.

(d) A certificate is valid for two years.

(e) To keep the certificate valid, the holder must successfully complete an update course once every two years.

(f) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(g) The effective date of this section is May 1, 2015.

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406110
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: May 1, 2015
For further information, please call: (512) 936-7713

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37 TAC §221.45

The Texas Commission on Law Enforcement (Commission) proposes new §221.45, concerning School Resource Officer Proficiency.

The proposed new rule adds a school resource officer proficiency certificate.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by recognizing proficiency based on law enforcement training, education, and experience.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.402, Proficiency Certificates, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.45. School Resource Officer Proficiency.

(a) To qualify for a school resource officer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) successful completion of an approved school resource officer course; and

(2) certification from the appointing chief administrator as a school resource officer.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) The effective date of this section is May 1, 2015.

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406111
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: May 1, 2015
For further information, please call: (512) 936-7713

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37 TAC §221.47

The Texas Commission on Law Enforcement (Commission) proposes new §221.47, concerning Canine Officer Proficiency.

The proposed new rule adds a canine officer proficiency certificate.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by recognizing proficiency based on law enforcement training, education, and experience.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.402, Proficiency Certificates, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.47. Canine Officer Proficiency.

(a) To qualify for a canine officer certificate, an applicant must meet all proficiency requirements including:

(1) successful completion of an approved canine officer course; and

(2) certification from the appointing chief administrator as a canine officer.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) The effective date of this section is May 1, 2015.

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

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406112
Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Proposed date of adoption: May 1, 2015
For further information, please call: (512) 936-7713

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 89. PROPERTY TAX LENDERS

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §89.102

The Office of Consumer Credit Commissioner withdraws the proposed amendments to §89.102 which appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484).

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406021
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: December 12, 2014
For further information, please call: (512) 936-7621

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SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §89.206

The Office of Consumer Credit Commissioner withdraws the proposed amendments to §89.206 which appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484).

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406026
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: December 12, 2014
For further information, please call: (512) 936-7621

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SUBCHAPTER E. DISCLOSURES

7 TAC §89.504

The Office of Consumer Credit Commissioner withdraws the proposed amendments to §89.504 which appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484).

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406029
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: December 12, 2014
For further information, please call: (512) 936-7621

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SUBCHAPTER F. COSTS AND FEES

7 TAC §89.601

The Office of Consumer Credit Commissioner withdraws the proposed amendments to §89.601 which appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484).

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406031
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: December 12, 2014
For further information, please call: (512) 936-7621

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SUBCHAPTER H. PAYOFF STATEMENTS

7 TAC §89.802

The Office of Consumer Credit Commissioner withdraws the proposed amendments to §89.802 which appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484).

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406035
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: December 12, 2014
For further information, please call: (512) 936-7621

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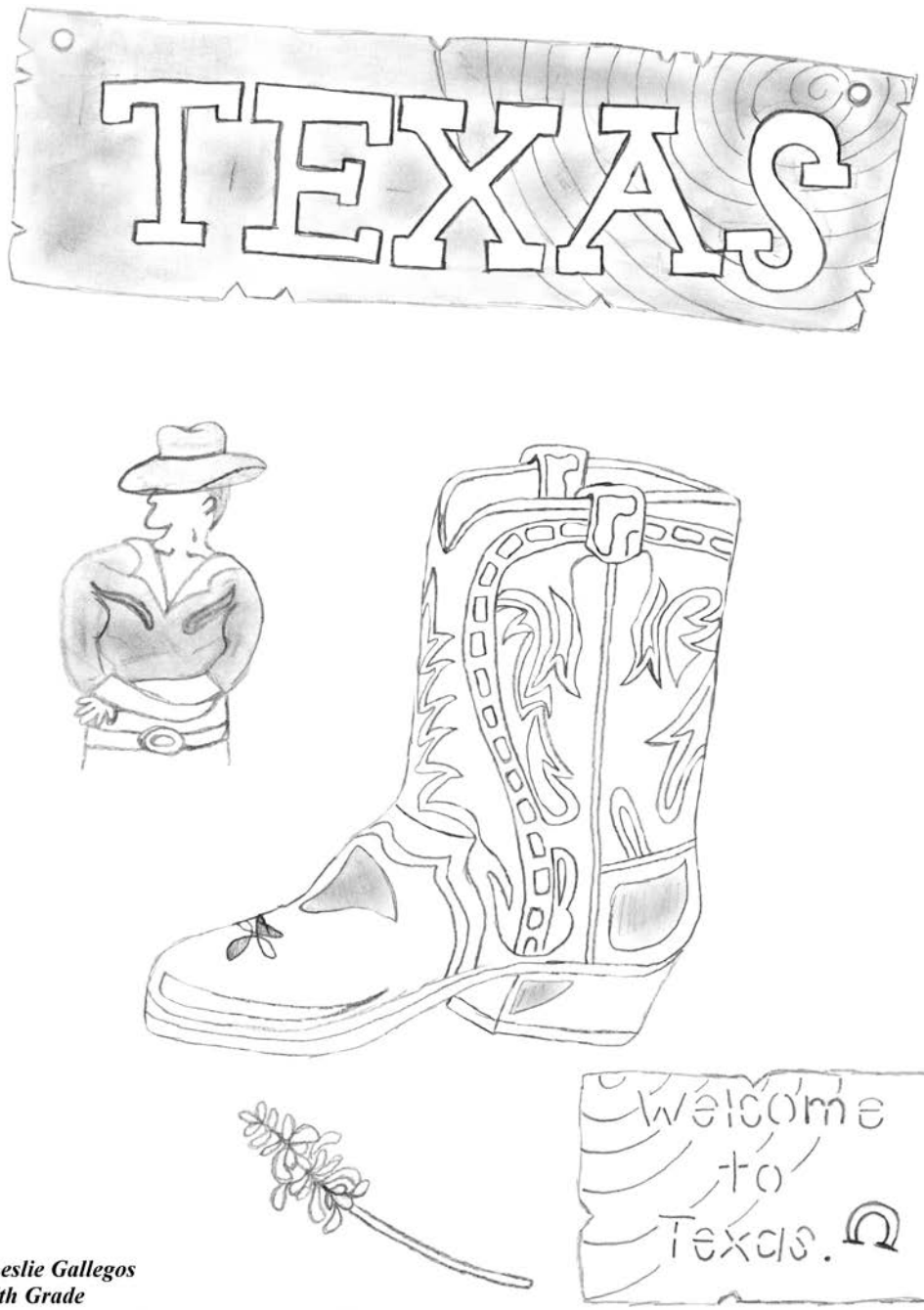

Leslie Gallegos
7th Grade

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 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor, Criminal Justice Division (CJD) adopts amendments to Chapter 3, §§3.3, 3.85, 3.2013, 3.2021, 3.2507, 3.2603, and 3.8305, without changes to the proposed text as published in the October 24, 2014, issue of the *Texas Register* (39 TexReg 8315).

The adopted amendment of §3.3: (1) updates the definitions of "equipment", "OMB", and "program income" to conform with the definitions of those terms in the Federal Uniform Administrative Requirements (2 CFR Part 200); and (2) adds definitions of "computing devices", "indirect costs", "information technology systems", and "supplies", to conform with the definitions of those terms in the Federal Uniform Administrative Requirements.

The adopted amendment of §3.85 differentiates between indirect cost rates that are negotiated between the applicant and the Federal government, and those negotiated between the applicant and the state cognizant agency.

The adopted amendment of §3.2013 increases the amount above which a grantee must obtain approval from CJD before making a procurement. The rule increases the amount from $100,000 to $150,000. The adopted amendment aligns the rule with the updated requirements of the Federal Uniform Administrative Requirements and those of the U.S. Department of Justice's Office of Justice Programs.

The adopted amendment of §3.2021 adds "non-profit corporations" back into the list of applicants that must provide CJD with an approved resolution from their governing boards as part of the application process. The adopted amendment ensures that the governing boards of non-profit corporations are involved in the application process.

The adopted amendment of §3.2507 clarifies the language of the rule and conforms it with language in CJD's *Guide to Grants*.

The adopted amendment of §3.2603 updates: (1) the Federal citation referencing the revised Federal Uniform Administrative Requirements; and (2) the state citation to use a more general reference to the "State Single Audit requirements" because the Uniform Grant Management Standards (UGMS) are currently being revised and the term "State Single Audit Circular" may not be used in a revised version of UGMS.

The adopted amendment of §3.8305 adds additional authority granted to the Specialty Courts Advisory Council by the legislature during the last legislative session pursuant to Senate Bill 462.

No comments were received regarding adoption of these amended rules.

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

1 TAC §3.3

The amendment of this rule is adopted under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The amended rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406085
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-1919

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SUBCHAPTER B. GRANT BUDGET REQUIREMENTS

1 TAC §3.85

The amendment of this rule is adopted under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The adopted rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adoption of this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406086
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-1919

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SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

1 TAC §3.2013, §3.2021

The amendment of these rules is adopted under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The adopted rules implement §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adoption of these rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406087
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-1919

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §3.2507

The amendment of this rule is adopted under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The adopted rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adoption of this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406088
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-1919

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SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §3.2603

The amendment of this rule is adopted under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The adopted rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406089
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-1919

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SUBCHAPTER G. CRIMINAL JUSTICE DIVISION BOARDS
DIVISION 3. SPECIALTY COURTS ADVISORY COUNCIL

1 TAC §3.8305

The amendment of this rule is adopted under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The adopted rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and

programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406090
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-1919

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 393. INFORMAL DISPUTE RESOLUTION AND INFORMAL RECONSIDERATION

1 TAC §393.1, §393.2

The Texas Health and Human Services Commission (HHSC) adopts amendments to §393.1, concerning Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), and new §393.2, concerning Informal Dispute Resolution for Assisted Living Facilities. The amendments and new rule are adopted without changes to the proposed text as published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8113) and will not be republished.

Background and Justification

House Bill (H.B.) 33, 83rd Legislature, Regular Session, 2013, amended §247.051 of the Texas Health and Safety Code. The amendment affects the informal dispute resolution (IDR) process that HHSC uses to address disputes between an assisted living facility (ALF) and the Department of Aging and Disability Services (DADS). H.B. 33 also amended §531.058 of Texas Government Code by changing the deadline for HHSC to complete the IDR process for ALFs from not later than the 30th day after the date of receipt of a request from an ALF for an IDR to not later than the 90th day after receipt of the IDR request. Additionally, H.B. 33 removed the requirement imposed by §531.058 of Texas Government Code and §247.051 of the Texas Health and Safety Code that required individuals representing providers in the IDR process to register with HHSC.

Moreover, H.B. 33 amended Health and Safety Code §247.051 to require the IDR process to give full consideration to all factual arguments raised during the IDR process that are supported by references to specific information that the ALFs or DADS relied on to dispute or support findings in the statement of violations that are provided by the proponent of the argument to HHSC. The bill requires IDR staff to give full consideration to the information provided by both parties.

As required by H.B. 33, in accordance with the Texas Government Code Chapter 2008, HHSC engaged in Negotiated Rulemaking to improve the IDR process for ALFs. Currently, §393.1 of the Texas Administrative Code (TAC) dictates the IDR process for three facility types: nursing facilities, ICF/IID, and ALFs. Under the negotiated rulemaking committee's proposal, there were significant differences between the proposed IDR process for ALFs and the other two providers. Therefore, although the negotiated rulemaking committee initially attempted to incorporate the newly proposed IDR process for ALFs within §393.1, it subsequently determined that having two separate rules--one that applies to nursing facilities and ICF/IID, and another that applies exclusively to ALFs--was preferable. The purpose of this bifurcation is to avoid confusion as to the IDR provisions for ALFs versus the other two providers.

HHSC agreed with the negotiated rulemaking committee and separated the rules. Thus, §393.1 as amended applies to nursing facilities and ICF/IIDs, while new §393.2 applies solely to ALFs. HHSC determined that, where possible, aligning the newly proposed IDR process for ALFs and the other providers is desirable and made additional changes to §393.1 based on the newly proposed §393.2.

Comments

The 30-day public comment period ended November 17, 2014. HHSC received comments from the State Long-term Care Ombudsman Program and AARP in support of the proposed rules.

Statutory Authority

The amendments and new rule are adopted under the authority granted to HHSC by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and Texas Health and Safety Code §247.051(a), which directs HHSC to adopt rules necessary to establish an informal dispute resolution process to address disputes between a facility and the department concerning a statement of violations prepared by the department.

The adopted amendments and new rule affect Texas Government Code, Chapter 531, and Texas Health and Safety Code, Chapter 247. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405943
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Chief Counsel
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Effective date: January 1, 2015
Proposal publication date: October 17, 2014
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

The Texas Department of Agriculture (department) adopts the repeal of 4 TAC Chapter 30, Community Development, in its entirety and new Chapter 30, Subchapters A and B. Specifically, the department adopts the repeal of Subchapter A, Texas Community Development Program, Division 1, §§30.1 - 30.11; and Division 2, §30.41; Subchapter B, State Office of Rural Health, Division 1, §§30.50 - 30.59; Division 2, §§30.70 - 30.74; Division 3, §§30.80 - 30.88; Division 4, §§30.90 - 30.103; Division 5, §§30.110 - 30.120; Division 6, §§30.130 - 30.137; Division 7, §§30.140 - 30.143; Division 8, §§30.150 - 30.154; Division 9, §§30.160 - 30.166; Division 10, §§30.170 - 30.172; and Division 11, §§30.180 - 30.185, without changes to the proposal as published in the October 24, 2014, issue of the *Texas Register* (39 TexReg 8320). The department also adopts new §§30.1 - 30.8, 30.20 - 30.31, 30.50 - 30.60, 30.62 - 30.64, 30.80 - 30.84, 30.100 - 30.103, 30.120, 30.121, 30.140 - 30.148, 30.160 - 30.168, 30.180 - 30.185, 30.200 - 30.203, 30.220 - 30.222, 30.240 - 30.244, 30.260 - 30.262, 30.280 - 30.283, and 30.300 - 30.302 without changes to the proposed text as published in the October 24, 2014, issue of the *Texas Register* (39 TexReg 8320). New §30.61 is adopted with changes to the proposal and will be republished.

The repeal of Subchapter A, Divisions 1 and 2, is necessary because the entire set of rules has been reformatted and renumbered. The department has determined that due to the extensive reorganization of Subchapter A, repeal of the entire subchapter and replacement with new rules is more efficient than adopting numerous amendments to make the required changes. The adopted rule actions will allow the department to make changes to existing provisions to ensure compliance with all statutory requirements, formalize existing policy and guidelines, reorganize rules in a more easily understandable and comprehensive format, and include revisions of necessary policy and administrative changes to further enhance operations.

The department adopts new sections to reorganize Subchapter A into the following five divisions: Division 1, General Provisions, §§30.1 - 30.8 ; Division 2, Application Information, §§30.20 - 30.31; Division 3, Administration of Program Funds, §§30.50 - 30.64 ; Division 4, Awards and Contract Administration, §§30.80 - 30.84; and Division 5, Reallocation of Program Funds, §§30.100 - 30.103.

The adopted new rules make changes to application requirements and selection criteria for each funding category under the Texas Community Development Block Grant (TxCDBG) Program to conform to the TxCDBG Action Plan, to make the application process more efficient, and to make the selection criteria more consistent with the overall goals and objectives of the TxCDBG Program. Additionally, in order to make the rules more concise and enable readers to easily locate program specific requirements, the adopted rules remove detailed and lengthy application and scoring information and refer readers to the applicable funding category's current application guide available on the department's website.

New Division 1, General Provisions, §§30.1 - 30.8, outlines the TxCDBG program objectives, defines important terms and phrases for the subchapter, describes the department's administrative appeals process, and provides other general provisions applicable to the TxCDBG Program, including an overview of TxCDBG funding categories and provisions related to conflict of interest and document retention.

New Division 2, Application Information, §§30.20 - 30.31, details uniform application and eligibility requirements applicable to all TxCDBG funding categories, clarifies citizen participation and public hearing requirements for applicants, and provides the bases for withdrawal of awards and penalties for providing false information in an application.

New Division 3, Administration of Program Funds, §§30.50 - 30.64, outlines selection criteria and specific requirements applicable to each TxCDBG program fund, including application cycles and limits on awards, if applicable. Section 30.61(f) is adopted with changes to clarify that the activities funded under the Urgent Need Fund must be completed within one year of the start date. This makes this section consistent with the time provided for completion of other urgent need projects.

New Division 4, Awards and Contract Administration, §§30.80 - 30.84, provides mandatory training requirements for contract administrators, clarifies the role and responsibilities of a third party administrator, and puts into rule current agency policy regarding enforcement actions which the department may take in the event a contractor fails to meet federal, state, local or contract requirements.

New Division 5, Reallocation of Program Funds, §§30.100 - 30.103, eliminates the marginal funding pool and makes changes to the reallocation and use of deobligated funds, unobligated funds, and program income.

The repeal of Subchapter B, Divisions 1 - 9, is necessary because the entire set of rules have been reformatted and renumbered. The department has determined that due to the extensive reorganization of Subchapter B, repeal of the entire subchapter and replacement with new rules is more efficient than adopting numerous amendments to make the required changes.

The repeal of Subchapter B, Division 10, is necessary because the critical access hospital board of trustee continuing education program has concluded and is no longer administered by the department.

The repeal of Subchapter B, Division 11, is necessary because the rural health information technology program has concluded and is no longer administered by the department.

The department adopts new rules to reorganize Subchapter B into the following ten divisions: Division 1, General Provisions, §30.120 and §30.121 ; Division 2, Outstanding Rural Scholar Recognition Program, §§30.140 - 30.148 ; Division 3, Medically Underserved Community-State Matching Incentive Program, §§30.160 - 30.168 ; Division 4, Texas Health Service Corps Program, §§30.180 - 30.185; Division 5, Rural Health Facility Capital Improvement Program, §§30.200 - 30.203; Division 6, Designation of a Hospital as a Rural Hospital, §§30.220 - 30.222; Division 7, Rural Communities Health Care Investment Program, §§30.240 - 30.244; Division 8, Rural Physician Relief Program, §§30.260 - 30.262; Division 9, Rural Technology Center Grant Program, §§30.280 - 30.283; and Division 10, Rural Physician Assistant Loan Reimbursement Program, §§30.300 - 30.302.

The adopted new rules in Subchapter B make changes to existing provisions to conform the rules to current policy and guidelines, remove detailed and lengthy application and selection information to make the rules more concise, include revisions of

necessary policy and administrative changes to further enhance operations, and refer readers to the applicable application guidelines for program specific requirements.

New Division 1, which consists of §30.120 and §30.121, defines important terms and phrases for the subchapter. In the current rules, each division includes a section for definitions of terms applicable to the specific title. New Division 1 includes all definitions of terms for the subchapter and removes definitions of terms already defined in Chapter 487 of the Texas Government Code.

New Division 2, which consists of §§30.140 - 30.148, describes general application and eligibility criteria for individuals to qualify for a forgivable loan award under the Outstanding Rural Scholar Recognition Program, and includes provisions relating to contract requirements, conditions of award, and repayment obligations for breach of contract. New Division 2 removes unnecessary provisions that simply restate the law.

New Division 3, which consists of §§30.160 - 30.168, describes general application and eligibility criteria for physicians to qualify for assistance under the Medically Underserved Community-State Matching Incentive Program, describes the department's administrative appeals process for award denials, and includes provisions relating to contract requirements, conditions of award, and penalties for breach of contract.

New Division 4, which consists of §§30.180 - 30.185, describes general application, eligibility, and registration requirements for resident physicians to qualify for a stipend under the Texas Health Service Corps Program, and includes provisions relating to conditions of award and penalties for breach of contract. New Division 4 removes unnecessary provisions that simply restate the law.

New Division 5, which consists of §§30.200 - 30.203, describes general application and eligibility criteria for public and non-profit hospitals located in a rural county in Texas to qualify for assistance under the Rural Health Facility Capital Improvement Program, and includes provisions relating to conditions of award. New Division 5 removes unnecessary provisions that simply restate the law.

New Division 6, which consists of §§30.220 - 30.222, describes the department's procedures for designating a hospital as a rural hospital in order for the hospital to qualify for assistance under certain federal programs.

New Division 7, which consists of §§30.240 - 30.244, describes general application and eligibility criteria for health professionals in medically underserved areas to qualify for assistance under the Rural Communities Health Care Investment Program, adds limits to awards and a requirement that grant recipients begin working in a qualifying community before award funds will be released, and includes provisions relating to contract requirements, conditions of award, and penalties for breach of contract.

New Division 8, which consists of §§30.260 - 30.262, describes general application and eligibility criteria for rural physicians to qualify for assistance under the Rural Physician Relief Program. New Division 8 removes unnecessary provisions that simply restate the law.

New Division 9, which consists of §§30.280 - 30.283, describes general application and eligibility criteria for public institutions of higher education, public high schools, and governmental entities located in a rural county in Texas to qualify for assistance under the Rural Technology Center Grant Program. New Division 9 removes unnecessary provisions that simply restate the law.

New Division 10, which consists of §§30.300 - 30.302, describes general application and eligibility criteria for physician assistants in rural health professional shortage areas and medically underserved areas in Texas to qualify for assistance under the Rural Physician Assistant Loan Reimbursement Program.

Public comments were received on proposed new Subchapter A, Division 3, from Kelly Davila, on behalf of the South Plains Association of Governments (SPAG). One comment was received from SPAG on proposed §30.52 regarding the changing of the application process, and states that the current application process has been found to be effective since businesses are more willing to provide financial data/statements if they know after the initial application if the community will actually be given a TCF award; however, if the revised process is similar to the current one in this manner, it will be efficient and acceptable. The department believes that in addition to simplifying the application process, an additional change is that communities will no longer be required to submit the financial data/statement of a business identified in their applications. The applicant must document evidence of underwriting the business at the local level and these records will be reviewed and retained locally only. Details of this process will be provided in the Application Guide.

Another comment was received from SPAG on proposed §30.60(c)(1), regarding disaster relief funding for droughts. The comments states that in contrast to other disaster events, a drought can occur over an extended period of time. This results in the possibility of a community requiring additional funds to cultivate additional sources of water if the drought persists and affects the source of water created with initial DR funds, which this rule change would prevent. It is suggested to have separate eligibility requirements for applications submitted for drought disasters and allow communities to be able to apply more than once for funding associated with that type of disaster. The department believes that a main goal of the DR Fund is to provide funding to fully mitigate the effects associated with a disaster event, and while drought was added as an eligible disaster, DR funding is not capable of fully, and continually, addressing the expansive effects of an extensive drought. Additionally, since it is awarded on a "first-come, first-serve" basis, DR funding must be provided as fairly as possible and must be responsive to many types of disastrous events that affect Texans in every corner of the state. In addition, there are other funding sources to address the continuing drought.

Another comment was received from SPAG on §30.60(f), regarding the timeline for completion of projects. The comment stated that certain aspects of a grant award (acquisition, coordinating with TCEQ, etc.) can delay a project and make it not possible to complete a project within one year. Also, communities would be required to incur major costs before applying for DR funding in order to facilitate the completion of their projects within a one-year period, which could put unnecessary and/or dangerous pressure on a community's current situation. This could also delay a community in applying for funding, which could prevent an applicant from receiving funding after preparing to apply since the program is awarded on a "first-come, first-serve" basis. The department believes that the situations that DR funds seek to mitigate are by their very nature urgent and unforeseen. Very often DR funds are simply reimbursing a community for work already performed; for example, the documented costs associated with the removal

and disposal of debris after a storm. In that example, it is not reasonable or safe for a community to delay debris removal until funding is obtained and must perform the work regardless of additional funding options. A two-year time period is not necessary to complete a project that is urgent and must be rectified as soon as possible. A drought is no exception. While still considered unforeseen in its severity, a drought provides a number of indicators well before a community finds itself in a disastrous situation and this could provide a community with an ample amount of time to prepare and execute a plan to address the situation (which could include applying for DR funding). Although project activities to address a drought are not the same as debris removal, for example, due to nature of the activities themselves, costs must be incurred prior to funding in both cases due to the urgency of proceeding with the project and many of these costs will be eligible for reimbursement if funded.

Public comments were received on proposed new Subchapter B from David McCarley, President of the Texas Dental Association. One comment was received regarding the Outstanding Rural Scholar Recognition Program, Subchapter B, Division 2, §§30.140 - 30.148. The commenter suggested that the appointment of members to the program's selection committee under §30.141 should include a dentist, and requested that special consideration be given to selecting students for the program that are seeking to become dentists. TDA recognizes the need for accessible dental services in underserved and rural areas. In 2011, the Texas Legislature during the 82nd Session eliminated the funding for the Outstanding Rural Scholar Recognition Program (ORSRP). Consequently, at this time no new applicants are being accepted into the ORSRP program. If funding becomes available for this program in the future, TDA will consider including a dentist in the selection committee as well as consider selecting students for the program that are seeking to become dentists. No changes have been made as a result of this comment.

Another comment was received supporting the Rural Communities Health Care Investment Program, Subchapter B, Division 7, §§30.240 - 30.244, as a means of helping rural communities recruit dentists to practice in medically underserved communities by providing loan reimbursement or stipends to dentists who serve or agree to serve in those communities. The commenter stated that loan repayment assistance is the fastest means of getting dentists into rural communities with dental needs. TDA recognizes the need to incentivize dental professionals to practice in underserved areas to increase access to dental care in rural Texas and agrees that recruitment and retention efforts should be focused towards rural locations and underserved areas.

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT PROGRAM

DIVISION 1. ALLOCATION OF PROGRAM FUNDS

4 TAC §§30.1 - 30.11

The repeal of Subchapter A, Division 1, Allocation of Program Funds, §§30.1 - 30.11, is adopted under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406037
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 2. CONTRACT ADMINISTRATION

4 TAC §30.41

The repeal of Subchapter A, Division 2, Contract Administration, §30.41, is adopted under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406038
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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SUBCHAPTER B. STATE OFFICE OF RURAL HEALTH

DIVISION 1. TEXAS OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM

4 TAC §§30.50 - 30.59

The repeal of Subchapter B, Division 1, §§30.50 - 30.59, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406039
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 2. TEXAS RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

4 TAC §§30.70 - 30.74

The repeal of Subchapter B, Division 2, §§30.70 - 30.74, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406040
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 3. TEXAS HEALTH SERVICE CORPS PROGRAM

4 TAC §§30.80 - 30.88

The repeal of Subchapter B, Division 3, §§30.80 - 30.88, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406042
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 4. MEDICALLY UNDERSERVED COMMUNITY-STATE MATCHING INCENTIVE PROGRAM

4 TAC §§30.90 - 30.103

The repeal of Subchapter B, Division 4, §§30.90 - 30.103, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406044
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 5. PERMANENT FUND FOR RURAL HEALTH FACILITY CAPITAL IMPROVEMENT

4 TAC §§30.110 - 30.120

The repeal of Subchapter B, Division 5, §§30.110 - 30.120, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406046

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 6. RURAL TECHNOLOGY CENTER GRANT PROGRAM

4 TAC §§30.130 - 30.137

The repeal of Subchapter B, Division 6, §§30.130 - 30.137, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406050
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 7. DESIGNATION OF A HOSPITAL AS A RURAL HOSPITAL

4 TAC §§30.140 - 30.143

The repeal of Subchapter B, Division 7, §§30.140 - 30.143, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406052
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 8. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

4 TAC §§30.150 - 30.154

The repeal of Subchapter B, Division 8, §§30.150 - 30.154, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406055
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 9. RURAL PHYSICIAN RELIEF PROGRAM

4 TAC §§30.160 - 30.166

The repeal of Subchapter B, Division 9, §§30.160 - 30.166, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406058
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 10. CRITICAL ACCESS HOSPITAL BOARD OF TRUSTEE CONTINUING EDUCATION PROGRAM

4 TAC §§30.170 - 30.172

The repeal of Subchapter B, Division 10, §§30.170 - 30.172, is adopted under Texas Government Code §487.051, which pro-

vides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406060
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 11. RURAL HEALTH INFORMATION TECHNOLOGY PROGRAM

4 TAC §§30.180 - 30.185

The repeal of Subchapter B, Division 11, §§30.180 - 30.185, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406061
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Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT PROGRAM

DIVISION 1. GENERAL PROVISIONS

4 TAC §§30.1 - 30.8

New Subchapter A, Division 1, General Provisions, §§30.1 - 30.8, is adopted under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406062
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 2. APPLICATION INFORMATION

4 TAC §§30.20 - 30.31

New Subchapter A, Division 2, Application Information, §§30.20 - 30.31, is adopted under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406063
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §§30.50 - 30.64

New Subchapter A, Division 3, Administration of Program Funds, §§30.50 - 30.64, is adopted under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

§30.61. Urgent Need (UN) Fund.

(a) Application cycle. Applications are accepted throughout a program year on an as-needed basis.

(b) Eligibility Determination. An application for UN Fund assistance will not be accepted until discussions between the potential applicant community and representatives of the department, TWDB, and the TCEQ have taken place. Through these discussions, a determination shall be made whether the situation meets eligibility requirements

and if a potential applicant can proceed with an application for the UN Fund.

(c) Eligible activities. UN Fund assistance is available for activities that will restore water and/or sewer infrastructure whose sudden failure has resulted in death, illness, injury, or poses an imminent threat to life or health within the affected community's jurisdiction.

(d) Selection procedures. To qualify for the UN Fund, a community must meet the following criteria. Detailed scoring information and other eligibility and project requirements are available in the application guidelines.

(1) The situation addressed by the community must not be related to a proclaimed state or federal disaster declaration.

(2) The situation addressed by the community must be both unanticipated and beyond the community's control (e.g., not facilities or equipment beyond their normal, useful life span).

(3) The problem being addressed must be of recent origin. This means that the situation first occurred or was first discovered no more than 30 days prior to the date the community submits a written request to the department for UN assistance. UN funds may not be used to address a situation that has been known for more than 30 days or should have been known would occur based on the community's existing system facilities.

(4) The community must demonstrate that local funds or funds from other state or federal sources are not available to completely address the problem.

(5) UN funds may not be used to restore infrastructure that has been cited previously for failure to meet minimum state standards.

(6) UN funds may not be used for infrastructure failure that resulted from a lack of maintenance or was caused by operator error.

(7) The infrastructure requested by the community may not include back-up or redundant systems.

(8) The UN Fund will not finance temporary solutions to the problem or circumstance.

(9) The department may consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation, if eligible.

(10) The distribution of these funds will be coordinated with other state agencies.

(e) Match requirement. The following match requirements apply:

(1) If the community's most recent Census population is equal to or fewer than 1,500 persons, the applicant must provide matching funds equal to 10 percent of the TxCDBG funds requested.

(2) If the community's most recent Census population is over 1,500 persons, the community must provide matching funds equal to 20 percent of the TxCDBG funds requested.

(3) For county applications where the beneficiaries of water or sewer improvements are located in unincorporated areas, the population category for matching funds is based on the number of project beneficiaries.

(f) Funded projects. Due to the urgent nature of projects, activities funded under the UN Fund must be completed within one year from the start date of the contract agreement. Construction on a funded project must begin within 90 days from the start date of the TxCDBG contract. The department may de-obligate contract funds if the contractor fails to meet this requirement.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406064
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 4. AWARDS AND CONTRACT ADMINISTRATION

4 TAC §§30.80 - 30.84

New Subchapter A, Division 4, Awards and Contract Administration, §§30.80 - 30.84, is adopted under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406065
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 5. REALLOCATION OF PROGRAM FUNDS

4 TAC §§30.100 - 30.103

New Subchapter A, Division 5, Reallocation of Program Funds, §§30.100 - 30.103, is adopted under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406066

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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SUBCHAPTER B. STATE OFFICE OF RURAL HEALTH

DIVISION 1. GENERAL PROVISIONS

4 TAC §30.120, §30.121

New Subchapter B, Division 1, General Provisions, §30.120 and §30.121, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406067
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 2. OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM

4 TAC §§30.140 - 30.148

New Subchapter B, Division 2, Outstanding Rural Scholar Recognition Program, §§30.140 - 30.148, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406068
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 3. MEDICALLY UNDERSERVED COMMUNITY-STATE MATCHING INCENTIVE PROGRAM

4 TAC §§30.160 - 30.168

New Subchapter B, Division 3, Medically Underserved Community-State Matching Incentive Program, §§30.160 - 30.168, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406069
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 4. TEXAS HEALTH SERVICE CORPS PROGRAM

4 TAC §§30.180 - 30.185

New Subchapter B, Division 4, Texas Health Service Corps Program, §§30.180 - 30.185, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406070

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 5. RURAL HEALTH FACILITY CAPITAL IMPROVEMENT PROGRAM

4 TAC §§30.200 - 30.203

New Subchapter B, Division 5, Rural Health Facility Capital Improvement Program, §§30.200 - 30.203, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406072
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 6. DESIGNATION OF A HOSPITAL AS A RURAL HOSPITAL

4 TAC §§30.220 - 30.222

New Subchapter B, Division 6, Designation of a Hospital as a Rural Hospital, §§30.220 - 30.222, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406074
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General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 7. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

4 TAC §§30.240 - 30.244

New Subchapter B, Division 7, Rural Communities Health Care Investment Program, §§30.240 - 30.244, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406079
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 8. RURAL PHYSICIAN RELIEF PROGRAM

4 TAC §§30.260 - 30.262

New Subchapter B, Division 8, Rural Physician Relief Program, §§30.260 - 30.262, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406080

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 9. RURAL TECHNOLOGY CENTER GRANT PROGRAM

4 TAC §§30.280 - 30.283

New Subchapter B, Division 9, Rural Technology Center Grant Program, §§30.280 - 30.283, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406082
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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DIVISION 10. RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

4 TAC §§30.300 - 30.302

New Subchapter B, Division 10, Rural Physician Assistant Loan Reimbursement Program, §§30.300 - 30.302, is adopted under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406083
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 1, 2015
Proposal publication date: October 24, 2014
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §26.2, §26.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §26.2, concerning required records to maintain; and §26.4, concerning when you must order and set a burial marker or monument in a perpetual care cemetery without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8481) and will not be republished. The amended rules clarify recordkeeping requirements, require maintenance of records regarding the sale of undeveloped mausoleum spaces and regarding the certificate holder's regulatory or litigation involvement, and require records of all marker transactions. The amended rules also add a requirement that if a certificate holder specifies in writing that it will set a marker or monument at a date earlier than that set forth in §26.4, it must set the marker or monument by that date.

The amendment to §26.2(b)(1)(D) clarifies that the certificate holder must maintain the original trust agreement and any amendments made since the last examination. The basis for this amendment is to ensure that the permit holder maintains the trust agreement even if it has not been amended.

The amendment to §26.2(b)(1)(E) does two things. First, it clarifies that if the certificate holder is rated marginal or worse or if its last examination was a limited scope examination, it must retain a copy of its examination response. The basis for this amendment is the department's examiners need to be able to review all pertinent documents responsive to these exams. Second, the amendment reflects that department Supervisory Memorandum 1014 was revised in 2011. The amendment to add §26.2(b)(1)(N) clarifies that the certificate holder must retain records to verify compliance with all the statutes in Health Code, Chapter 712, Subchapter D, which governs the sale of undeveloped mausoleum spaces, including those records specifically referred to in Health Code §712.044(a)(2)-(3). This amendment serves to highlight for the certificate holder additional records it must maintain because their maintenance is required by statute.

The amendment to add §26.2(b)(1)(O) requires the certificate holder to maintain all records relating to regulatory action or litigation to which the certificate holder is subject. This requirement gives the commissioner information necessary to determine whether the certificate holder meets the qualifications and requirements for holding a certificate of authority. The department adopts a non-substantive amendment to §26.4(a)(4) to clarify a reference to §26.4(b)(1) by adding the words "of this section."

The amendments to §26.4(c) and (d) state that if a certificate holder stipulates in writing that it will set a marker or monument at a date that is earlier than the date otherwise required by those subsections, it must honor the earlier date. This clarification is necessary because some certificate holders specify earlier dates, and the amendment will eliminate confusion as to whether that date or the date in the current rule applies.

The amendment to §26.4(f) clarifies the requirement that certificate holders keep a record of all marker transactions, including ones where the marker was purchased from someone other than the certificate holder. Requiring maintenance of a record of all marker transactions will allow the department to monitor compliance with §26.4(c), (d) and (e).

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Health Code §712.008, which authorizes the commission to adopt rules to enforce and administer Chapter 712 and which states that the commission shall adopt rules establishing reasonable standards for timely placement of burial markers or monuments in a perpetual care cemetery. The amendments are also adopted pursuant to Health Code §712.044, which authorizes the commissioner to examine books and records of a certificate holder, and Health Code §712.0037(a), which requires the commissioner to determine that a renewing certificate holder continues to meet the qualifications that apply to applicants for a certificate of authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405993
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: January 1, 2015
Proposal publication date: October 31, 2014
For further information, please call: (512) 475-1300

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CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §31.11, concerning requirements to engage in the business of child support enforcement in Texas; §31.14, concerning the requirements for submission of the proposed contract for services with an agency's clients; and §31.32, concerning annual fee requirements. Section 31.11 is adopted with changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8482). Section 31.14 and §31.32 are adopted without changes and will not be republished.

Changes were made to proposed §31.11 to accurately reflect the current name and source of the form that may be submitted in support of an application for licensure. The rule amendments update the name and source of one of the documents that may be submitted with an application; eliminate one of the electronic formats used to submit forms included in applications and eliminate certain font types used for those forms; and make uniform the date by which licensees must pay annual fees.

The amendment to §31.11(b)(6) changes the name of the form that may be submitted in support of an application from a certificate of good standing to a franchise tax account status. The change also clarifies that the form is issued by the Comptroller of Public Accounts.

The amendment to §31.11(b)(8) eliminates WordPerfect as one of the possible formats in which to submit a proposed contract. This change is adopted to make the format consistent with the more widely used and readable Word format. The amendments to §31.14(d)(1), (2)(O) and (P) are conforming changes that eliminate font types that are not available in the Word format and correct a misspelling of the Arial font type.

The amendment to §31.32 changes the time for payment of the annual fee from the anniversary of the date of registration to a fixed date of January 31 each year. The change is required to simplify recordkeeping and processing of renewals by the department.

The Department received no comments regarding the proposed amendments.

SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

7 TAC §31.11, §31.14

The amendments are adopted pursuant to Finance Code, §396.051, which authorizes the Finance Commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

§31.11. What must I do to legally engage in the business of child support enforcement in Texas?

(a) First, you must submit an application to the department for a certificate of registration that includes the following information:

(1) with respect to your agency and its principal owner, the name, title, physical street address, mailing address, business telephone number, fax number, web site address, and e-mail address of:

(A) the principal owner;

(B) each person with a controlling interest;

(C) each officer and director;

(D) the principal business office; and

(E) each additional registered office;

(2) the name, address, states in which operated, and current license status of any agency ever operated in any state by:

(A) your agency;

(B) your agency's principal owner;

(C) an officer or director of your agency or your agency's principal owner; or

(D) a person owning a controlling interest in your agency or principal owner;

(3) a notarized statement by your agency's principal owner or chief executive officer stating that the application and accompanying

information is accurate and truthful in all respects and that the agency is able to meet its financial obligations as they become due; and

(4) such other information as the banking commissioner may require you to submit.

(b) Second, you must submit the following documents with your application:

(1) a copy of your agency's assumed name certificate if it is doing business or intends to do business in this state under a different name; financial disclosures that comply with this chapter;

(2) a list containing information on each pending lawsuit, civil or criminal (other than lawsuits filed on behalf of clients), involving your agency, including:

(A) the parties;

(B) a synopsis of the facts alleged by each party;

(C) the nature of the action;

(D) the court in which it is pending; and

(E) the amount in controversy;

(3) a list, containing the information required in paragraph (2) of this subsection, on each pending lawsuit involving an owner of a controlling interest in your agency that:

(A) is related to child support enforcement (other than lawsuits filed on behalf of clients); or

(B) may affect your agency.

(4) a list for the previous ten years of each judgment awarded against your agency or any owner of a controlling interest in the agency and a statement as to whether an appeal is pending;

(5) a surety bond in the amount of $50,000 that meets the requirements of§31.12;

(6) a franchise tax account status from the Texas Comptroller of Public Accounts if you are a Texas business corporation or a foreign business corporation;

(7) a copy of the findings from any supervisory enforcement actions taken against your agency by a governmental entity for the previous 5 years;

(8) a paper and electronic (Word) copy of the form contract your agency will use for an obligee to engage its services to enforce a child support obligation and the scores you calculated under§31.14(d) and the readability statistics you generated; and

(9) such other information as the banking commissioner may require you to submit.

(c) Third, you must submit a certified financial statement with your application containing the following:

(1) information that demonstrates the financial solvency of your agency;

(2) for your agency's most recent fiscal year:

(A) a balance sheet; and

(B) an income statement.

(3) if the end of your agency's most recent fiscal year was more than 120 days prior to submission of your application, an interim version of each document required under paragraph (2) of this subsection covering the period from the end of the most recent fiscal year to a date less than 120 days prior to submission;

(4) a written certification by your agency's chief financial officer or accountant that it is a true and correct statement of the agency's financial position; and

(5) any information the banking commissioner requests you to submit to demonstrate your agency's financial solvency, including an audited financial statement.

(d) Fourth, you must submit the following fees with your application:

(1) a nonrefundable filing fee of $500 for each location you want to register; and

(2) a $500 fee to cover the annual cost of regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405978
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: January 1, 2015
Proposal publication date: October 31, 2014
For further information, please call: (512) 475-1300

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SUBCHAPTER C. WHAT ARE MY AGENCY'S RESPONSIBILITIES AFTER REGISTRATION?

7 TAC §31.32

The amendments are adopted pursuant to Finance Code, §396.051, which authorizes the Finance Commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405981
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General Counsel
Texas Department of Banking
Effective date: January 1, 2015
Proposal publication date: October 31, 2014
For further information, please call: (512) 475-1300

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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 153. HOME EQUITY LENDING

7 TAC §§153.1, 153.5, 153.15, 153.51

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to the following home equity lending interpretations: §153.1, concerning Definitions, §153.5, concerning Three percent fee limitation, §153.15, concerning Location of Closing, and §153.51, concerning Consumer Disclosure.

The commissions adopt the amendments without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5021).

The Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") received one written comment on the proposal from an individual. The comment includes three suggested revisions to the proposed amendments. The commenter's individual suggestions are discussed following the purpose of each provision discussed in the comment.

The amendments apply the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §11.308 and §15.413.

The main purpose of the amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood,* 418 S.W.3d 566 (Tex. 2013). In *Norwood,* the court held that portions of three interpretations adopted by the commissions were invalid: §§153.1, 153.5, and 153.15.

In 1997, the Texas Constitution was amended to authorize home equity loans. After further amendments in 2003, the commissions were authorized to adopt interpretations of the constitution's home equity provisions, subject to the requirements of the Texas Administrative Procedure Act. The commissions adopted their interpretations in 2004. A group of homeowners sued the commissions, challenging several of the adopted interpretations. The case was ultimately appealed to the Texas Supreme Court and resulted in the court's decision in *Finance Commission of Texas v. Norwood.*

In *Norwood,* the court invalidated certain provisions interpreting Section 50(a)(6)(E), which provides that a home equity loan may not "require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit." The court invalidated §153.1(11) of the commissions' interpretations, which defined "interest" for purposes of the three percent limitation as "interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts." The court held that interest means "the amount determined by multiplying the loan principal by the interest rate." 418 S.W.3d at 588. The court also invalidated paragraphs (3), (4), (6), (8), (9), and (12) of §153.5, which applied the commissions' original definition of "interest" to several specific types of charges for purposes of the three percent limitation. In a supplemental opinion, the court explained that interest includes per diem interest and legitimate discount points, and that these amounts are not included in the three percent limitation. 418 S.W.3d at 596.

The court also invalidated provisions interpreting Section 50(a)(6)(N), which provides that a home equity loan must be "closed only at the office of the lender, an attorney at law, or a title company." The court invalidated §153.15(2), which allowed a lender to accept a properly executed power of attorney authorizing someone to close a loan on a homeowner's behalf. It also invalidated §153.15(3), which allowed a lender to accept the homeowner's consent by mail. In the supplemental opinion, the court explained that "a power of attorney must be part of the closing to show the attorney-in-fact's authority to act." 418 S.W.3d at 596.

As stated earlier, the main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood.* The individual purposes of each amendment are provided below.

The amendment to the second sentence of §153.1 replaces the word "section" with "chapter" in order to clarify that the definitions listed in §153.1 apply to all of Chapter 153.

The amendment to §153.1(11) replaces the previous definition of "interest" with the definition used by the court. The phrase "over a period of time" is included in the amendment in order to clarify the time component in the definition. In addition, in its supplemental opinion, the court used the phrase "over a period of time" in applying the general definition of "interest." 418 S.W.3d at 596.

The amendment to §153.5(3)(A) specifies that per diem interest is interest and is not subject to the three percent limitation, in accordance with the court's supplemental opinion. *See* 418 S.W.3d at 596.

The amendment to §153.5(3)(B) specifies that legitimate discount points are interest and are not subject to the three percent limitation, in accordance with the court's supplemental opinion. *See* 418 S.W.3d at 596. The amendment also identifies the conditions that must be satisfied in order for discount points to be considered legitimate under the court's supplemental opinion, stating that the discount points cannot be "necessary to originate, evaluate, maintain, record, or service the loan." The amendment provides that a lender may rely on an established system to evidence that the discount points it offers are legitimate.

The commenter's first suggestion is that the commissions remove the phrase "and are not necessary to originate, evaluate, maintain, record, or service the loan" from §153.5(3)(B). The commenter states: "If a lender is charging a discount point, then it is a charge that the lender is making and collecting at closing in order to 'originate' the loan, the lender would not make the loan under the reduced interest rate, if the borrower did not pay the discount point. So every borrower who pays a discount point could argue that the payment of the discount point was 'necessary to originate . . . the loan' and they would be correct, or at least create a fact question."

The commissions disagree with this suggestion. In order for discount points to be legitimate, the borrower must be able to choose between a loan without discount points and a loan that includes discount points with a corresponding reduced interest rate. If the borrower can make this choice, then the discount points are not "necessary to originate, evaluate, maintain, record, or service the loan," because the borrower has the option of obtaining a loan without them. The court made this point in its supplemental opinion to *Norwood* when it stated: "We also agree with the Homeowners that true discount points are not fees 'necessary to originate, evaluate, maintain, record, insure, or service' but are an option available to the borrower and thus not subject to the 3% cap." 418 S.W.3d at 596. In other words, whether discount points are legitimate depends partly on whether they are truly an option available to the borrower. The

commissions disagree with the commenter's suggestion and believe that the proposed text is appropriate to maintain for this adoption.

The amendments to paragraphs (4), (6), (8), (9), and (12) of §153.5 add the phrase "as defined by §153.1(11) of this title" after "that are not interest" in provisions describing charges that are subject to the three percent limitation. Paragraphs (9) and (12), regarding charges to maintain and service the loan, are also amended to provide clarity and delete redundant text.

The amendment to §153.15(2) specifies that any power of attorney allowing an attorney-in-fact to execute closing documents must be signed at the office of the lender, an attorney at law, or a title company. It also provides that a lender may rely on an established system to evidence the date and place at which a power of attorney was signed. The amendment permits the use of an affidavit or written certification of a person who was present when the power of attorney was executed.

The commenter's second suggestion is that the commissions amend the provision in §153.12(2)(B) allowing a lender to evidence compliance with the requirements for powers of attorney. As proposed, the provision allows a lender to evidence compliance through "an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed." The commenter suggests that the commissions add the phrase "or of a person with personal (or actual) knowledge of where the power of attorney was executed," in order to allow certifications by persons who were not present but who possess personal or actual knowledge. The commenter states: "It would seem that anyone with personal knowledge of where the POA was executed should be authorized to execute an Affidavit. For example, Texas Estates Code Section 751.055, provides that the agent with personal knowledge may execute an affidavit as to certain facts. If the agent knows that the principal executed the POA at an attorney's office and has personal knowledge that it was executed there (for example, they drove their father to the attorney's office, but was not in the room when it was executed), then why shouldn't a person with personal knowledge of the facts also be permitted (and expressly authorized by the rule) to give an affidavit as to that fact?"

The commissions disagree with this suggestion. The commenter suggests that a person can have personal knowledge that the power of attorney was signed at a particular place and time, even though the person was not present when it was signed. It is unclear how a person can have personal knowledge in this situation. In the commenter's example, where the child drops the parent off at the attorney's office, it appears that the child's affidavit would be based on a hearsay allegation that the parent signed the power of attorney inside the office. An affidavit not based on personal knowledge is generally insufficient to support a claim. *Marks v. St. Luke's Episcopal Hosp.,* 319 S.W.3d 658, 666 (Tex. 2010). An affidavit based on hearsay is insufficient. *Stanford v. Johnson,* 577 S.W.2d 791, 793 (Tex. Civ. App.--Corpus Christi 1979, no writ). Also, Texas Estates Code, §751.055 does not support the type of affidavit suggested by the commenter. That section deals with an affidavit signed by an attorney-in-fact, stating that the attorney-in-fact did not have knowledge about the termination of a power of attorney at the time it was terminated or revoked. This matter is within the personal knowledge of the attorney-in-fact.

The commissions disagree with the suggestion that a person can have personal knowledge of the time and place that a power of attorney was signed without being present. The commissions believe that it is appropriate to maintain the proposed text, which allows a certification by a person who was present. This does not mean that §153.12(2) provides the only methods through which a lender can evidence compliance. The provision is not intended to provide a comprehensive list of all methods by which a lender may evidence compliance. This is why the section uses the phrase "may include one or more of the following." It would be outside the intended scope of the amendments to provide a comprehensive statement of the circumstances in which a lender can (or should) use powers of attorney, or a statement of the conditions that must be satisfied in every power of attorney relating to a home equity loan.

The amendment to §153.15(3) specifies that the required consent form must be signed at the office of the lender, an attorney at law, or a title company. The amendment also specifies that the consent may be signed by an attorney-in-fact described by paragraph (2).

In §153.51, new paragraph (5) specifies that if a power of attorney described by §153.15(2) has been executed, then the attorney-in-fact may accept the disclosures required under Section 50(g).

The commenter's third suggestion is that the commissions make conforming changes to §152.15, regarding Place for Execution of Contract for Work and Material. The commenter suggests that this change would be appropriate because "a POA could also be used to close these loans and presumably would (or should) be subject to the same requirements."

The commissions decline to adopt this suggestion. This suggestion is outside the intended scope of the amendments, which are intended to address home equity loans, rather than work and material loans. Work and material loans were not addressed in *Norwood.* In addition, because §152.15 is outside the subject matter included in the proposal, adopting this change would require a separate rulemaking action with a new publication for comment. *See State Bd. of Ins. v. Deffebach,* 631 S.W.2d 794, 801 (Tex. App.--Austin 1982, writ ref'd n.r.e.).

The amendments are adopted under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §11.308 and §15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the adopted amendments are contained in Article XVI, Section 50 of the Texas Constitution.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406000
Leslie L. Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Effective date: January 1, 2015
Proposal publication date: July 4, 2014
For further information, please call: (512) 936-7621

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §5.2, §5.19

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, §5.2, Definitions, and §5.19, Client Income Guidelines, with changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7843).

REASONED JUSTIFICATION. The amendments to §5.2 include additional defined terms, including Award Date, Contract, and Life Threatening Crisis; removal of terms that are no longer relevant to these rules including Targeting, and Terms and Conditions; modified definitions due to changes in federal law (such as OMB Circulars and Supplies); and staff administrative corrections. The amendments to §5.19 are to clarify what income sources are to be included and excluded during benefit determinations, to incorporate eligibility determination requirements, and to affect grammatical and capitalization matters.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The Department received comments to the proposed amendments. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules. Comments were accepted from October 3, 2014, through November 3, 2014, with comments received from:

(1) Carlos Rivera, Director, Austin/Travis County Health and Human Services Department

(2) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)

(3) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas, in support of comments filed by TACAA

(4) Emma Vasquez, Executive Director, Big Bend Community Action Committee, Inc., in support of comments filed by TACAA

(5) Karen Swenson, Executive Director, Greater East Texas Community Action Program, in support of comments filed by TACAA

(6) Carole Belver, Executive Director, Community Action, Inc. of Central Texas, in support of comments filed by TACAA

(7) Dennis Chapman, Social Services Program Administrator, Travis County Health and Human Services and Veterans Service

§5.2. Definitions

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (a), commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff agrees and recommended clerical changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(2) Award Date and (b)(11) Contract, commenter seeks clarification of why these definitions are not consistent.

STAFF RESPONSE: Staff wishes to clarify that the Award Date and the date on which the Subrecipient may consider awarded funds available for expenditure are purposefully distinct from each other. The Award Date identifies a date on which the Department's board took action in awarding funds to a Subrecipient. Awarded funds expended prior to the date a Contract commences may not be eligible for reimbursement by the Department.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(6) Community Action Agencies (CAAs), commenter suggests replacing Community Action Program with Community Services Block Grant Program.

STAFF RESPONSE: The 1964 Economic Opportunity Act established the Community Action Program, which includes more than just the CSBG. Staff recommends no changes based on this comment.

COMMENT SUMMARY (1): Regarding (b)(13) Declaration of Income Statement, commenter suggested that the Texas Secretary of State's office requirement that an applicant provide an identification card issued by a governmental agency in order for the Declaration of Income Statement ("DIS") to be notarized may create a barrier for persons seeking services through the Community Services Block Grants program ("CSBG"). Since CSBG does not require that the DIS be notarized, the commenter requests that the CSBG program be excluded from the notary requirement.

STAFF RESPONSE: The requirement that self certifications of income be notarized is a Department of Energy requirement contained in the annual release of its program notice regarding Poverty Income Guidelines and Definition of Income. To maintain consistency across programs that share applications and clients, the Department applies the requirements to the CSBG, CEAP, and LIHEAP WAP programs.

Further, §406.014 of the Texas Government Code gives a notary options for notarizing a document for persons who are not able to provide an identification card issued by a governmental agency.

(5) whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker;

(6) if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;

Staff recommends no changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(18) Discretionary Funds, commenter suggested that the Department remove "...and not designated for distribution on a statewide basis to CSBG Eligible Entities." Because the CSBG Act does not prohibit a CSBG Eligible Entity from conducting statewide activities.

STAFF RESPONSE: Staff wishes to clarify that the this language is included to distinguish the distribution of CSBG Discretionary funds from the distribution of the 90 percent of CSBG funds that is designated for distribution on a statewide basis to CSBG Eligible Entities. The definition does not prohibit a CSBG Eligible Entity from conducting statewide activities.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(23) Eligible Entity, commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff agrees and recommended changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(29) Families with Young Children, commenter suggested that text be added for a clear and consistent definition for all Subrecipients.

STAFF RESPONSE: Staff does not believe the clarification is necessary and recommends no change based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(38) Low Income, commenter suggested that the Department increase the income amount from 125% of the HHS Poverty Income Guidelines to 150% for CEAP and LIHEAP WAP to be in line with allowable federal guidelines and to allow Subrecipients to serve clients up to the higher threshold.

STAFF RESPONSE: Staff recommends that the income levels remain unchanged in order to enhance the ability of service providers to provide the greatest array of services to the very lowest income households. Staff recommends no change based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(43) National Performance Indicator, commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff recommends the following revision:

An individual measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(51) Poverty Income Guidelines, commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff agrees and made clerical changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(61) State, commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff agrees and recommended changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(71) Uniform Grant Management Standards, commenter suggested a revised sentence structure.

STAFF RESPONSE: As used in this context, "subrecipients" is used as a general term and should not be capitalized. Staff recommends no changes to the rule based on this comment.

§5.19. - Income Eligibility: Excluded Income

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (a), commenter suggested that countable income should be a finite list, and that determination of income eligibility should not be based on an excluded list.

STAFF RESPONSE: Staff has yet to find a finite list of income inclusions. Since staff is unable to assemble a finite list of income inclusions based on federal guidance, staff recommends no changes to the rule based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (a)(1), commenter suggested striking this item and keeping the list of included income because determination of income eligibility should not be based on an excluded list. Commenter suggests that the list of included income should mirror the 2015 LIHEAP State Plan to HHS as modified and approved by the TDHCA Board at its July 31, 2014 meeting.

STAFF RESPONSE: Staff has yet to find a finite list of income inclusions. Since staff is unable to assemble a finite list of income inclusions based on federal guidance, staff recommends no changes to the rule based on this comment.

COMMENT SUMMARY (1): Regarding (a)(2)(P), commenter suggested that since Social Security benefit award letters frequently reflect deductions for overpayment, clarification is needed as to whether these deductions should be considered or if only the Medicare premium deduction should be considered.

STAFF RESPONSE: Staff wishes to clarify that the deduction for overpayment would be considered income. The Subrecipient would only consider the Medicare premium deduction as a deduction not counted as income. Staff will ensure that this clarification is provided to all affected Subrecipients. Staff recommends no changes to the rule based on this comment.

COMMENT SUMMARY (1): Regarding (a)(2)(T), commenter suggested that since the Department does not consider child support as included income, the Department should consider excluding any Social Security benefit paid to a parent on behalf of a child from included income.

STAFF RESPONSE: "Regular payments from Social Security benefits paid to a parent on behalf of a child" is not listed as an excluded income source by the Department of Energy Weatherization Assistance Program, nor is it included in the Department of Housing and Urban Development's Federally Mandated Exclusions from Income list. To maintain consistency within TDHCA programs, staff recommends no changes to this requirement.

COMMENT SUMMARY (1): Regarding (a)(2)(DD), (EE) and (FF), commenter suggested that persons receiving income under programs such as the Workforce Investment Act, the Older Americans Act, and the Child Care Development Block Grant Act are often unaware of the income's original source. The commenter seeks clarification on the Department's expectations for verification of these types of income in complying with this rule.

STAFF RESPONSE: Staff wishes to clarify that unless the Subrecipient can verify that income is from a source that should be excluded according to this rule, the income should be considered as income from an included source. Staff will ensure that this clarification is provided to all affected Subrecipients. Staff recommends no changes to the rule based on this comment.

COMMENT SUMMARY (1): Regarding (b)(1), commenter suggested that the proposed eligibility determination appears to remove the reference to "30 days prior to the date of application" as the basis for determining eligibility. Commenter seeks clarification on whether "current circumstances" as cited in the proposed rule change will still be based on the prior 30 days income.

STAFF RESPONSE: See staff response below.

COMMENT SUMMARY (7): Regarding (b), commenter seeks clarification on how "current circumstances" is defined and requests that the Department provide a more detailed definition as it relates to household income. Commenter suggests that without a clear interpretation, different organizations may treat households differently in the eligibility determination process.

STAFF RESPONSE: See staff response below.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b), commenter suggested that the proposed method of calculating income for the purpose of determining eligibility be removed, and that the Department simply require Subrecipients to annualize household income based on verifiable documentation from the past 30 days. Commenter stated that the proposed method of calculation applies to a regular full-time employee. Many clients don't fit this category; rather they are part-time or receive irregular weekly wages based on unpredictable hours worked. To project, estimate, or anticipate income is subjective. The current method of calculation is an effective, accurate, consistent and non-subjective method of determining income.

STAFF RESPONSE: Based on comments received, staff proposes the following revision to the rule:

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) Subrecipient must collect verifiable documentation of Household income received in the thirty (30) days prior to the date of application.

(3) Once all sources of income are known, Subrecipients must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(c) Except for ESG, to annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

The Board adopted these amendments at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules.

§5.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--If, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways the Department may determine control include, but are not limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

(3) Child--Household dependent not exceeding eighteen (18) years of age.

(4) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(5) Collaborative Application--An application from two or more organizations to provide services to the target population.

(6) Community Action Agencies (CAAs)--Local Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Action Plan--A plan required by the Community Services Block Grant (CSBG) Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

(8) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(9) Community Services Block Grant (CSBG)--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(10) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP-funded program to assist low-income Households, particularly those with the lowest incomes, that pay a high proportion of Household income for home energy, primarily in meeting their immediate home energy needs.

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(12) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amend-

ments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(13) Declaration of Income Statement (DIS)--A Department-approved form for limited use and only when an applicant cannot obtain income documentation requiring the Subrecipient to document income and the circumstances preventing the client from obtaining documentation. The DIS is not complete unless notarized in accordance with §406.014 of the Texas Government Code.

(14) Department--The Texas Department of Housing and Community Affairs.

(15) Department of Energy (DOE)--Federal department that provides funding for the weatherization assistance program.

(16) Department of Health and Human Services (HHS)--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(17) Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(18) Discretionary Funds--Those CSBG funds maintained by the Department, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG Eligible Entities and not designated for state administrative purposes.

(19) DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy. 10 CFR Part 600 implements OMB requirements on behalf of DOE and establishes administrative requirements for grants and agreements.

(20) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

(21) Elderly Person--A person who is sixty (60) years of age or older, except for ESG.

(22) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(23) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(24) Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

(A) natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.

(H) This definition does not apply to ESG or HHSP.

(25) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(26) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a Dwelling Unit.

(27) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular weatherization energy efficiency measures.

(28) Equipment--Tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of $5,000 or more per unit.

(29) Families with Young Children--A family that includes a Child age five (5) or younger.

(30) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income. Determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(31) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures, by way of example, at the time of this rulemaking, that amount is $1,000, but is subject to change.

(32) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

(33) Homeless Housing and Services Program (HHSP)--A state funded program established under §2306.2585 of the Texas Government Code with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

(34) Household--Any individual or group of individuals who are living together as one economic unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

(35) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(36) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant household could lose their life without the Subrecipient's utility assistance because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by client report) and any member of the Household is dependent upon equipment that is prescribed by a medical professional, operated on electricity or gas and is necessary to sustain the person's life. Examples of life-sustaining equipment include but are not limited to kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not include information regarding the applicant's medical condition but may include certification that such a device is required in the home to sustain life.

(37) Local Unit of Government--City, county, council of governments, and housing authorities.

(38) Low Income--Income in relation to family size and that governs eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP, CSBG, and LIHEAP WAP at or below 125% of the HHS Poverty Income guidelines;

(C) For ESG, 30% of the Area Median Income (AMI) as defined by HUD's Section 8 Income Limits for persons receiving prevention assistance; and

(D) For HHSP, 30% of the AMI as defined by HUD's Section 8 Income Limits for all clients assisted.

(39) Low Income Home Energy Assistance Program (LIHEAP)--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

(40) Migrant Farm Worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.

(41) Modified Cost Reimbursement--A contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

(42) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

(43) National Performance Indicator--An individual measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

(44) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

(45) Office of Management and Budget (OMB)--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(46) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(47) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(48) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(49) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;

(B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(50) Population Density--The number of persons residing within a given geographic area of the state.

(51) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(52) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(53) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(54) Referral--The process of providing information to a client Household about an agency, program, or professional person that can provide the service(s) needed by the client.

(55) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.

(56) Renter--A person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.

(57) Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the Household annualized income must be derived from the agricultural labor or related industry.

(58) Shelter--Defined by the Department as a Dwelling Unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities. This definition does not apply to ESG or HHSP.

(59) Single Audit--As defined in the Single Audit Act of 1984 (as amended) or UGMS, a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered federal or state awards during such fiscal year provided that each such audit shall encompass the financial statements and

schedule of expenditures of federal or state awards for each such department, agency, and organizational unit.

(60) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

(61) State--The State of Texas or the Department, as indicated by context.

(62) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(63) Subgrant--An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(64) Subgrantee--The legal entity to which a subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(65) Subrecipient--Generally, an organization with whom the Department contracts and provides CSBG, CEAP, ESG, HHSP, DOE WAP, or LIHEAP funds. (Refer to Subchapters B, D - G, J, and K of this chapter for program specific definitions.)

(66) Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements." A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-federal entity for financial statement purposes or $5,000, regardless of the length of its useful life.

(67) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

(68) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(69) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(70) Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

(71) Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. In addition, Chapter 2105, Texas Government Code, subjects all subrecipients of federal block grants to the Uniform Grant and Contract Management Standards.

(72) Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(73) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(74) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving ESG and LIHEAP beneficiaries.

(75) Weatherization Assistance Program (WAP)--DOE and LIHEAP funded program designed to reduce the energy cost burden of low income households through the installation of energy efficient weatherization materials and education in energy use.

(76) Weatherization Assistance Program Policy Advisory Council (WAP PAC)--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.

(77) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(78) Weatherization Project--A project conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

§5.19. Income Eligibility.

(a) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross income is to be used, not net income.

(1) If an income source is not excluded below, it must be included when determining income eligibility.

(2) Excluded Income:

(A) Capital gains;

(B) Any assets drawn down as withdrawals from a bank;

(C) Balance of funds in a checking or savings account;

(D) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(E) The sale of property, a house, or a car;

(F) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(G) Tax refunds, Earned Income Tax Credit refunds;

(H) Jury duty compensation;

(I) Gifts, loans, and lump-sum inheritances;

(J) One-time insurance payments, or compensation for injury;

(K) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(L) Reimbursements (for mileage, gas, lodging, meals, etc.);

(M) Food or housing received in lieu of wages;

(N) The value of food and fuel produced and consumed on farms;

(O) The imputed value of rent from owner-occupied non-farm or farm housing;

(P) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches (Medicare deduction from Social Security Administration benefits should not be counted as income);

(Q) Housing assistance and combat zone pay to the military;

(R) Veterans (VA) Disability Payments;

(S) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(T) Child support payments (amount paid by payor may not be deducted from income);

(U) Income of Household members under eighteen (18) years of age;

(V) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;

(W) AmeriCorps Program payments, allowances, earnings, and in-kind aid;

(X) Depreciation for farm or business assets;

(Y) Reverse mortgages;

(Z) Payments for care of Foster Children;

(AA) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(BB) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(CC) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(DD) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(EE) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(FF) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(GG) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(HH) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(II) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(JJ) The first $2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(KK) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(LL) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(MM) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(NN) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(OO) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(PP) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(QQ) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(RR) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(SS) Any other income required to be excluded by the federal or state funding program.

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) Subrecipient must collect verifiable documentation of Household income received in the thirty (30) days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(c) Except for ESG, to annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

(d) For HHSP, Subrecipients may select either the method described in (a) - (c) of this section or the method described in (e) of this section, but once selected the method must be used consistently throughout the contract period.

(e) For ESG, Subrecipients must use the income determination method outlined in 24 CFR 5.609, must use the list of income included in HUD Handbook 4350, and must exclude from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(f) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, or applicants who are unable to locate income documentation of a recently deceased spouse. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.

(g) The DIS must be notarized. Attainment of notary public commission is an allowable activity as an administrative cost.

(h) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406081
Cameron Dorsey
Chief of Staff
Texas Department of Housing and Community Affairs
Effective date: January 1, 2015
Proposal publication date: October 3, 2014
For further information, please call: (512) 475-0471

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10 TAC §5.16, §5.20

The Texas Department of Housing and Community Affairs (the "Department") adopts repeal of 10 TAC §5.16, concerning Monitoring and Single Audit Requirement, and §5.20, concerning Determining Income Eligibility, without changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7849) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the requirements of 10 TAC §5.16 concerning Monitoring and Single Audit Requirement are included in 10 TAC §1.3 concerning Delinquent Audits and Related Issues and 10 TAC §5.2101 concerning Compliance Monitoring and is no longer required as a separate section. The requirements of §5.20 concerning Determining Income Eligibility are incorporated into 10 TAC §5.19.

The Department accepted public comments between October 3, 2014, and November 3, 2014. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 13, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406076
Cameron Dorsey
Chief of Staff
Texas Department of Housing and Community Affairs
Effective date: January 1, 2015
Proposal publication date: October 3, 2014
For further information, please call: (512) 475-0471

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SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG)

10 TAC §§5.204, 5.207, 5.210, 5.213

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, §§5.204, 5.207, 5.210 and 5.213 without changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7849). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the amended sections lacked clarity and required greater definition. Accordingly, the amendments remove reference to certain OMB circulars; update requirements for Subrecipient performance by indicating which rules apply to Eligible Entities and which to other CSBG Subrecipients, including federal and state requirements for Subrecipient activities; further explain state requirements for client case management; delete a portion of §5.210 which will be moved to §5.207; clarify requirements for submission of the two plans; and clarify requirements for adequate representation on boards of directors

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department received comments to the proposed amendments. The Department's response to all comments received is set out below. The comments and responses include

both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules. Comments were accepted from October 3, 2014, through November 3, 2014, with comments received from:

(1) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)

(2) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas, in support of comments filed by TACAA

(3) Emma Vasquez, Executive Director, Big Bend Community Action Committee, Inc., in support of comments filed by TACAA

(4) Karen Swenson, Executive Director, Greater East Texas Community Action Program, in support of comments filed by TACAA

(5) Carole Belver, Executive Director, Community Action, Inc. of Central Texas, in support of comments filed by TACAA

COMMENT SUMMARY (1, 2, 3, 4, 5): Regarding several sections, commenter suggested replacing the federal rule references with the codified rule reference.

STAFF RESPONSE: To be consistent with federal oversight agency citations, the Department will keep its current citation practice for the CSBG program. Staff recommends no changes based on this comment.

The Board adopted these amendments at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406105
Cameron Dorsey
Chief of Staff
Texas Department of Housing and Community Affairs
Effective date: January 4, 2015
Proposal publication date: October 3, 2014
For further information, please call: (512) 475-0471

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SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §5.423

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, §5.423 with changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7855). The rule will be republished.

REASONED JUSTIFICATION. The amendments clearly describe the requirements for payments under the Household Crisis component of the program, and appropriately address the full scope of heating and cooling appliance replacement. Accordingly, the amendments clarify the payment requirements by specifying minimum and maximum requirements for payments under the Household Crisis component, and update the requirements for heating and cooling appliance replacements by changing from an appliance size-based requirement to a requirement that addresses the work that must be completed to install the appliance.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The Department received comments to the proposed amendments. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules. Comments were accepted from October 3, 2014, through November 3, 2014, with comments received from:

(1) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)

(2) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas, in support of comments filed by TACAA

(3) Emma Vasquez, Executive Director, Big Bend Community Action Committee, Inc., in support of comments filed by TACAA

(4) Karen Swenson, Executive Director, Greater East Texas Community Action Program, in support of comments filed by TACAA

(5) Carole Belver, Executive Director, Community Action, Inc. of Central Texas, in support of comments filed by TACAA

§5.423, Household Crisis Component

COMMENT SUMMARY (1, 2, 3, 4, 5): Regarding (c), commenter suggested language basing crisis payment on vendor acknowledgement that the crisis has been avoided. STAFF RESPONSE: Staff has made changes based on this comment. The proposed language was changed to allow for other circumstances where a crisis may have been resolved.

COMMENT SUMMARY (1, 2, 3, 4, 5): Regarding (d), commenter suggested revised language under the rationale that it is implied that if a Subrecipient cannot pay the entire bill the client is denied. STAFF RESPONSE: To clarify that this rule only applies to the Household Crisis component of the program, staff has changed the terminology from "the crisis exceeds the scope of this program" to "the crisis exceeds the scope of this component". The Subrecipient has the option of assisting the Household through the Utility Assistance component of the program. The client would receive services, but would not be counted under the Household Crisis component.

The Board adopted the amendments at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules.

§5.423. Household Crisis Component.

(a) A bona fide Household crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages or a terrorist attack have depleted or will deplete

Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Household, particularly the Elderly, the Disabled, or a Family with Young Children.

(b) A utility disconnection notice may constitute a Household crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been provided to the Subrecipient within the effective contract term and the notice of disconnection must not be dated more than sixty (60) days from receipt at the Subrecipient.

(c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; e.g. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds or options are available to resolve the Household's remaining crisis need.

(d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.

(e) Payments may not exceed Household's actual utility bill.

(f) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may directly issue vouchers to provide:

(1) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(2) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(3) Service and repair of existing heating and cooling units not to exceed $2,500 during the contract period when Subrecipient has met local weather crisis criteria. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Documentation of service/repair and related warranty must be included in the client file;

(4) Portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) may be purchased for households that include at least one member that is Elderly, Disabled, or a Family with Young Children, when Subrecipient has met local weather crisis criteria;

(5) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(6) Purchase of portable heating/cooling units which require performance of electrical work for proper installation requires prior written approval from the Department;

(7) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(8) Portable heating/cooling units must be Energy Star(r) and compliant with the 2009 International Residential Code (IRC). In cases where the type of unit is not rated by Energy Star(r), or if Energy Star(r) units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(g) Crisis funds, whether for emergency fuel deliveries, repair of existing heating and cooling units, purchase of portable heating/cooling units, or temporary shelter, shall be considered part of the total maximum Household allowable assistance.

(h) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(i) Time Limits for Assistance--Subrecipients shall ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

(j) Subrecipients must maintain written documentation in client files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in client files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406084
Cameron Dorsey
Chief of Staff
Texas Department of Housing and Community Affairs
Effective date: January 1, 2015
Proposal publication date: October 3, 2014
For further information, please call: (512) 475-0471

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SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL

10 TAC §5.502, §5.528

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, §5.502 and §5.528 without changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7856). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the amended sections did not clearly state program requirements.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The Department received comments to the proposed amendments. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules. Comments were accepted from October 3, 2014 through November 3, 2014 with comments received from:

(1) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)

(2) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas, in support of comments filed by TACAA

(3) Emma Vasquez, Executive Director, Big Bend Community Action Committee, Inc., in support of comments filed by TACAA

(4) Karen Swenson, Executive Director, Greater East Texas Community Action Program, in support of comments filed by TACAA

(5) Carole Belver, Executive Director, Community Action, Inc. of Central Texas, in support of comments filed by TACAA

5.528. Health and Safety

COMMENT SUMMARY (1, 2, 3, 4, 5): Regarding (a), commenter suggested raising the Health and Safety expenditure limit to 30% of total unit expenditures, with the rationale that continued increases in the cost of materials and other requirements such as ASHRAE warrant an increase in the allowable percentage.

STAFF RESPONSE: The Health and Safety expenditure limit is set by the Department of Energy and cannot be raised by the Department. No change is recommended based on this comment.

The Board adopted these amendments at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406104
Cameron Dorsey
Chief of Staff
Texas Department of Housing and Community Affairs
Effective date: January 4, 2015
Proposal publication date: October 3, 2014
For further information, please call: (512) 475-0471

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SUBCHAPTER K. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §5.2013

The Texas Department of Housing and Community Affairs (the "Department") adopts 10 TAC Chapter 5, §5.2013 without changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7857). The rule will not be republished.

REASONED JUSTIFICATION. The Department finds that the new rule is needed to clearly describe the requirements for clearance of environmental review prior to expenditure of program funds.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from October 3, 2014, through November 3, 2014. No comments were received.

The Board adopted this new rule at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The new rule is adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406102
Cameron Dorsey
Chief of Staff
Texas Department of Housing and Community Affairs
Effective date: January 4, 2015
Proposal publication date: October 3, 2014
For further information, please call: (512) 475-0471

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PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 176. ENTERPRISE ZONE PROGRAM

10 TAC §176.3, §176.4

The Economic Development and Tourism Division of the Office of the Governor (Office) adopts amendments to Texas Administrative Code, Title 10, Part 5, Chapter 176 (Enterprise Zone Program), §176.3 and §176.4. Section 176.3 is adopted with

changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5275) and will be republished. Section 176.4 is amended without changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5275) and will not be republished. The adopted amendments seek to comply with statutory changes.

The adopted amendment to §176.3 updates the rules in response to the amendment of Texas Government Code §2303.004(b). In response to public comments, the proposed amendment to §176.3(c) will not be adopted.

The adopted amendment to §176.4 updates the rules to reflect the addition of Texas Government Code, §2303.101(4), which automatically considers the area within a defense base development authority to be an enterprise zone, by requiring, if applicable, that an application for designation of an enterprise project include a statement that the project is located in an area that is also designated as a defense base development authority.

The Office received one comment regarding the proposed amendments to §176.3(c) and §176.3(g) from Sharon Welhouse, Principal, Ryan, LLC. This commenter asserts that the proposed amendment to §176.3(c) should be applied to all Enterprise Zone projects that have received designations, and that applying it only to projects designated after September 1, 2014, would be less efficient and would result in the unequal treatment of similarly situated taxpayers. Based on this comment, the Office will further review potential changes to the language of §176.3(c). Accordingly, no changes will be made to §176.3(c) pursuant to this amendment.

This commenter also asserts that because the proposed language of §176.3(g) was in response to the amendment to Texas Government Code §2303.004(b), and the amendment to Texas Government Code §2303.004(b) was effective September 1, 2011, the proposed language of §176.3(g) should apply retroactively as of September 1, 2011. The Office has reviewed the designations made after September 1, 2011, and although the language of §176.3 was not updated to reflect the amendment to Texas Government Code §2303.004(b), all designations were made in a manner consistent with the amendment to Texas Government Code §2303.004(b) effective September 1, 2011. Additionally, although the amendment to Texas Government Code §2303.004(b) was effective September 1, 2011, all designations for prior designation rounds have been allocated, and there are no designations for these periods remaining. Accordingly, the Office disagrees that the proposed amendment contained in §176.3(g) should be made retroactive to apply as of September 1, 2011. Section 176.3(g) will be adopted as proposed without changes.

The Office received no comments pertaining to the proposed amendment to §176.4. Section 176.4 will be adopted as proposed without changes.

The amendments of §176.3 and §176.4 are adopted pursuant to the Texas Government Code, §2303.051(c), which authorizes the Office to adopt rules necessary for the Program; and the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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

§176.3. Qualification for Designation of Enterprise Projects.

(a) The Bank may not designate a nominated qualified business as an enterprise project unless it determines that:

(1) the business meets the requirements set forth in the Act, §2303.402, and this chapter;

(2) the qualified business is located in, or has made substantial commitment to locate in an enterprise zone or at a qualified business site;

(3) the applicant's governing body has not reached the maximum number of designation allowed during the biennium;

(4) the applicant's governing body has demonstrated that a high level of cooperation exists between public and private entities;

(5) the designation of the qualified business as an enterprise project will contribute significantly to the achievement of the plans of the applicant for development and revitalization of the area;

(6) the designation of the qualified business as an enterprise project will further the public purposes of the Act and significantly benefit the goals of the program which include, but are not limited to, high impact projects or activities, targeted industry clusters and creation of primary jobs; and

(7) the applicant's governing body is in compliance with the Act.

(b) For job creation, a qualified business must be seeking to create new jobs, or for an existing business seeking to expand and increase their current level of employment in Texas. The program, however, does not allow benefit for moving existing jobs from one municipality or county in Texas to another within the state.

(c) For job retention, a qualified business must submit to the governing body a written request for the retained job benefit with documentation verifying which criteria is applicable. The governing body must authenticate the documentation. A copy of the request from the qualified business requesting the retained jobs benefit to the governing body, as well as the backup documentation, must be attached to the application under the applicable Tab. The governing body liaison must verify that the documentation meets at least one requirement for the retained jobs benefit on the application form. In any case, for job retention, the qualified business must maintain the same level of employment that existed 90 days prior to the date of designation. Documentation that the level of employment has been maintained must be submitted with the job certification application to the Comptroller of Public Accounts. Any of the retained jobs that are subsequently vacated must meet the 25% or 35% economically disadvantaged or enterprise zone resident hiring requirement, as applicable, when the vacant position is filled. The retained job benefit may not be used to receive benefit for moving existing jobs from one municipality or county in Texas to another within the state.

(d) Municipalities or counties with a population of 250,000 or more, based on the most recent decennial census, are eligible for up to nine enterprise project designations during a state biennium based upon availability.

(e) Municipalities or counties with a population of less than 250,000, based on the most recent decennial census, are eligible for up to six enterprise project designations during a state biennium based upon availability.

(f) The Bank may not allocate more than 12 project designations during a quarterly round unless there were fewer than 12 project designations allocated during a previous round in the biennium to offset the difference. The Bank may allocate the remaining nine designations during any round, and may award a designation to a lower scoring project over and above a higher scoring project if it proposes to create a significant number of new jobs and makes a substantial capital investment.

(g) The governing body of a county with a population of one million (1,000,000) or more may nominate for designation as an enterprise project a project or activity of a qualified business that is located within the jurisdiction of a municipality located in the county. A county during any biennium may not use in any one municipality more than three of the maximum number of designations the county is permitted under Texas Government Code §2303.4069(d)(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406114
Justin Gordon
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Office
Effective date: January 4, 2015
Proposal publication date: July 11, 2014
For further information, please call: (512) 463-1788

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CHAPTER 178. SINGLE UNIFIED PROJECTS

10 TAC §§178.1 - 178.5

The Economic Development and Tourism Division of the Office of the Governor (Office) adopts the addition of Texas Administrative Code, Title 10, Part 5, Chapter 178, §§178.1 - 178.5, Single Unified Projects, without changes to the proposed text published in the in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5278). The rules will not be republished.

The new Chapter 178 defines the criteria by which the Office may determine whether projects constitute a Single Unified Project for the purpose of counting qualified jobs under Texas Tax Code, Title 3, Chapter 313. The new Chapter 178 also delineates the application procedure for projects seeking Single Unified Project designation from the Office.

No comments were received regarding the adoption of the new Chapter 178.

The new Chapter 178 is adopted pursuant to the Texas Tax Code, §313.024, which directs the Office to develop a procedure for determining whether projects constitute a Single Unified Project, and the Texas Government Code, Chapter 2001 Subchapter B, which prescribes the standards for rulemaking by state agencies.

No other codes, statutes, or articles are affected by the adoption of these rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2014.

TRD-201406113
Justin Gordon
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Office
Effective date: January 4, 2015
Proposal publication date: July 11, 2014
For further information, please call: (512) 463-1788

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE
SUBCHAPTER E. DISCOVERY

16 TAC §1.86, §1.87

The Railroad Commission of Texas (Commission) adopts new §1.86, relating to Alignment of Municipal Intervenors for Purposes of Discovery, and new §1.87, relating to Limitations on Discovery Requests. The Commission adopts §1.86 without changes, and adopts §1.87 with changes from the proposed text published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5703). The Commission concurrently adopts amendments to §7.5530 of this title, relating to Allowable Rate Case Expenses, in a separate rulemaking, in conjunction with these adopted new rules in Chapter 1. The Commission adopts the new rules and amendments with an effective date of September 1, 2015. Because these two rulemaking proposals were related to similar subjects and affected similar parties, and because one public hearing was held by the Commission to receive comments on both proposals, and because many comments received during the public comment period and at the hearing did not differentiate between the two proposals, the Commission will summarize and respond to the comments received from all parties on both rulemaking proposals in both adoption preambles.

The Commission adopts two changes in §1.87. In subsection (b), the Commission adopts a change to allow intervenors, upon a showing of good cause, to make additional requests for information (RFIs) in excess of the 600 RFI limit, in order to provide greater flexibility in cases where the 600 RFI limit may prove insufficient. In subsection (c), the Commission adopts a change to ensure that the limitation imposed is triggered when a municipal party has requested that discovery propounded at the municipal level be updated. The Commission adopts this change in order to clarify the intent of the rule and in response to concerns raised by various commenters that the rule, as proposed, operated to deprive municipalities of their original jurisdiction.

In the separate but concurrent adoption notice, the Commission adopts two changes in §7.5530. As proposed, subsection (c) of the rule would have provided that a gas utility would not otherwise be required to reimburse a municipality for the reasonable cost of services of a person engaged under Texas Utilities Code §103.022(a) unless the municipality had either paid such fees and expenses or, by ordinance, expressly assumed the obligation to pay those costs, without making its obligation to pay contingent in any way upon the municipality's receipt of reimbursement. The Commission received numerous comments regarding proposed subsection (c). After further review, the Commission does not adopt proposed subsection (c) and redesignates the remaining subsections accordingly. In proposed subsection

(f), adopted as subsection (e), the Commission adopts a change to clarify the intent of the rule and to emphasize that the provisions of that subsection apply only to those proceedings that are within the Commission's appellate jurisdiction.

The Commission received numerous comments on the proposed new rules and amendments, including a request for a public hearing, which was held September 25, 2014. The Commission appreciates the interest shown by the public in this rulemaking effort.

The Commission received 32 timely-filed comments from the following Cities: Addison, Arlington, Breckenridge, Bridgeport, College Station, Colleyville, Crowley, DeSoto, Dickinson, El Paso, Euless, Farmers Branch, Fort Worth, Haslet, Houston, Hutto, Kerrville, Lancaster, Levelland, Muleshoe, Plainview, Richland, Rockwall, Seabrook, Snyder, Southlake, Sweetwater, Texas City, Waxahachie, Weston Lakes, Wichita Falls, and Wolfforth. The Commission received 21 late-filed comments from the following cities after the August 25, 2014, comment deadline: Carrollton, Cleburne, Colorado City, Commerce, Copperas Cove, Corsicana, Grand Prairie, Groom, Lamesa, Leander, Lewisville, Marble Falls, Marshall, Missouri City, Paris, Red Oak, Rockdale, Slaton, Somerville, Sugar Land, Whitney, and two late-filed comments from the Towns of Fairview and Westlake. The City of Whitney withdrew its comments on September 25, 2014.

The Commission received two timely-filed comments from the following elected officials: the Honorable Wendy R. Davis and City of Waco Mayor Malcolm Duncan, Jr. The Commission received eight late-filed comments from the following elected officials after the August 25, 2014, comment deadline: the Honorable Charles "Doc" Anderson, the Honorable Giovanni Capriglione, the Honorable Charlie Geren, the Honorable Patricia Harless, the Honorable Jane Nelson, the Honorable Charles Perry and the Honorable John Frullo (jointly-filed), and the Honorable Chris Turner.

The Commission received timely-filed comments from seven entities, four of which were from the following groups or associations: Atmos Cities Steering Committee (Atmos Cities), Joint Alliance of Municipalities for Fairness in Gas Utility Rates (Joint Alliance), Texas Coalition of Cities for Utility Issues (Texas Coalition), and Texas Municipal League (TML). The Commission received two timely-filed comments from the following companies: CenterPoint Energy (CenterPoint) and Texas Gas Service Company (Texas Gas). The Commission also received one timely-filed comment from Hays & Owens, L.L.P. The Commission received three late-filed comments from the following groups or associations after the August 25, 2014, comment deadline: Texans for Lawsuit Reform (TLR), Texas Civil Justice League (TCJL), and the Texas Conservative Coalition (TCC).

The Commission received one comment from an individual (Andrea Gardner) before the comment deadline.

The Commission conducted a public hearing on September 25, 2015, to receive additional comments regarding the proposed amendments. The following Cities submitted public comments at the hearing: Abilene, Amarillo, Buda, Cedar Park, Copperas Cove, Corsicana, Dalhart, Dallas, Denison, Electra, El Paso, Fort Worth, Fredericksburg, Greenville, Hewitt, Kermit, Kerrville, Leander, Lubbock, Mansfield, Marble Falls, Marshall, Somerset, and Waco. The Commission received one comment from an elected official (the Honorable Jim Keffer) at the hearing. The Commission received three comments from the following groups or associations at the hearing: Atmos Cities, Joint Coalition of Cities (Joint Coalition), and TML. The Commission received one comment from Hays & Owens, L.L.P. at the hearing. The Commission received two comments from the following companies at the hearing: CenterPoint and Texas Gas.

The aforementioned individual, cities, and all of the elected officials save one offered comments expressing opposition to the adoption of the proposed new rules and rule amendments. The Honorable Patricia Harless offered comments in support of adoption. Of the various entities that offered comments on the proposals, CenterPoint, Texas Gas, TLR, TCC, and TCJL were in favor of adoption. Hays & Owens, Atmos Cities, Joint Alliance, Texas Coalition, and TML were opposed to adoption.

COMMENTS

The Commission appreciates the comments submitted by various state legislators respecting the rule proposals. Legislators Perry, Frullo, Geren and Keffer requested that the Commission allow the Legislature to address certain issues raised in these proposed rules in the upcoming legislative session. Legislators Anderson, Geren, Turner, Capriglione, Nelson, and Davis commented that the proposed rules mirror legislation proposed in 2013, which was not approved by the Texas Legislature. Legislators Anderson, Perry, Frullo, Geren, Turner, and Davis commented that, during the 83rd Regular Legislative Session, a large number of municipalities and other parties across the state testified or registered in opposition to similar measures. Senator Davis commented that the Commission should not overstep its bounds and continue a process that was explicitly halted by the Legislature over a year ago, and that "sweeping changes" that would affect every city across the state are unquestionably a legislative issue. Senator Davis also commented that city participation in rate cases should continue as-is until the Legislature decides changes are necessary, and that the Legislature unmistakably declined to implement those changes. Senator Nelson commented that these issues deserve full vetting through the legislative process, and any final decision should rest with the Legislature. Chairman Keffer commented at the public hearing held September 25, 2014, that a similar, if not the very same, topic was heard by the State Affairs Committee and never advanced because it was very sensitive in nature. Chairman Keffer added that some vetting is still needed in the Legislature. Representative Harless commented that she supported the proposed new rules and amendments and that the proposal should result in savings for ratepayers.

In response to these comments, the Commission declines to adopt proposed subsection (c) as part of these rule amendments. While proposed §7.5530(c) did raise the same issues as House Bill 1148 (83rd Reg. Sess. 2013) with respect to municipal recovery of rate case expenses, the Commission is not aware that any of the issues addressed in proposed §§1.86, 1.87, and §7.5530(d) - (f), were contemplated by proposed legislation during the 2013 Legislative Session, and therefore adopts those sections with changes previously discussed. The Commission is confident that, despite the removal of proposed subsection (c), adoption of the remaining rule provisions will provide benefits for ratepayers.

The Commission received numerous comments asserting that the proposed rules would generally limit the ability of cities to meaningfully participate in the ratemaking process. Many of those comments stated that the proposed rules would act to erode local jurisdiction and control. Many commenters stated that the proposed rules would severely impair the authority of

municipalities to review and challenge rate increases proposed by gas utilities in Texas, and would dramatically alter the way rates are set, resulting in higher than necessary gas rates that will harm consumers. Other comments stated that the proposed rules create punitive and unnecessary obstacles for cities in their roles as local regulatory authorities. Many cities commented that they oppose any rules that would eliminate, delay, or diminish the reimbursement of municipalities' reasonable costs incurred while investigating and challenging utility rate proposals or that would otherwise reduce municipalities' ability to participate in the rate-setting process.

The proposal does not restrict municipal or local participation, nor does it alter the way rates are set. Instead, the proposal seeks to promote the most efficient use of intervenor resources which, in turn, should result in just and reasonable rates ultimately benefitting consumers. The proposed new rules and rule amendments do not limit the city's ability to review rate change requests, but rather, they are intended to promote efficiencies by streamlining discovery and establishing an allocation methodology for rate case expenses. The Commission expects that, to some extent, commenters' concerns regarding changes to current reimbursement procedures will be assuaged with the removal of proposed §7.5530(c), but nonetheless reiterates that, pursuant to the rules as adopted, municipal expenses that are incurred during a rate case proceeding may continue to be recovered, provided they are just and reasonable. Likewise, utilities are still required to establish that a rate request is just and reasonable and that rate case expenses associated with those requests are also just and reasonable. Finally, in response to concerns raised by commenters regarding encroachment by the Commission on the original jurisdiction of municipalities, the Commission adopts certain changes to the proposed rule language in order to clarify that RFIs propounded during the municipal-level proceeding, if the utility first filed its request for relief at the municipal level, and the Commission is exercising its appellate authority, shall count towards the total number of RFIs a municipality may propound on the utility during the Commission proceeding only if the municipal party requests that the discovery propounded at the municipal level be updated. Likewise, the addition of the word "appellate" to the proposed language in §7.5530(f) (adopted as §7.5530(e)) seeks to make clear that the proposed changes to that rule apply only to proceedings that are within the Commission's appellate jurisdiction.

The Commission received several comments stating that the proposed rule amendments would erode a city's ability to form or participate in coalitions, which would diminish cities' abilities to respond to rate changes that impact the public and weaken protections of public users. Other commenters stated that there are rarely parties other than cities and city coalitions that intervene to protect the public interest.

The proposed rules do not limit the cities' abilities to participate in a coalition, nor do they diminish cities' ability to respond to rate changes. These rules are not designed to change the way the public is represented at the Commission. The Commission is confident that municipalities will continue to exercise their statutory obligation as regulatory authorities and continue to represent the interests of municipalities before the Commission. The Commission disagrees with these comments and asserts that the adoption of these proposed new rules and amendments promotes efficiencies by streamlining the discovery process and allocating the expenses of litigation based on the principles of cost causation, which ultimately benefits the public interest.

The Commission received multiple comments stating that the current process works, and therefore no rule changes are necessary. Many comments stated that the Commission did not make any showing of abuse by cities, either in rate case expenses or discovery, as justification for the proposed changes.

The Commission agrees that the current process works. These rule amendments codify Commission precedent but still afford the Hearings Examiner discretion to allow flexibility when justified. Sections 1.86 and 1.87 as adopted formalize a standard practice at the Commission in order to provide greater predictability and consistency in future cases through the rule-making process. These rules are not necessarily, then, intended to address abuse, but rather to promote efficiencies by streamlining discovery and establishing an allocation methodology for rate case expenses.

The Commission received one comment stating that the rule proposal appeared specifically designed to impair cities' ability to protect gas customers (and keep gas utility rates reasonable) by limiting the discovery cities may perform in the requested rate increases. Another commenter stated that the complexity of issues presented in rate cases precludes a one-size-fits-all approach to review of the utility's application.

Discovery limitations are common to all forms of litigation. They have been applied on a case-by-case basis in gas utility proceedings at the Commission in the past and, to date, no appeals have been made based upon the argument that participants in those proceedings have been impaired by such limitations. Section 1.86(b) as adopted allows parties to overcome the presumption of alignment upon a showing of good cause. Similarly, changes adopted to §1.87(b) allow the 600 RFI limitation to be overcome upon a showing of good cause. Accordingly, the Commission disagrees that these new and amended rules should be characterized as a "one-size-fits-all approach."

The Commission received multiple comments stating that Commission staff typically focus on a few issues and rely on cities to pursue everything else. According to the comments, in Gas Utilities Docket No. 10359, the pending appeal of Atmos Mid-Tex's rate review mechanism case, the Commission did not file testimony, make an appearance at the prehearing conference, or attend noticed depositions. The comments further state that Commission staff reviews of filings made under Texas Utilities Code Ann. §104.301 (referred to as the Gas Reliability Infrastructure Program or "GRIP") result in approval of nearly 100% of the utilities' requests, unlike in rate cases where cities participate.

The Commission finds that these comments are outside the scope of this rulemaking, but emphasizes that the proposed rules are intended to promote efficiencies by streamlining the discovery process, not to impair the cities' ability to participate to the extent they deem beneficial. Gas Utilities Docket No. 10359 involved the appeal of a tariff negotiated between the utility and municipalities. The GRIP filings are reviewed at the Commission in a manner consistent with the statutory requirements related to those filings. Any change in investment and related expenses and revenues in interim rate adjustment filings are subject to review for reasonableness and prudence in a subsequent rate case, as required by statute and rule. On average, these reviews occur approximately once every six years. The Commission received one comment stating that, when duplicative discovery does occur, the utility company usually doesn't answer the duplicative request. Instead, the comment argues, the utility responds with "see the answer already provided to question X." The commenter stated that responding in

that manner does not require a tremendous amount of expense, and is not what's driving excessive rate case expenses.

The proposed new rules are intended to promote efficiency throughout the entire litigation process, which typically involves several hundred questions, requests for admission, requests for production of documents, and depositions. While simply referring to a previous response may not appear to exhaust tremendous resources, multiple duplicative inquiries in the context of a complex case will result in unnecessary rate case expenses, which may be avoided with the implementation of these rules as adopted.

The Commission received one comment stating that the preamble to proposed rules §1.86 and §1.87 states that alignment of parties "reduces rate-case expenses by reducing the duplication of services" without explaining why this is so when it is the usual practice of city intervenor groups to coordinate their work.

The Commission reiterates that the adopted new rules are intended to promote efficiency in the discovery process. As city intervenor groups already endeavor to coordinate their work, aligning municipal parties for the purposes of discovery should have minimal impact on the current process. The Commission makes no change in response to this comment.

The Commission received a comment stating that, under the proposed new rules, every city in a utility's service territory must know what discovery every other city is conducting at the city level, because once they arrive at the Commission, all city intervenors will be aligned and subject to the same total RFI limitation. Stated another way, parties will be limited in the discovery that they may conduct by the amount of discovery propounded by another party. Similarly, the Commission received a comment stating that parties may be penalized by taking more time to review an application before filing RFIs, thereby losing the race to propound discovery that new rule provisions would essentially require.

The Commission agrees in part with these comments; efficiencies in the discovery process are best realized when aligned parties communicate effectively and coordinate their efforts. The Commission anticipates that the timing of discovery will be coordinated among the participants. The adopted new rules only implement limitations on the number of RFIs, however; other forms of discovery are not subject to this limitation.

The Commission received numerous comments stating that the proposed new rules explicitly target only municipalities with the effect of eroding their original jurisdiction over the rates, operations and services of a gas utility.

The Commission disagrees with these comments. The proposed new rules are intended to promote efficiency in the discovery process, not to limit participation by or original jurisdiction of municipal parties. As efficiencies are realized in the discovery process, it is anticipated that rate case expenses of all parties will be reduced.

The Commission received numerous additional comments stating that alignment of municipal intervenors for discovery purposes creates and implements a presumption that may not exist, and imposes an insurmountable burden on municipalities. Some comments stated that numerous proceedings before this Commission have demonstrated that all municipalities do not share common interest. Some comments stated that spending time trying to overcome the presumption of alignment hampers an intervenor's ability to participate in the discovery phase of the case.

The Commission disagrees with these comments. The presumption regarding alignment is intended to promote efficiency in the discovery process. Adopted new rule §1.86 sets out specific criteria by which municipalities may overcome the presumption, and addressing the presumption early in the process will promote efficiency. It is anticipated that, given the procedural posture of these appellate proceedings, parties will have the ability to seek relief with regards to alignment in the early stages of the proceedings. Further, the rule as adopted does not require that parties be aligned on all issues; it only requires that the parties be aligned and coordinate for purposes of discovery. As in all litigation, it is presumed that the parties and the presiding officer will work to resolve litigation disputes in an efficient manner. Finally, appellate proceedings at the Commission typically follow a municipal review, which provides the municipalities the opportunity to form their position on issues relevant to that particular filing. By the time a case is filed at the Commission as an appeal, all parties will have had up to 125 days to consider the proposed rate change and to identify issues in which they are interested.

The Commission received a comment stating that proposed §1.86 conflicts with the provision that Commission rules apply only to proceedings before the Commission because it would also apply to proceedings under Texas Utilities Code §104.102, which are oftentimes before a municipality.

The Commission disagrees with this comment. The adopted rules do not set aside the existing provisions in the Commission's rules in Chapter 1 of this title (relating to Practice and Procedure). Section 1.1 of this title (relating to Purpose, Scope, and Conflict with Special Rules) states: "These rules provide a system of procedures for practice before all divisions of the Railroad Commission of Texas that will enable the just disposition of proceedings and public participation in the decision-making process." Read in conjunction with the existing rules, adopted §1.86(c) is applicable only to proceedings before the Commission. The scope of the existing rules is not altered.

The Commission received a comment stating that proposed new §1.86 would create an incentive for municipal groups to stake out different positions to defeat the presumption of shared interest in order to avoid discovery limitations.

The Commission disagrees with this comment. The presumption regarding alignment is intended to promote efficiency in the discovery process. The proposed rule sets out specific criteria for overcoming the presumption and addressing the presumption early in the process will promote efficiency. Efforts to overcome the presumption of alignment would be subject to challenge by the opposing party and to scrutiny by the presiding officer. This should ensure that arguments made to overcome the presumption of alignment are based on upon real differences among municipal groups.

The Commission received comments stating that proposed new §1.86 assumes that all cities have the same interest, which seriously oversimplifies the issues at stake in a rate case.

The Commission disagrees with these comments. Section 1.86 as adopted presumes that the municipalities are in agreement that the utility's filing should be challenged, but only creates the presumption of alignment for purposes of discovery. It does not assume that all municipalities share the same interest beyond the discovery phase.

The Commission received a comment noting that §1.61(b) of this title (relating to Classification and Alignment of Parties) al-

ready states that an examiner "may align parties according to the nature of the proceeding." This provision permits alignment but bases the examiner's decision to align parties on the particulars of each proceeding.

The Commission reiterates that codification of the presumption of party alignment by rule for purposes of discovery is intended to promote efficiency in the discovery process; it does not assume that all municipalities share the same interest beyond the discovery phase. Section §1.61(b), raised by the commenter, addresses the alignment of parties for all purposes and is not limited solely to discovery.

The Commission received a comment stating that, under Texas Utilities Code Ann. §§101.001-105.051 (the Gas Utility Regulatory Act or "GURA"), the presumption is that unless a showing is made that "consolidation" is appropriate, and then only with respect to an issue of common interest, there is no "consolidation" of one municipality with another.

The Commission disagrees with this comment; GURA does not create a presumption against consolidation; rather, §103.023 states that municipal party standing is subject to the right of the Commission to consolidate municipalities on issues of common interest. New rule §1.86 as adopted presumes that the municipalities are in agreement that the utility's filing should be challenged and creates a presumption of alignment for purposes of discovery. It does not assume that all municipalities share the same interest beyond the discovery phase.

The Commission received a comment stating that it should not be the municipalities' burden to prove a negative and overcome a presumption that common interests exist for all issues.

The Commission disagrees with this comment. Demonstrating to the presiding officer that municipal parties have differing views on issues in a rate case does not require municipalities to prove a negative, but rather to make an affirmative showing that cause exists for issues of a particular municipality to be considered separately. Also, as mentioned previously, the rule seeks efficiencies by presuming common interests among municipalities only during the discovery phase.

The Commission received a comment stating that, because different municipalities will be pursuing different issues, motions to realign under the proposed rules could be filed in every instance.

The Commission disagrees with this comment. The presumption regarding alignment does not require that the parties be aligned on all issues, but only for the purposes of discovery. As in all litigation, it is presumed that parties and the presiding officer will work to resolve litigation disputes in an efficient manner.

The Commission received comments stating that proposed §1.86 would greatly limit a city's ability to individually settle a case, while another chooses to continue to litigate it.

The Commission disagrees with this comment. A municipality's decision to settle a case would potentially be suitable justification for overcoming the presumption of alignment.

The Commission received a comment stating that there are no orders issued by the Commission in which parties have filed motions for relief from excessive discovery.

The Commission disagrees with this comment. Commission examiners have repeatedly issued discovery control orders to manage the amount of discovery propounded in ratemaking proceedings. (See Gas Utility Docket Nos: 9670, 9762, 9902, 10006, 10038, 10097, 10106, 10182.)

The Commission received comments stating that limiting the number of requests for information for each party constrains the amount of discovery that can be conducted, unreasonably restricting cities' ability to thoroughly evaluate rate requests.

The Commission disagrees in part with these comments. The alignment of parties for purposes of discovery is intended to promote efficiency in the discovery process. However, the Commission agrees that parties should be afforded the opportunity to demonstrate that, in some instances, exceeding the 600 RFI limitation may be justified. Accordingly, the Commission adopts a change in §1.87(b) to allow parties to petition the presiding officer and demonstrate that good cause exists for increasing that limit.

The Commission received comments stating that any limitation on discovery should not include discovery conducted at the municipal level. Some comments argued that new §1.87, as proposed, operated to deprive municipalities of their original jurisdiction

The Commission agrees with these comments and adopts a change to §1.87(c), to ensure that the limitation imposed is triggered when a municipal party has requested that discovery propounded at the municipal level be updated. If the utility updates its test year, the limitation on discovery will not include RFIs asked at the municipal level.

The Commission received a comment recommending that it consider, in lieu of the alignment-as-one-party approach, using a cap on discovery per party that is lower than the proposed cap (thereby more closely aligning Commission rules with the Texas Rules of Civil Procedure.) The comment also stated that the rules as proposed are likely to lead to disputes as to whether a discovery request was truly an RFI, an interrogatory, a request for production, or a request for admission, as those terms are defined elsewhere in Commission rules.

The Commission disagrees with this comment. This rulemaking is guided in part by the Texas Rules of Civil Procedure. While those rules do set a limit on discovery that is lower than contemplated in this rule, the Commission has decided that the limit of 600 RFI is reasonable in conjunction with adoption of the rule presuming municipal alignment for purposes of discovery. To the extent there is a disagreement regarding the character of a form of discovery, the parties may petition the presiding officer and seek a ruling to resolve such disputes.

The Commission received a comment stating that, under GURA, cities are authorized to "require the utility to submit information as necessary" and hire professionals to conduct investigations and present evidence during the ratemaking process. The comment further states that it does not make sense to limit the number of inquiries that will be permitted without knowing complexities of the particular rate case. Another comment stated that the limitation of 600 RFIs in proposed §1.87 is an arbitrary limit.

The Commission disagrees with these comments. GURA emphasizes reasonableness and the rules as adopted allow the foregoing activities to the extent that the Commission considers them to be reasonable. Moreover, the rules are intended to promote efficiency by streamlining the discovery process, and required a reasonable limitation to be placed on RFIs to achieve that end. Parties may file fewer RFIs as desired or request additional RFIs from the Examiner based on demonstrated needs.

The Commission received a comment stating that §1.87 as proposed invites gamesmanship as utilities attempt to push parties

closer to the RFI limit by providing incomplete or confusing answers that will require follow-up.

The Commission disagrees with this comment. Abuse of discovery undertaken by participants may be brought to the attention of the presiding officer. To the extent that a finding is made that any party has engaged in gamesmanship, the presiding officer has the authority to address that at the hearing.

The Commission received a comment stating that current rules (specifically, §1.85 of this title, relating to Discovery Orders) already provide the Examiners and the Commission sufficient authority to curtail and penalize a party's abuse of discovery.

The Commission agrees that current rules provide the Examiners and the Commission with authority to curtail and penalize a party's abuse of discovery; however, the proposed rules are intended to act in concert with §1.85 while enhancing predictability and transparency in the process (as articulated by Commissioner Smitherman at the open meeting of the Commission held August 21, 2012.)

The Commission received a comment stating that an arbitrary limitation on the amount of discovery permitted is in violation of generally accepted auditing standards.

The Commission agrees that the accuracy of financial information is an important element of both an audit process and the ratemaking process. Utilities' books and records must comply with FERC Uniform System of Accounts. The statutory rate review process is guided by the Commission's rules in Chapter 1, the Texas Rules of Civil Procedure, and GURA.

The Commission received a comment stating that, if the proposed discovery limits were based on the interest of efficiency and justice, they would not be applied only to municipalities but also to other parties that submit discovery requests.

The Commission disagrees with this comment. Participants in rate proceedings have requested that discovery control plans be adopted. The Commission is unaware of any case within the last ten years where relief has been requested regarding discovery propounded by any parties other than municipalities.

The Commission received a comment stating that the Commission has consistently sided with utilities over consumers when setting rates.

The Commission notes that this comment is outside the scope of this rulemaking, but reiterates that the rules as adopted are intended to promote efficiencies in the discovery process which will facilitate the determination of just and reasonable rates in proceedings at the Commission.

The Commission received a comment stating that the rule as proposed provides that subparts are counted in calculating the limit of 75 RFIs per week or 600 in total, which is very different than what is provided for in the Texas Rules of Civil Procedure where only discrete subparts are counted.

It is not clear whether the comment advocates the wholesale adoption of the Texas Rules of Civil Procedure with regards to interrogatories relating to the valuation of a subpart of the interrogatory in rate case proceedings. If so, the Commission disagrees; Texas Rules of Civil Procedure define three levels of discovery. In Level 1 proceedings, a party may not serve another party more than 15 written interrogatories, excluding interrogatories asking a party to identify and authenticate documents. (See §190.2(b)(3).) In Level 2 proceedings, a party may not serve another party more than 25 written interrogatories, excluding interrogatories asking a party to identify and authenticate documents. The assumption in Level 3 proceedings is that either the interrogatory limits of Level 1 apply, if applicable, or the interrogatory limits of Level 2 apply unless specifically changed in the discovery control plan. The ceiling of 600 RFI included in the proposed rule far exceeds the assumed level of interrogatories applicable in most complex civil litigation. As the starting point of §1.87 as adopted is 600 RFIs, as opposed to 25, as applicable to interrogatories in district court, it is reasonable that each subpart of an RFI be counted as a separate RFI. Simply counting each subpart is intended to reduce litigation and thus, rate case expenses, related to determining whether a subpart is a "discrete subpart," to be included in the overall count of RFIs, or a subpart that is merely a component of the principle query. Despite the expansive limit of 600 questions, the adopted rule as amended provides the presiding officer discretion to expand the number of questions by a showing of good cause.

The Commission received a comment stating that the term "update" in §1.87(c) (providing that municipal RFIs count in the total RFI limit, unless the utility updated its test year on appeal) is unclear.

Due to the nature of rate case proceedings, updates are determined on a case-by-case basis. Certain minor corrections that may be the result of proceedings at the municipal level may not rise to the level of an update. On the other hand, changes made by the utility may result in an updated filing. As with any unresolved issue, it will be necessary for the presiding officer to decide each instance of a change to the utility's filing on a case-by-case basis. The Commission makes no change to the rule based on this comment.

The Commission received a comment stating that, while proposed §1.87(f) mentions admissions, request for production, inspections and RFIs, there is no mention of depositions. The commenter asks if this omission should be construed to mean that there's no limit on the length of time for taking a deposition, or, whether that deposition, as a form of discovery, can even be taken under the proposed rule.

Section 1.81 of this title (relating to Form and Scope of Discovery in Protested Contested Cases) provides permissible forms of discovery in proceedings at the Commission. The proposed rule is not intended to supplant that rule, but rather, to supplement existing procedure and promote efficiencies by streamlining the discovery process. As set forth in §1.81, the scope of depositions shall be the same as provided in the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein, as well as the constraints provided for in Texas Government Code, Chapter 2001.

The Commission received comments stating that the rule proposal represents a solution to a problem that does not exist.

The Commission disagrees with this comment. The discovery process is a labor-intensive component of all litigation and represents a significant portion of rate case expenses. Rate case expenses are a necessary part of rate proceedings and those expenses are ultimately paid by the customer. The rules as adopted are intended to promote efficiencies by streamlining the discovery process, thereby reducing costs for end users.

The Commission received a comment proposing that the Commission adopt rules that parallel rules of a similar nature adopted by the Public Utility Commission.

The Commission finds that comments regarding rules promulgated by another agency are outside the scope of this rulemaking. The focus of these proposed rules is to streamline the litigation process in the context of rate case expenses for utilities that are within the jurisdiction of the Railroad Commission.

One commenter stated that the Commission is required by Texas Government Code §2006.002 to perform a regulatory flexibility analysis to evaluate alternative means of achieving the purpose of the proposed rules.

Texas Government Code §2006.002 requires a state agency to prepare a regulatory flexibility analysis if the proposed rule amendments will have an adverse effect on small businesses or micro-businesses. The Commission finds, and so stated in the proposal preamble, that these rules do not have such an effect and the commenter did not provide evidence to the contrary.

The commenter also raised the issue of impact to local governments which is not contemplated by §2006.002. Another commenter stated that it disagreed with the Commission's position that, "the rule change will have no foreseeable implication relating to cost or revenue of the state or local government" and that "there are no foreseeable economic costs to be incurred by parties or persons required to comply with these amendments." The comment stated that one could not reasonably draw these conclusions.

The new rules and amendments as proposed imposed no economic costs upon parties and/or persons required to comply. In accordance with §103.022(b) of the Texas Utilities Code, under proposed §7.5530, affected local governments would continue to be reimbursed by gas utilities for rate case expenses the Commission determined to be reasonable, provided that those municipalities had paid the rate case fees and expenses, or, by ordinance expressly assumed the obligation to pay such fees and expenses. The Commission reasoned that municipalities may adjust their budgets as they deem appropriate to allow for payment of any reasonable expenses they incur of their own volition during a rate case proceeding (pending reimbursement by the utility.) Accordingly, these rules as proposed presented no adverse effect on local economies and the Commission was not required to provide a local impact statement pursuant to Texas Government Code §2001.022. For reasons discussed previously, however, the Commission does not adopt proposed §7.5530(c) at this time, rendering concerns about the economic impact of that provision upon parties and persons required to comply moot.

The Commission received multiple comments stating that the proposed rules will have the effect of forcing cities to drop out of the regulatory process, thereby effectively terminating mechanisms that depend upon local ratemaking. These comments stated that the end result will be increased filings at the Commission, more work for Commission staff, and counterproductively, more litigation.

The Commission disagrees with these comments. Currently, there are no Commission regulations that specifically address the allocation of rate case expenses. The adopted rules would codify the Commission's policy on the allocation of rate case expenses and result in judicial efficiency, thus reducing the Commission's workload. Articulation of the Commission's policy in this area may also serve to eliminate unnecessary litigation on the allocation of rate case expenses. Finally, as discussed previously, the proposal does not seek to restrict municipal participation, but rather to promote the most efficient use of intervenor resources.

The Commission received several comments stating that the proposed rule amendments are unfair in that they are "only aimed at cities." These comments added that all rate cases are filed by large utilities whose rate case expenses are several times larger than the expenditures incurred by the cities.

The Commission disagrees with these comments. The proposed rules and rule amendments are consistent with the Commission's statutory authority under GURA and are intended to codify the Commission's practice with regard to the allocation of rate case expenses. Under GURA, utilities are required to file rate cases to recover the costs associated with providing safe and reliable service, and bear the burden of proof (and concomitant costs) of doing so under the statutory scheme set forth by that Act. The allocation methodology implemented by this rulemaking is reflective of cost causation principles for reasons articulated by the Commission at the open meeting held on August 21, 2012, at which the Commission specifically considered the proper allocation of rate case expenses. At that meeting, Commissioner Smitherman stated that the proposed allocation reflected two principles of Commission policy: socializing costs incentivizes further consumption of those costs, and the Commission seeks to allocate costs to the cost causer.

The Commission received numerous comments specifically in opposition to the adoption of proposed §7.5530(c). Those comments included assertions that the Commission should not dictate the exact method by which the municipality can act or enter into a contract with legal representation or consultants; that the rule establishes no new constraints as to how utilities contract for professionals they engage to assist with their litigation of rate cases; that the rule would allow utilities to obtain approval for expenses that they themselves have not actually paid; that §7.5530(c) poses a burden on public funds by requiring cities to "front" expenses for activities intended to protect the public interest; that the proposed rule creates a tremendous financial burden if cities are going to be forced to cover these rate case expenses ahead of time; that §7.5530(c) would eliminate the funding for cities to hire legal representation and/or experts to analyze the proposed rate increases until the cities actually expended the funds themselves, which is extremely troublesome for very small cities that do not budget money to fight rate cases; that proposed §7.5530(c) would make it difficult for some cities to participate in ratemaking proceedings due to financial constraints; that §7.5530(c) serves no purpose at all, other than to try to deter cities from participating in rate cases; and that §7.5530(c) adds additional burdensome requirements for participating cities that conspicuously are not required of gas utilities. The Commission considered these comments, together with comments discussed previously, and declines to adopt proposed §7.5530(c) as part of these rule amendments.

The Commission received several comments stating that proposed §7.5530(d) (adopted as §7.5530(c)) deters cities from participating in rate cases by creating or exacerbating the "free-rider" problem. Commenters further stated that "the proposed allocation of utility expenses and municipal expenses turn the entire focus of the statutory provision from a reimbursement of reasonable expenses to issues of how they were incurred and how they are to be allocated." Instead of saving expenses, commenters submitted that proposed subsection (d) creates new burdens and probably engenders more litigation issues. Finally, the Commission received comments stating that this proposed

rule provision appears designed to discourage municipal participation in the process by assigning more costs specifically to customers within municipalities without regard to the proper cause of those costs.

The Commission disagrees with these comments. Proposed §7.5530(d) (adopted as subsection (c)) formalizes the methodology approved by the Commission in its most recent litigated rate case expense proceeding, and is consistent with the Commission's jurisdictional authority as set out in GURA. This methodology is reflective of cost causation principles articulated by the Commission at the open meeting held on August 21, 2012, at which the Commission specifically considered the proper allocation of rate case expenses. In the context of litigation, costs are attributed to those participants who review, control, and participate in the litigation decisions. Municipalities that have settled or approved the proposed rates do not generate any additional litigation expenses. (GUD No. 10051, FoF 44.) Finally, the Commission currently does not have a rule addressing allocation of rate case expenses. The Commission has previously stated (at the aforementioned open meeting) its intent to clarify the allocation of rate case expense by adopting a rule that would provide predictability and transparency to the process.

The Commission received one comment stating that proposed §7.5530(e) (adopted as §7.5530(d)) violates a number of tenets applicable to utility ratemaking, including the prohibition against recovery of budgeted or projected expenses, and the requirement to base rates on a historic test year.

The Commission disagrees with this comment. GURA allows a utility to recover only that portion of the estimated expenses that are actually expended, and nothing in the rules as proposed or adopted changes this requirement. The calculation of estimated expenses acts as a cap to the overall expenses that the parties may recover following the date of the final order of any case.

The Commission received a comment stating that proposed §7.5530(e) (adopted as subsection (d)) essentially deems any expenses the utility incurs related to the initial filing and notice as reasonable and provides that they "shall be allocated uniformly to all customers."

The Commission disagrees with this comment. Adopted §7.5530(d) does not deem any expenses the utility incurs related to the initial filing and notice as reasonable; all rate case expenses are examined for reasonableness during the course of the proceeding.

The Commission received a comment stating that rule language describing the characterization of "required regulatory expenses" is written so broadly that it invites abusive application.

The Commission disagrees with this comment. The proposed rule formalizes the methodology approved by the Commission in its most recent litigated rate case expense proceeding. As stated previously, all rate case expenses must be just and reasonable before a utility may recover the expense. The Commission is confident that participants and Commission staff will be able to identify any abusive practices and address those together with other litigated matters.

The Commission received comments stating that proposed §7.5530(e) and (f) (adopted as subsections (d) and (e), respectively) constitute a one-sided proposal that is clearly designed to reduce city participation in the process with a punitive allocation of the utilities' own expenses.

The Commission disagrees with this comment. GURA allows a utility to recover only that portion of the estimated expenses that are actually expended, and nothing in the proposed rule changes this requirement. The calculation of estimated expenses acts as a cap to the overall expenses that the parties may recover following the date of the final order of any case.

The Commission received a number of comments stating that proposed §7.5530(e) and (f) (adopted as subsections (d) and (e), respectively) are designed to discourage or inhibit municipal participation, arbitrarily and unfairly allocate utility expenses to customers in municipalities, and improperly assign all expenses of litigation to customers within municipalities. Additional comments stated that these proposed rule provisions do not relate cause to effect, but rather seek to impose greater burdens on customers in municipalities which have participated in the process, and inject unnecessary complexity into rate case expense issues.

The Commission disagrees with the characterization of the proposed rules and rule amendments offered by these comments, and is confident that, under the adopted regulatory scheme, municipalities will continue to exercise their statutory obligation as regulatory authorities and continue to represent the interest of municipalities at the Commission. The rules as adopted formalize the allocation methodology approved by the Commission in its most recent litigated rate case expense proceeding, and are consistent with the Commission's jurisdictional authority as set out in GURA. Litigation expenses are to be recovered from affected customers in the municipalities or coalitions of municipalities participating in the proceeding and affected customers subject to the original jurisdiction of the commission. As previously discussed, these methods are reflective of cost causation principles publicly articulated and espoused by the Commission. In the context of litigation, it is appropriate for costs to be attributed to those participants who review, control, and participate in the litigation decisions. Municipalities that have settled or approved the proposed rates do not generate any additional litigation expenses. (GUD No. 10051, FoF 44.) Moreover, adoption of a rule addressing allocation of rate case expenses results in judicial efficiency and provides greater predictability and transparency to the process for all participants.

The Commission received a comment stating that proposed §7.5530(e) and (f) (adopted as subsections (d) and (e), respectively) may result in increased litigation to determine what is "related" to the initial filing of the rate case, as parties must now consider categorization of rate case expense, an issue that did not exist previously.

The Commission disagrees with this comment. Prior to the adoption of these rule amendments, there were no Commission rules addressing the allocation of litigation expenses, and yet, that issue has been previously litigated at the Commission. The adopted rule amendments provide clarity and guidance with regard to the classification of rate case expenses and it is expected that, if anything, they will result in a decrease in litigation regarding the allocation of expenses.

The Commission received a comment stating that the proposed allocation of expenses in proposed §7.5530(f) (adopted as subsection (e)) imposes an explicit direct cost on local governments. A similar comment stated that this rule provision violates the grant of authority to cities to participate in ratemaking proceedings found in GURA §103.022(a) by threatening a penalty that would accrue only to those cities that exercise their authority under the statute.

The Commission disagrees with these comments. Proposed §7.5530(f) imposes no costs on local governments, but rather allocates costs that have been generated by the participants themselves in rate proceedings. The proposed rule formalizes the allocation methodology approved by the Commission in its most recent litigated rate case expense proceeding, and is consistent with the Commission's jurisdictional authority as set out in GURA. The proposed rules are not intended to penalize cities that litigate, but merely to allocate rate case expenses to the intervenors that generate those expenses in a manner consistent with cost causation principles previously upheld by the Commission.

The Commission received a comment stating that, under "a true cost-causation argument, all rate-case expenses should be borne by the utility." The Commission disagrees with this comment. Rate case filings are a response to increases in operating expenses and increased investment which, in turn, help utilities provide safe and reliable service. GURA requires that utilities seek recovery of those expenses by filing a request with the regulatory authority. The proposed new rules and amendments are not intended to alter that statutory scheme.

The Commission received a comment stating that proposed §7.5530 neglects to include any provision for recovery of cities' estimated expenses.

The Commission disagrees with this comment. The rule does not preclude the recovery by municipalities or utilities of actual rate case expenses. The estimated rate case expenses of any party are used to set a cap on the amount of rate case expenses estimated to be incurred during the duration of a case. Only amounts actually expended are eligible for recovery. Municipal expenses are not categorized by the rule, and all expenses that are incurred may be recovered provided they are just and reasonable.

The Commission received a comment stating that the current process works well and the Commission should leave it in place.

The Commission reiterates that the adopted new rules and amendments are not intended to reject the current process; they are intended to promote the most efficient use of intervenor resources.

The Commission received various comments in support of proposed new §1.86, §1.87, and the proposed amendments to §7.5530, which are summarized briefly as follows:

The Commission received comments stating that the proposed changes do not interfere with continued municipal participation in rate making proceedings; that the proposed rule changes do not affect a municipality's ability to intervene in rate cases, hire attorneys and other experts, propound discovery, and recover their reasonable rate case expenses; that the proposed rules do not deny the cities their original jurisdiction under GURA; that the Commission is taking reasonable and appropriate steps to ensure that both utilities and municipalities incur only reasonable rate case expenses; that the proposed rules will enhance the efficiency of the process and lessen the economic impact; that the proposal is a fair, realistic, and moderate solution to excessive regulatory litigation costs; that the proposal equalizes the role of utilities and municipalities as responsible managers of public funds; that the proposed rules are an appropriate exercise of the Commission's jurisdiction because a municipality's original jurisdiction over a utility's rates and services is subject to the Commission's jurisdiction over appeals from municipal rate orders; that the proposal should result in savings for ratepayers; that the Commission's proposed amendments to §7.5530 reflect the rate-case expense allocations in the Commission's order in GUD No. 10051; that the Commission's proposed rules generally reflect Commission precedent and subsequent rate case expense dockets; that §7.5530 will require cities to move from passive observer to active participant in the regulatory process; that the proposed amendments will place no additional burden on municipalities; that the proposed amendments will help encourage continued municipal oversight over the expenses incurred in ratemaking proceedings; that amendments to §7.5530 will encourage all litigants to have a sense of ownership over the expenses they incur in ratemaking litigation; that the proposed amendments are an appropriate exercise of the Commission's jurisdiction because a municipality's original jurisdiction over a utility's rates and services is subject to the Commission's jurisdiction over appeals from municipal rate orders (*Texas Coast Utilities Coalition v. R.R. Comm'n of Texas*, 423 S.W.3d 355, 360 (Tex. 2014) (citing Tex. Util. Code §103.055(a), (c)); that cities ought to have the right to make their own choices in a rate case without being forced to pay legal fees incurred by other cities; that the Commission's motivations for proposing the amendments are reasonable and should be encouraged by all participants in a ratemaking proceeding who have an interest in reducing rate case expenses; that by embodying cost-causation principles in the proposed amendments, municipalities will necessarily ensure that rate case expenses are reasonable and prudently incurred; that it is reasonable and appropriate for the Commission to undertake this rulemaking to amend §7.5530 to more closely align the Commission's rule with the mandatory reimbursement concept in §103.022(b); that the proposed amendments codify the Commission's recent practice of, where possible, assigning the recovery of rate case expenses to the party who caused the expenses to be incurred; that the proposed amendments will ensure that costs are allocated reasonably among the parties who drive the litigation costs; that the Commission's proposed amendments to §7.5530 should be adopted because they will encourage municipalities to actively oversee expenses incurred in ratemaking proceedings and will serve to create efficiencies in the ratemaking process such that ratepayers should enjoy lower costs resulting from reduced rate case expenses; that the amendments contained in proposed §7.5530(c) do not alter the Commission's rules or procedures on determining the reasonableness of rate case expenses; that proposed amendments to §7.5530 (d) - (f) memorialize recent Commission decisions to allocate rate case expenses based on the principle of cost causation; that proposed §7.5530(d) would protect the ratepayers within the environs from bearing the same level of rate case expenses as a municipality that engaged consultants, accountants, auditors, attorneys, or engineers to litigate a case; that proposed §7.5530(e) will empower parties to reduce litigation costs by tying cost liability to cost causation; that proposed §7.5530(e) and (f) would protect municipalities who allowed the proposed rates to go into effect or who entered into a settlement agreement prior to the incurrence of a majority of the litigation expenses; that the allocation provisions in the proposed amendments are subject to a showing that good cause exists to allocate reasonable rate case expenses in some other manner; that proposed §§1.86 and 1.87 will balance the need for transparency in rate cases with the need for prudence in discovery; that the proposed new rules create sensible external controls to keep rate case expenses in check; that the proposed new rules apply only to the discovery phase of a ratemaking proceeding; that neither proposed new rule impedes a municipal regulator's authority to appropriately scrutinize and challenge a utility's rate request; that the proposed new rules in-

sert the reasonable procedural tools of alignment and discovery limits into one of the most costly aspects of a ratemaking proceeding in a way that balances party interest with the fact that ratepayers ultimately will bear the cost of reasonable litigation expenses; that proposed rule §1.86 is a reasonable extension of the Commission's existing statutory ability to align municipal parties with other parties on issues of common interest under Texas Utilities Code §103.023(b); that proposed rule §1.86 merely extends the Commission's existing authority by adding a rebuttable presumption of municipal alignment only for purposes of discovery in ratemaking proceedings; that proposed new rule §1.86 places no additional burden on municipalities; that municipalities are similarly situated to challenge the utility's ability to meet its burden of proof in support of its rate request, and therefore it is reasonable for the Commission to presume that municipal parties, whether acting alone or as part of a coalition, share a common interest in a proceeding; that municipalities or municipal coalitions would not be aligned for the purposes of filing testimony, participating in a hearing on the merits, or submitting post-hearing briefs under the rules as proposed; that proposed §1.86 will help promote more efficient discovery because municipal parties who share a common interest will necessarily have to take minor steps to coordinate discovery; that, under proposed §1.86, a municipality has the right to challenge the presumption of alignment by filing a motion to realign that shows that good cause exists for realignment; that, since proposed rule §1.86 reasonably recognizes that there may be instances in which alignment, for purposes of discovery, is not appropriate, the proposed rule reasonably targets the discovery phase of a ratemaking proceeding to promote efficiencies while accounting for the rights of municipal parties to propound reasonable discovery; that, under proposed new rule §1.86, municipalities would not be aligned for purposes of providing testimony or participating in a hearing on the merits; that municipal intervenors should be aligned because they all seek to keep rates as low as possible across the board and to ensure that ordinary consumers get the best possible rates; that the Examiner would retain discretion to reorder the alignment of the parties upon proper showing of disparate interest; that, to the extent a municipality objects to alignment, the municipality has the right to file a motion to realign in whole or in part; that proposed §1.87 is a procedural device that is narrowly focused on discovery, which is often one of the most expensive aspects of a rate proceeding; that proposed §1.87 is narrowly focused on only one form of discovery without affecting several other effective discovery tools for analyzing a utility's requested rate treatment; that proposed §1.87 balances the benefit of imposing reasonable limitations on RFIs in the Commission-level proceeding with a municipality's right to sufficiently analyze and challenge the utility's requested rate treatment; that proposed §1.87 does not in any way limit the rights and abilities of Commission staff or the presiding officers overseeing the proceedings; that proposed rule §1.87 merely memorializes existing precedent, set by Examiners' use of discovery control orders to manage the amount of discovery propounded in ratemaking proceedings, by giving the presiding officer the ability to limit discovery in the interest of efficiency and justice; that, by placing a reasonable limit on discovery, parties will inevitably prioritize and coordinate RFIs they propound, which will increase the efficiency of the case and reduce costs for all parties and ultimately ratepayers; that limitation on RFIs seeks to cut back on needless and duplicative questioning; that the Examiner retains sufficient discretion under the proposed rules to adjust the limitations to take special circumstances into account; that the proposed rules and rule amendments will encourage municipalities to thoughtfully collaborate throughout the discovery phase and should eliminate duplicative discovery efforts; and that the proposed new rules will reduce litigation costs while still protecting a municipality's ability to analyze a utility's rate request.

The Commission generally agrees with these comments and appreciates the interest shown by the commenters in this rulemaking. The Commission adopts certain changes to §1.87 and §7.5530, however, as previously discussed.

State statutes allow participants in complex utility rate cases to recover rate-case expenses from customers. These rules are intended to reduce rate-case expenses and promote the efficient resolution of cases. Alignment of parties reduces rate-case expenses by reducing the duplication of services. Since 1999, litigants in Texas courts have complied with procedures that impose discovery control plans which effectively control costs in complex cases. These rules would be limited to rate-setting proceedings and are designed to promote the efficient resolution of cases, thereby reducing rate-case expenses. Section 1.121 of this title, relating to Presiding Officer, grants a presiding officer broad discretion in regulating the course and conduct of a proceeding. New §1.86 and §1.87 specifically delineate for parties in a proceeding and a presiding officer what terms and considerations apply to alignment of municipal parties and limitations on discovery. The new rules promote efficient use of party and Commission resources. Rate case proceedings, in particular, can be costly litigation exercises. While parties have the right to contest a utility's request for rate relief and other forms of relief, there are efficiencies that can be gained through alignment of parties and reasonable discovery limitations that will result in reduced rate case expenses, thereby reducing the costs that are passed on to ratepayers. New §1.86 recognizes that parties that participate in a utility ratemaking case are frequently aligned in their attempts to reduce the utility's requested rate increase, and preserves a municipal party's right to propound discovery requests while recognizing that it is more efficient for the utility to respond to a single opposing position from potential municipal intervenors rather than respond to multiple versions of similar discovery requests propounded by parties with the same goal. Thus, the goal of reducing the costs ultimately passed on to ratepayers can be realized by aligning parties with similar interests.

In new §1.86(a), the Commission adopts wording to include a presumption that municipal parties share a common interest such that alignment of municipal parties as a single party is appropriate. Subsection (a) directs the presiding officer to order alignment of municipal parties at the earliest reasonable opportunity to allow municipal parties to coordinate their efforts in the most efficient way possible.

The Commission adopts new §1.86(b) to require a municipal party to file a motion to realign, in whole or in part, to overcome the presumption of alignment. In paragraphs (1) - (7), the presiding officer is required to consider several factors to determine whether the motion to realign, in whole or in part, is warranted including: (1) whether the municipal parties are taking opposing positions regarding the utility's request for relief; (2) whether the municipal parties have sufficiently different positions on one or more issues to justify realignment on such issues; (3) whether granting the motion will create unnecessary inefficiencies or duplication of effort; (4) whether granting the motion will result in undue costs to the parties; (5) the effect of granting the motion on the parties and the public interest; (6) whether granting the

motion will serve the interest of justice; and (7) any other relevant factors as determined by the presiding officer.

New §1.86(c) states that this section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and §104.102.

New §1.87(a) grants the presiding officer the discretion, upon request by a party, to order discovery to be limited in the interests of efficiency and justice.

New §1.87(b), adopted with a change previously discussed, clarifies that each request or subpart in an RFI is considered a separate RFI and indicates that a reasonable limitation on discovery is no more than 600 total RFIs with no more than 75 RFIs propounded by a single party in a single calendar week. Commission staff and presiding officers are not subject to these discovery limitations when Commission staff or the presiding officers issue the RFIs. These figures are consistent with the discovery control plan adopted by the presiding officers in rate-setting procedures conducted at the Commission over the last ten years. New §1.87 codifies recent rulings recognizing that reasonable limitations on discovery are appropriate. For example, discovery limitations have been granted in recent dockets including GUD Nos. 9902, 10006, 10007, 10038, 10097, and 10106. Moreover, limitations on discovery are common practice in civil litigation in Texas as governed by the Texas Rules of Civil Procedure 190. The goal of reducing the costs ultimately passed on to ratepayers can be realized by implementing reasonable limitations on discovery at the request of a party.

New §1.87(c), adopted with a change previously discussed, directs that the RFIs propounded during the municipal-level proceeding, if the utility first filed its request for relief at the municipal level, the municipal party has requested that the discovery propounded at the municipal level be updated, and the Commission is exercising its appellate authority, shall count towards the total number of RFIs a municipality may propound on the utility during the Commission proceeding unless the utility updated its test year when filing its appeal.

New §1.87(d) states that RFIs that a party is not required to answer due to a sustained objection or withdrawal do not count towards the permissible total number of the propounding party's RFI limit. The subsection also states that if the presiding officer determines that a party is intentionally propounding objectionable RFIs, the request or subpart will be included in the calculation of that propounding party's RFI limit even if the responding party is not required to provide an answer.

In accordance with the Texas Rules of Civil Procedure 196 and 198, new §1.87(e) clarifies that discovery limitations would not apply to Requests for Production and Inspection, or Requests for Admission.

New §1.87(f) requires the party propounding discovery to separately characterize its discovery as an RFI, a Request for Production and Inspection, or a Request for Admission.

The Commission adopts the new sections under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities as required by Texas Utilities Code §104.001 and §104.051. The Commission's authority to promulgate these rules relates to the powers it is granted in Texas Utilities Code §103.022, which requires a gas utility in a ratemaking proceeding to reimburse the governing body of a municipality for the reasonable cost of certain services to the extent determined reasonable by the Commission; §104.051, which authorizes the Commission to establish a utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return; and Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Utilities Code §103.022 and §104.051; and Texas Government Code §2001.004 are affected by the adopted new sections.

Cross-reference to statute: Texas Utilities Code §103.022, and §104.051; and Texas Government Code §2001.004.

Issued in Austin, Texas, on December 9, 2014.

§1.87. Limitations on Discovery Requests.

(a) Upon request by a party, the presiding officer may limit discovery, by order, in the interest of efficiency and justice.

(b) For purposes of calculating the number of requests for information (RFIs), each request or subpart shall be considered a separate RFI. Absent a showing of good cause, a reasonable limitation on RFIs propounded to a party is no more than 600 total RFIs, with no more than 75 RFIs propounded by a single party in one calendar week. Commission staff and presiding officers are not subject to these discovery limitations when Commission staff or the presiding officers issue the RFIs.

(c) With regard to discovery propounded by a municipality or municipal coalition, to the extent that the utility first filed its request for relief at the municipal level and a municipal party has requested that the discovery propounded at the municipal level be updated, and the Commission is now considering the utility's request on appeal from the municipal forum, the number of RFIs (inclusive of subparts) that the municipality propounded at the municipal level shall count towards the total number of permissible RFIs a municipality may serve on the utility during the Commission proceeding on appeal, unless the utility updated its test year when filing its appeal.

(d) If a party is not required to answer a question due to a sustained objection or withdrawal, that question may not be included in the calculation of the propounding party's RFI limit. However, if the presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise objectionable requests, the question shall be included in the calculation of that propounding party's RFI limit.

(e) As set out in the Texas Rules of Civil Procedure 196 and 198, there shall be no limitation with regard to requests for production and inspection, or requests for admission.

(f) The party propounding discovery shall separately characterize its discovery as an RFI, a Request for Production and Inspection, or a Request for Admission.

(g) This section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and §104.102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2014.

TRD-201405918

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Effective date: September 1, 2015
Proposal publication date: July 25, 2014
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CHAPTER 7. GAS SERVICES DIVISION
SUBCHAPTER E. RATES AND RATE-SETTING PROCEDURES

16 TAC §7.5530

The Railroad Commission of Texas (Commission) adopts amendments to §7.5530, relating to Allowable Rate Case Expenses, with changes to the proposed text published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5708). The Commission concurrently adopts new §1.86 and §1.87 of this title, relating to Alignment of Municipal Intervenors for Purposes of Discovery and Limitations on Discovery Requests, in a separate rulemaking, in conjunction with these adopted amendments to §7.5530. The Commission adopts the new rules and amendments with an effective date of September 1, 2015. Because these two rulemaking proposals were related to similar subjects and affected similar parties, and because one public hearing was held by the Commission to receive comments on both proposals, and because many comments received during the public comment period and at the hearing did not differentiate between the two proposals, the Commission will summarize and respond to the comments received from all parties on both rulemaking proposals in both adoption preambles.

The Commission adopts two changes in §1.87. In subsection (b), the Commission adopts a change to allow intervenors, upon a showing of good cause, to make additional requests for information (RFIs) in excess of the 600 RFI limit, in order to provide greater flexibility in cases where the 600 RFI limit may prove insufficient. In subsection (c), the Commission adopts a change to ensure that the limitation imposed is triggered when a municipal party has requested that discovery propounded at the municipal level be updated. The Commission adopts this change in order to clarify the intent of the rule and in response to concerns raised by various commenters that the rule, as proposed, operated to deprive municipalities of their original jurisdiction.

In the separate but concurrent adoption notice, the Commission adopts two changes in §7.5530. As proposed, subsection (c) of the rule would have provided that a gas utility would not otherwise be required to reimburse a municipality for the reasonable cost of services of a person engaged under Texas Utilities Code §103.022(a) unless the municipality had either paid such fees and expenses or, by ordinance, expressly assumed the obligation to pay those costs, without making its obligation to pay contingent in any way upon the municipality's receipt of reimbursement. The Commission received numerous comments regarding proposed subsection (c). After further review, the Commission does not adopt proposed subsection (c) and redesignates the remaining subsections accordingly. In proposed subsection (f), adopted as subsection (e), the Commission adopts a change to clarify the intent of the rule and to emphasize that the provisions of that subsection apply only to those proceedings that are within the Commission's appellate jurisdiction.

The Commission received numerous comments on the proposed new rules and amendments, including a request for a public hearing, which was held September 25, 2014. The Commission appreciates the interest shown by the public in this rulemaking effort.

The Commission received 32 timely-filed comments from the following Cities: Addison, Arlington, Breckenridge, Bridgeport, College Station, Colleyville, Crowley, DeSoto, Dickinson, El Paso, Euless, Farmers Branch, Fort Worth, Haslet, Houston, Hutto, Kerrville, Lancaster, Levelland, Muleshoe, Plainview, Richland, Rockwall, Seabrook, Snyder, Southlake, Sweetwater, Texas City, Waxahachie, Weston Lakes, Wichita Falls, and Wolfforth. The Commission received 21 late-filed comments from the following cities after the August 25, 2014, comment deadline: Carrollton, Cleburne, Colorado City, Commerce, Copperas Cove, Corsicana, Grand Prairie, Groom, Lamesa, Leander, Lewisville, Marble Falls, Marshall, Missouri City, Paris, Red Oak, Rockdale, Slaton, Somerville, Sugar Land, Whitney, and two late-filed comments from the Towns of Fairview and Westlake. The City of Whitney withdrew its comments on September 25, 2014.

The Commission received two timely-filed comments from the following elected officials: the Honorable Wendy R. Davis and City of Waco Mayor Malcolm Duncan, Jr. The Commission received eight late-filed comments from the following elected officials after the August 25, 2014, comment deadline: the Honorable Charles "Doc" Anderson, the Honorable Giovanni Capriglione, the Honorable Charlie Geren, the Honorable Patricia Harless, the Honorable Jane Nelson, the Honorable Charles Perry and the Honorable John Frullo (jointly-filed), and the Honorable Chris Turner.

The Commission received timely-filed comments from seven entities, four of which were from the following groups or associations: Atmos Cities Steering Committee (Atmos Cities), Joint Alliance of Municipalities for Fairness in Gas Utility Rates (Joint Alliance), Texas Coalition of Cities for Utility Issues (Texas Coalition), and Texas Municipal League (TML). The Commission received two timely-filed comments from the following companies: CenterPoint Energy (CenterPoint) and Texas Gas Service Company (Texas Gas). The Commission also received one timely-filed comment from Hays & Owens, L.L.P. The Commission received three late-filed comments from the following groups or associations after the August 25, 2014, comment deadline: Texans for Lawsuit Reform (TLR), Texas Civil Justice League (TCJL), and the Texas Conservative Coalition (TCC).

The Commission received one comment from an individual (Andrea Gardner) before the comment deadline.

The Commission conducted a public hearing on September 25, 2015, to receive additional comments regarding the proposed amendments. The following Cities submitted public comments at the hearing: Abilene, Amarillo, Buda, Cedar Park, Copperas Cove, Corsicana, Dalhart, Dallas, Denison, Electra, El Paso, Fort Worth, Fredericksburg, Greenville, Hewitt, Kermit, Kerrville, Leander, Lubbock, Mansfield, Marble Falls, Marshall, Somerset, and Waco. The Commission received one comment from an elected official (the Honorable Jim Keffer) at the hearing. The Commission received three comments from the following groups or associations at the hearing: Atmos Cities, Joint Coalition of Cities (Joint Coalition), and TML. The Commission received one comment from Hays & Owens, L.L.P. at the hearing. The Commission received two comments from the following companies at the hearing: CenterPoint and Texas Gas.

The aforementioned individual, cities, and all of the elected officials save one offered comments expressing opposition to the adoption of the proposed new rules and rule amendments. The Honorable Patricia Harless offered comments in support of adoption. Of the various entities that offered comments on the proposals, CenterPoint, Texas Gas, TLR, TCC, and TCJL were in favor of adoption. Hays & Owens, Atmos Cities, Joint Alliance, Texas Coalition, and TML were opposed to adoption.

COMMENTS

The Commission appreciates the comments submitted by various state legislators respecting the rule proposals. Legislators Perry, Frullo, Geren and Keffer requested that the Commission allow the Legislature to address certain issues raised in these proposed rules in the upcoming legislative session. Legislators Anderson, Geren, Turner, Capriglione, Nelson, and Davis commented that the proposed rules mirror legislation proposed in 2013, which was not approved by the Texas Legislature. Legislators Anderson, Perry, Frullo, Geren, Turner, and Davis commented that, during the 83rd Regular Legislative Session, a large number of municipalities and other parties across the state testified or registered in opposition to similar measures. Senator Davis commented that the Commission should not overstep its bounds and continue a process that was explicitly halted by the Legislature over a year ago, and that "sweeping changes" that would affect every city across the state are unquestionably a legislative issue. Senator Davis also commented that city participation in rate cases should continue as-is until the Legislature decides changes are necessary, and that the Legislature unmistakably declined to implement those changes. Senator Nelson commented that these issues deserve full vetting through the legislative process, and any final decision should rest with the Legislature. Chairman Keffer commented at the public hearing held September 25, 2014, that a similar, if not the very same, topic was heard by the State Affairs Committee and never advanced because it was very sensitive in nature. Chairman Keffer added that some vetting is still needed in the Legislature. Representative Harless commented that she supported the proposed new rules and amendments and that the proposal should result in savings for ratepayers.

In response to these comments, the Commission declines to adopt proposed subsection (c) as part of these rule amendments. While proposed §7.5530(c) did raise the same issues as House Bill 1148 (83rd Reg. Sess. 2013) with respect to municipal recovery of rate case expenses, the Commission is not aware that any of the issues addressed in proposed §§1.86, 1.87, and 7.5530(d) - (f), were contemplated by proposed legislation during the 2013 Legislative Session, and therefore adopts those sections with changes previously discussed. The Commission is confident that, despite the removal of proposed subsection (c), adoption of the remaining rule provisions will provide benefits for ratepayers.

The Commission received numerous comments asserting that the proposed rules would generally limit the ability of cities to meaningfully participate in the ratemaking process. Many of those comments stated that the proposed rules would act to erode local jurisdiction and control. Many commenters stated that the proposed rules would severely impair the authority of municipalities to review and challenge rate increases proposed by gas utilities in Texas, and would dramatically alter the way rates are set, resulting in higher than necessary gas rates that will harm consumers. Other comments stated that the proposed rules create punitive and unnecessary obstacles for cities in their roles as local regulatory authorities. Many cities commented that they oppose any rules that would eliminate, delay, or diminish the reimbursement of municipalities' reasonable costs incurred while investigating and challenging utility rate proposals or that would otherwise reduce municipalities' ability to participate in the rate-setting process.

The proposal does not restrict municipal or local participation, nor does it alter the way rates are set. Instead, the proposal seeks to promote the most efficient use of intervenor resources which, in turn, should result in just and reasonable rates ultimately benefitting consumers. The proposed new rules and rule amendments do not limit the city's ability to review rate change requests, but rather, they are intended to promote efficiencies by streamlining discovery and establishing an allocation methodology for rate case expenses. The Commission expects that, to some extent, commenters' concerns regarding changes to current reimbursement procedures will be assuaged with the removal of proposed §7.5530(c), but nonetheless reiterates that, pursuant to the rules as adopted, municipal expenses that are incurred during a rate case proceeding may continue to be recovered, provided they are just and reasonable. Likewise, utilities are still required to establish that a rate request is just and reasonable and that rate case expenses associated with those requests are also just and reasonable. Finally, in response to concerns raised by commenters regarding encroachment by the Commission on the original jurisdiction of municipalities, the Commission adopts certain changes to the proposed rule language in order to clarify that RFIs propounded during the municipal-level proceeding, if the utility first filed its request for relief at the municipal level, and the Commission is exercising its appellate authority, shall count towards the total number of RFIs a municipality may propound on the utility during the Commission proceeding only if the municipal party requests that the discovery propounded at the municipal level be updated. Likewise, the addition of the word "appellate" to the proposed language in §7.5530(f) (adopted as §7.5530(e)) seeks to make clear that the proposed changes to that rule apply only to proceedings that are within the Commission's appellate jurisdiction.

The Commission received several comments stating that the proposed rule amendments would erode a city's ability to form or participate in coalitions, which would diminish cities' abilities to respond to rate changes that impact the public and weaken protections of public users. Other commenters stated that there are rarely parties other than cities and city coalitions that intervene to protect the public interest.

The proposed rules do not limit the cities' abilities to participate in a coalition, nor do they diminish cities' ability to respond to rate changes. These rules are not designed to change the way the public is represented at the Commission. The Commission is confident that municipalities will continue to exercise their statutory obligation as regulatory authorities and continue to represent the interests of municipalities before the Commission. The Commission disagrees with these comments and asserts that the adoption of these proposed new rules and amendments promotes efficiencies by streamlining the discovery process and allocating the expenses of litigation based on the principles of cost causation, which ultimately benefits the public interest.

The Commission received multiple comments stating that the current process works, and therefore no rule changes are necessary. Many comments stated that the Commission did not make any showing of abuse by cities, either in rate case expenses or discovery, as justification for the proposed changes.

The Commission agrees that the current process works. These rule amendments codify Commission precedent but still afford the Hearings Examiner discretion to allow flexibility when justified. Section 1.86 and §1.87 as adopted formalize a standard practice at the Commission in order to provide greater predictability and consistency in future cases through the rule-making process. These rules are not necessarily, then, intended to address abuse, but rather to promote efficiencies by streamlining discovery and establishing an allocation methodology for rate case expenses.

The Commission received one comment stating that the rule proposal appeared specifically designed to impair cities' ability to protect gas customers (and keep gas utility rates reasonable) by limiting the discovery cities may perform in the requested rate increases. Another commenter stated that the complexity of issues presented in rate cases precludes a one-size-fits-all approach to review of the utility's application.

Discovery limitations are common to all forms of litigation. They have been applied on a case-by-case basis in gas utility proceedings at the Commission in the past and, to date, no appeals have been made based upon the argument that participants in those proceedings have been impaired by such limitations. Section 1.86(b) as adopted allows parties to overcome the presumption of alignment upon a showing of good cause. Similarly, changes adopted to §1.87(b) allow the 600 RFI limitation to be overcome upon a showing of good cause. Accordingly, the Commission disagrees that these new and amended rules should be characterized as a "one-size-fits-all approach."

The Commission received multiple comments stating that Commission staff typically focus on a few issues and rely on cities to pursue everything else. According to the comments, in Gas Utilities Docket No. 10359, the pending appeal of Atmos Mid-Tex's rate review mechanism case, the Commission did not file testimony, make an appearance at the prehearing conference, or attend noticed depositions. The comments further state that Commission staff reviews of filings made under Texas Utilities Code Ann. §104.301 (referred to as the Gas Reliability Infrastructure Program or "GRIP") result in approval of nearly 100% of the utilities' requests, unlike in rate cases where cities participate.

The Commission finds that these comments are outside the scope of this rulemaking, but emphasizes that the proposed rules are intended to promote efficiencies by streamlining the discovery process, not to impair the cities' ability to participate to the extent they deem beneficial. Gas Utilities Docket No. 10359 involved the appeal of a tariff negotiated between the utility and municipalities. The GRIP filings are reviewed at the Commission in a manner consistent with the statutory requirements related to those filings. Any change in investment and related expenses and revenues in interim rate adjustment filings are subject to review for reasonableness and prudence in a subsequent rate case, as required by statute and rule. On average, these reviews occur approximately once every six years.

The Commission received one comment stating that, when duplicative discovery does occur, the utility company usually doesn't answer the duplicative request. Instead, the comment argues, the utility responds with "see the answer already provided to question X." The commenter stated that responding in that manner does not require a tremendous amount of expense, and is not what's driving excessive rate case expenses.

The proposed new rules are intended to promote efficiency throughout the entire litigation process, which typically involves several hundred questions, requests for admission, requests for production of documents, and depositions. While simply referring to a previous response may not appear to exhaust tremendous resources, multiple duplicative inquiries in the context of a complex case will result in unnecessary rate case expenses, which may be avoided with the implementation of these rules as adopted.

The Commission received one comment stating that the preamble to proposed §1.86 and §1.87 states that alignment of parties "reduces rate-case expenses by reducing the duplication of services" without explaining why this is so when it is the usual practice of city intervenor groups to coordinate their work.

The Commission reiterates that the adopted new rules are intended to promote efficiency in the discovery process. As city intervenor groups already endeavor to coordinate their work, aligning municipal parties for the purposes of discovery should have minimal impact on the current process. The Commission makes no change in response to this comment.

The Commission received a comment stating that, under the proposed new rules, every city in a utility's service territory must know what discovery every other city is conducting at the city level, because once they arrive at the Commission, all city intervenors will be aligned and subject to the same total RFI limitation. Stated another way, parties will be limited in the discovery that they may conduct by the amount of discovery propounded by another party. Similarly, the Commission received a comment stating that parties may be penalized by taking more time to review an application before filing RFIs, thereby losing the race to propound discovery that new rule provisions would essentially require.

The Commission agrees in part with these comments; efficiencies in the discovery process are best realized when aligned parties communicate effectively and coordinate their efforts. The Commission anticipates that the timing of discovery will be coordinated among the participants. The adopted new rules only implement limitations on the number of RFIs, however; other forms of discovery are not subject to this limitation.

The Commission received numerous comments stating that the proposed new rules explicitly target only municipalities with the effect of eroding their original jurisdiction over the rates, operations and services of a gas utility.

The Commission disagrees with these comments. The proposed new rules are intended to promote efficiency in the discovery process, not to limit participation by or original jurisdiction of municipal parties. As efficiencies are realized in the discovery process, it is anticipated that rate case expenses of all parties will be reduced.

The Commission received numerous additional comments stating that alignment of municipal intervenors for discovery purposes creates and implements a presumption that may not exist, and imposes an insurmountable burden on municipalities. Some comments stated that numerous proceedings before this Commission have demonstrated that all municipalities do not share common interest. Some comments stated that spending time trying to overcome the presumption of alignment hampers an intervenor's ability to participate in the discovery phase of the case.

The Commission disagrees with these comments. The presumption regarding alignment is intended to promote efficiency in the discovery process. Adopted new rule §1.86 sets out specific criteria by which municipalities may overcome the

presumption, and addressing the presumption early in the process will promote efficiency. It is anticipated that, given the procedural posture of these appellate proceedings, parties will have the ability to seek relief with regards to alignment in the early stages of the proceedings. Further, the rule as adopted does not require that parties be aligned on all issues; it only requires that the parties be aligned and coordinate for purposes of discovery. As in all litigation, it is presumed that the parties and the presiding officer will work to resolve litigation disputes in an efficient manner. Finally, appellate proceedings at the Commission typically follow a municipal review, which provides the municipalities the opportunity to form their position on issues relevant to that particular filing. By the time a case is filed at the Commission as an appeal, all parties will have had up to 125 days to consider the proposed rate change and to identify issues in which they are interested.

The Commission received a comment stating that proposed §1.86 conflicts with the provision that Commission rules apply only to proceedings before the Commission because it would also apply to proceedings under Texas Utilities Code §104.102, which are oftentimes before a municipality.

The Commission disagrees with this comment. The adopted rules do not set aside the existing provisions in the Commission's rules in Chapter 1 of this title (relating to Practice and Procedure). Section 1.1 of this title (relating to Purpose, Scope, and Conflict with Special Rules) states: "These rules provide a system of procedures for practice before all divisions of the Railroad Commission of Texas that will enable the just disposition of proceedings and public participation in the decision-making process." Read in conjunction with the existing rules, adopted §1.86(c) is applicable only to proceedings before the Commission. The scope of the existing rules is not altered.

The Commission received a comment stating that proposed new §1.86 would create an incentive for municipal groups to stake out different positions to defeat the presumption of shared interest in order to avoid discovery limitations.

The Commission disagrees with this comment. The presumption regarding alignment is intended to promote efficiency in the discovery process. The proposed rule sets out specific criteria for overcoming the presumption and addressing the presumption early in the process will promote efficiency. Efforts to overcome the presumption of alignment would be subject to challenge by the opposing party and to scrutiny by the presiding officer. This should ensure that arguments made to overcome the presumption of alignment are based on upon real differences among municipal groups.

The Commission received comments stating that proposed new §1.86 assumes that all cities have the same interest, which seriously oversimplifies the issues at stake in a rate case.

The Commission disagrees with these comments. Section 1.86 as adopted presumes that the municipalities are in agreement that the utility's filing should be challenged, but only creates the presumption of alignment for purposes of discovery. It does not assume that all municipalities share the same interest beyond the discovery phase.

The Commission received a comment noting that §1.61(b) of this title (relating to Classification and Alignment of Parties) already states that an examiner "may align parties according to the nature of the proceeding." This provision permits alignment but bases the examiner's decision to align parties on the particulars of each proceeding.

The Commission reiterates that codification of the presumption of party alignment by rule for purposes of discovery is intended to promote efficiency in the discovery process; it does not assume that all municipalities share the same interest beyond the discovery phase. Section §1.61(b), raised by the commenter, addresses the alignment of parties for all purposes and is not limited solely to discovery.

The Commission received a comment stating that, under Texas Utilities Code Ann. §§101.001-105.051 (the Gas Utility Regulatory Act or "GURA"), the presumption is that unless a showing is made that "consolidation" is appropriate, and then only with respect to an issue of common interest, there is no "consolidation" of one municipality with another.

The Commission disagrees with this comment; GURA does not create a presumption against consolidation; rather, §103.023 states that municipal party standing is subject to the right of the Commission to consolidate municipalities on issues of common interest. New rule §1.86 as adopted presumes that the municipalities are in agreement that the utility's filing should be challenged and creates a presumption of alignment for purposes of discovery. It does not assume that all municipalities share the same interest beyond the discovery phase.

The Commission received a comment stating that it should not be the municipalities' burden to prove a negative and overcome a presumption that common interests exist for all issues.

The Commission disagrees with this comment. Demonstrating to the presiding officer that municipal parties have differing views on issues in a rate case does not require municipalities to prove a negative, but rather to make an affirmative showing that cause exists for issues of a particular municipality to be considered separately. Also, as mentioned previously, the rule seeks efficiencies by presuming common interests among municipalities only during the discovery phase.

The Commission received a comment stating that, because different municipalities will be pursuing different issues, motions to realign under the proposed rules could be filed in every instance.

The Commission disagrees with this comment. The presumption regarding alignment does not require that the parties be aligned on all issues, but only for the purposes of discovery. As in all litigation, it is presumed that parties and the presiding officer will work to resolve litigation disputes in an efficient manner.

The Commission received comments stating that proposed §1.86 would greatly limit a city's ability to individually settle a case, while another chooses to continue to litigate it.

The Commission disagrees with this comment. A municipality's decision to settle a case would potentially be suitable justification for overcoming the presumption of alignment.

The Commission received a comment stating that there are no orders issued by the Commission in which parties have filed motions for relief from excessive discovery.

The Commission disagrees with this comment. Commission examiners have repeatedly issued discovery control orders to manage the amount of discovery propounded in ratemaking proceedings. (See Gas Utility Docket Nos: 9670, 9762, 9902, 10006, 10038, 10097, 10106, 10182.)

The Commission received comments stating that limiting the number of requests for information for each party constrains the amount of discovery that can be conducted, unreasonably restricting cities' ability to thoroughly evaluate rate requests.

The Commission disagrees in part with these comments. The alignment of parties for purposes of discovery is intended to promote efficiency in the discovery process. However, the Commission agrees that parties should be afforded the opportunity to demonstrate that, in some instances, exceeding the 600 RFI limitation may be justified. Accordingly, the Commission adopts a change in §1.87(b) to allow parties to petition the presiding officer and demonstrate that good cause exists for increasing that limit.

The Commission received comments stating that any limitation on discovery should not include discovery conducted at the municipal level. Some comments argued that new §1.87, as proposed, operated to deprive municipalities of their original jurisdiction

The Commission agrees with these comments and adopts a change to §1.87(c), to ensure that the limitation imposed is triggered when a municipal party has requested that discovery propounded at the municipal level be updated. If the utility updates its test year, the limitation on discovery will not include RFIs asked at the municipal level.

The Commission received a comment recommending that it consider, in lieu of the alignment-as-one-party approach, using a cap on discovery per party that is lower than the proposed cap (thereby more closely aligning Commission rules with the Texas Rules of Civil Procedure.) The comment also stated that the rules as proposed are likely to lead to disputes as to whether a discovery request was truly an RFI, an interrogatory, a request for production, or a request for admission, as those terms are defined elsewhere in Commission rules.

The Commission disagrees with this comment. This rulemaking is guided in part by the Texas Rules of Civil Procedure. While those rules do set a limit on discovery that is lower than contemplated in this rule, the Commission has decided that the limit of 600 RFI is reasonable in conjunction with adoption of the rule presuming municipal alignment for purposes of discovery. To the extent there is a disagreement regarding the character of a form of discovery, the parties may petition the presiding officer and seek a ruling to resolve such disputes.

The Commission received a comment stating that, under GURA, cities are authorized to "require the utility to submit information as necessary" and hire professionals to conduct investigations and present evidence during the ratemaking process. The comment further states that it does not make sense to limit the number of inquiries that will be permitted without knowing complexities of the particular rate case. Another comment stated that the limitation of 600 RFIs in proposed §1.87 is an arbitrary limit.

The Commission disagrees with these comments. GURA emphasizes reasonableness and the rules as adopted allow the foregoing activities to the extent that the Commission considers them to be reasonable. Moreover, the rules are intended to promote efficiency by streamlining the discovery process, and required a reasonable limitation to be placed on RFIs to achieve that end. Parties may file fewer RFIs as desired or request additional RFIs from the Examiner based on demonstrated needs.

The Commission received a comment stating that §1.87 as proposed invites gamesmanship as utilities attempt to push parties closer to the RFI limit by providing incomplete or confusing answers that will require follow-up.

The Commission disagrees with this comment. Abuse of discovery undertaken by participants may be brought to the attention of the presiding officer. To the extent that a finding is made that any party has engaged in gamesmanship, the presiding officer has the authority to address that at the hearing.

The Commission received a comment stating that current rules (specifically, §1.85 of this title, relating to Discovery Orders) already provide the Examiners and the Commission sufficient authority to curtail and penalize a party's abuse of discovery.

The Commission agrees that current rules provide the Examiners and the Commission with authority to curtail and penalize a party's abuse of discovery; however, the proposed rules are intended to act in concert with §1.85 while enhancing predictability and transparency in the process (as articulated by Commissioner Smitherman at the open meeting of the Commission held August 21, 2012.)

The Commission received a comment stating that an arbitrary limitation on the amount of discovery permitted is in violation of generally accepted auditing standards.

The Commission agrees that the accuracy of financial information is an important element of both an audit process and the ratemaking process. Utilities' books and records must comply with FERC Uniform System of Accounts. The statutory rate review process is guided by the Commission's rules in Chapter 1, the Texas Rules of Civil Procedure, and GURA.

The Commission received a comment stating that, if the proposed discovery limits were based on the interest of efficiency and justice, they would not be applied only to municipalities but also to other parties that submit discovery requests.

The Commission disagrees with this comment. Participants in rate proceedings have requested that discovery control plans be adopted. The Commission is unaware of any case within the last ten years where relief has been requested regarding discovery propounded by any parties other than municipalities.

The Commission received a comment stating that the Commission has consistently sided with utilities over consumers when setting rates.

The Commission notes that this comment is outside the scope of this rulemaking, but reiterates that the rules as adopted are intended to promote efficiencies in the discovery process which will facilitate the determination of just and reasonable rates in proceedings at the Commission.

The Commission received a comment stating that the rule as proposed provides that subparts are counted in calculating the limit of 75 RFIs per week or 600 in total, which is very different than what is provided for in the Texas Rules of Civil Procedure where only discrete subparts are counted.

It is not clear whether the comment advocates the wholesale adoption of the Texas Rules of Civil Procedure with regards to interrogatories relating to the valuation of a subpart of the interrogatory in rate case proceedings. If so, the Commission disagrees; Texas Rules of Civil Procedure define three levels of discovery. In Level 1 proceedings, a party may not serve another party more than 15 written interrogatories, excluding interrogatories asking a party to identify and authenticate documents. (See §190.2(b)(3).) In Level 2 proceedings, a party may not serve another party more than 25 written interrogatories, excluding interrogatories asking a party to identify and authenticate documents. The assumption in Level 3 proceedings is that either the interrogatory limits of Level 1 apply, if applicable, or the interrogatory limits of Level 2 apply unless specifically changed in the discov-

ery control plan. The ceiling of 600 RFI included in the proposed rule far exceeds the assumed level of interrogatories applicable in most complex civil litigation. As the starting point of §1.87 as adopted is 600 RFIs, as opposed to 25, as applicable to interrogatories in district court, it is reasonable that each subpart of an RFI be counted as a separate RFI. Simply counting each subpart is intended to reduce litigation and thus, rate case expenses, related to determining whether a subpart is a "discrete subpart," to be included in the overall count of RFIs, or a subpart that is merely a component of the principle query. Despite the expansive limit of 600 questions, the adopted rule as amended provides the presiding officer discretion to expand the number of questions by a showing of good cause.

The Commission received a comment stating that the term "update" in §1.87(c) (providing that municipal RFIs count in the total RFI limit, unless the utility updated its test year on appeal) is unclear.

Due to the nature of rate case proceedings, updates are determined on a case-by-case basis. Certain minor corrections that may be the result of proceedings at the municipal level may not rise to the level of an update. On the other hand, changes made by the utility may result in an updated filing. As with any unresolved issue, it will be necessary for the presiding officer to decide each instance of a change to the utility's filing on a case-by-case basis. The Commission makes no change to the rule based on this comment.

The Commission received a comment stating that, while proposed §1.87(f) mentions admissions, request for production, inspections and RFIs, there is no mention of depositions. The commenter asks if this omission should be construed to mean that there's no limit on the length of time for taking a deposition, or, whether that deposition, as a form of discovery, can even be taken under the proposed rule.

Section 1.81 of this title (relating to Form and Scope of Discovery in Protested Contested Cases) provides permissible forms of discovery in proceedings at the Commission. The proposed rule is not intended to supplant that rule, but rather, to supplement existing procedure and promote efficiencies by streamlining the discovery process. As set forth in §1.81, the scope of depositions shall be the same as provided in the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein, as well as the constraints provided for in Texas Government Code, Chapter 2001.

The Commission received comments stating that the rule proposal represents a solution to a problem that does not exist.

The Commission disagrees with this comment. The discovery process is a labor-intensive component of all litigation and represents a significant portion of rate case expenses. Rate case expenses are a necessary part of rate proceedings and those expenses are ultimately paid by the customer. The rules as adopted are intended to promote efficiencies by streamlining the discovery process, thereby reducing costs for end users.

The Commission received a comment proposing that the Commission adopt rules that parallel rules of a similar nature adopted by the Public Utility Commission.

The Commission finds that comments regarding rules promulgated by another agency are outside the scope of this rulemaking. The focus of these proposed rules is to streamline the litigation process in the context of rate case expenses for utilities that are within the jurisdiction of the Railroad Commission.

One commenter stated that the Commission is required by Texas Government Code §2006.002 to perform a regulatory flexibility analysis to evaluate alternative means of achieving the purpose of the proposed rules.

Texas Government Code §2006.002 requires a state agency to prepare a regulatory flexibility analysis if the proposed rule amendments will have an adverse effect on small businesses or micro-businesses. The Commission finds, and so stated in the proposal preamble, that these rules do not have such an effect and the commenter did not provide evidence to the contrary.

The commenter also raised the issue of impact to local governments which is not contemplated by §2006.002. Another commenter stated that it disagreed with the Commission's position that, "the rule change will have no foreseeable implication relating to cost or revenue of the state or local government" and that "there are no foreseeable economic costs to be incurred by parties or persons required to comply with these amendments." The comment stated that one could not reasonably draw these conclusions.

The new rules and amendments as proposed imposed no economic costs upon parties and/or persons required to comply. In accordance with §103.022(b) of the Texas Utilities Code, under proposed §7.5530, affected local governments would continue to be reimbursed by gas utilities for rate case expenses the Commission determined to be reasonable, provided that those municipalities had paid the rate case fees and expenses, or, by ordinance expressly assumed the obligation to pay such fees and expenses. The Commission reasoned that municipalities may adjust their budgets as they deem appropriate to allow for payment of any reasonable expenses they incur of their own volition during a rate case proceeding (pending reimbursement by the utility.) Accordingly, these rules as proposed presented no adverse effect on local economies and the Commission was not required to provide a local impact statement pursuant to Texas Government Code §2001.022. For reasons discussed previously, however, the Commission does not adopt proposed §7.5530(c) at this time, rendering concerns about the economic impact of that provision upon parties and persons required to comply moot.

The Commission received multiple comments stating that the proposed rules will have the effect of forcing cities to drop out of the regulatory process, thereby effectively terminating mechanisms that depend upon local ratemaking. These comments stated that the end result will be increased filings at the Commission, more work for Commission staff, and counterproductively, more litigation.

The Commission disagrees with these comments. Currently, there are no Commission regulations that specifically address the allocation of rate case expenses. The adopted rules would codify the Commission's policy on the allocation of rate case expenses and result in judicial efficiency, thus reducing the Commission's workload. Articulation of the Commission's policy in this area may also serve to eliminate unnecessary litigation on the allocation of rate case expenses. Finally, as discussed previously, the proposal does not seek to restrict municipal participation, but rather to promote the most efficient use of intervenor resources.

The Commission received several comments stating that the proposed rule amendments are unfair in that they are "only aimed at cities." These comments added that all rate cases are

filed by large utilities whose rate case expenses are several times larger than the expenditures incurred by the cities.

The Commission disagrees with these comments. The proposed rules and rule amendments are consistent with the Commission's statutory authority under GURA and are intended to codify the Commission's practice with regard to the allocation of rate case expenses. Under GURA, utilities are required to file rate cases to recover the costs associated with providing safe and reliable service, and bear the burden of proof (and concomitant costs) of doing so under the statutory scheme set forth by that Act. The allocation methodology implemented by this rulemaking is reflective of cost causation principles for reasons articulated by the Commission at the open meeting held on August 21, 2012, at which the Commission specifically considered the proper allocation of rate case expenses. At that meeting, Commissioner Smitherman stated that the proposed allocation reflected two principles of Commission policy: socializing costs incentivizes further consumption of those costs, and the Commission seeks to allocate costs to the cost causer.

The Commission received numerous comments specifically in opposition to the adoption of proposed §7.5530(c). Those comments included assertions that the Commission should not dictate the exact method by which the municipality can act or enter into a contract with legal representation or consultants; that the rule establishes no new constraints as to how utilities contract for professionals they engage to assist with their litigation of rate cases; that the rule would allow utilities to obtain approval for expenses that they themselves have not actually paid; that §7.5530(c) poses a burden on public funds by requiring cities to "front" expenses for activities intended to protect the public interest; that the proposed rule creates a tremendous financial burden if cities are going to be forced to cover these rate case expenses ahead of time; that §7.5530(c) would eliminate the funding for cities to hire legal representation and/or experts to analyze the proposed rate increases until the cities actually expended the funds themselves, which is extremely troublesome for very small cities that do not budget money to fight rate cases; that proposed §7.5530(c) would make it difficult for some cities to participate in ratemaking proceedings due to financial constraints; that §7.5530(c) serves no purpose at all, other than to try to deter cities from participating in rate cases; and that §7.5530(c) adds additional burdensome requirements for participating cities that conspicuously are not required of gas utilities. The Commission considered these comments, together with comments discussed previously, and declines to adopt proposed §7.5530(c) as part of these rule amendments.

The Commission received several comments stating that proposed §7.5530(d) (adopted as §7.5530(c)) deters cities from participating in rate cases by creating or exacerbating the "free-rider" problem. Commenters further stated that "the proposed allocation of utility expenses and municipal expenses turn the entire focus of the statutory provision from a reimbursement of reasonable expenses to issues of how they were incurred and how they are to be allocated." Instead of saving expenses, commenters submitted that proposed subsection (d) creates new burdens and probably engenders more litigation issues. Finally, the Commission received comments stating that this proposed rule provision appears designed to discourage municipal participation in the process by assigning more costs specifically to customers within municipalities without regard to the proper cause of those costs.

The Commission disagrees with these comments. Proposed §7.5530(d) (adopted as subsection (c)) formalizes the methodology approved by the Commission in its most recent litigated rate case expense proceeding, and is consistent with the Commission's jurisdictional authority as set out in GURA. This methodology is reflective of cost causation principles articulated by the Commission at the open meeting held on August 21, 2012, at which the Commission specifically considered the proper allocation of rate case expenses. In the context of litigation, costs are attributed to those participants who review, control, and participate in the litigation decisions. Municipalities that have settled or approved the proposed rates do not generate any additional litigation expenses. (GUD No. 10051, FoF 44.) Finally, the Commission currently does not have a rule addressing allocation of rate case expenses. The Commission has previously stated (at the aforementioned open meeting) its intent to clarify the allocation of rate case expense by adopting a rule that would provide predictability and transparency to the process.

The Commission received one comment stating that proposed §7.5530(e) (adopted as §7.5530(d)) violates a number of tenets applicable to utility ratemaking, including the prohibition against recovery of budgeted or projected expenses, and the requirement to base rates on a historic test year.

The Commission disagrees with this comment. GURA allows a utility to recover only that portion of the estimated expenses that are actually expended, and nothing in the rules as proposed or adopted changes this requirement. The calculation of estimated expenses acts as a cap to the overall expenses that the parties may recover following the date of the final order of any case.

The Commission received a comment stating that proposed §7.5530(e) (adopted as subsection (d)) essentially deems any expenses the utility incurs related to the initial filing and notice as reasonable and provides that they "shall be allocated uniformly to all customers."

The Commission disagrees with this comment. Adopted §7.5530(d) does not deem any expenses the utility incurs related to the initial filing and notice as reasonable; all rate case expenses are examined for reasonableness during the course of the proceeding.

The Commission received a comment stating that rule language describing the characterization of "required regulatory expenses" is written so broadly that it invites abusive application.

The Commission disagrees with this comment. The proposed rule formalizes the methodology approved by the Commission in its most recent litigated rate case expense proceeding. As stated previously, all rate case expenses must be just and reasonable before a utility may recover the expense. The Commission is confident that participants and Commission staff will be able to identify any abusive practices and address those together with other litigated matters.

The Commission received comments stating that proposed §7.5530(e) and (f) (adopted as subsections (d) and (e), respectively) constitute a one-sided proposal that is clearly designed to reduce city participation in the process with a punitive allocation of the utilities' own expenses.

The Commission disagrees with this comment. GURA allows a utility to recover only that portion of the estimated expenses that are actually expended, and nothing in the proposed rule changes this requirement. The calculation of estimated expenses acts

as a cap to the overall expenses that the parties may recover following the date of the final order of any case.

The Commission received a number of comments stating that proposed §7.5530(e) and (f) (adopted as subsections (d) and (e), respectively) are designed to discourage or inhibit municipal participation, arbitrarily and unfairly allocate utility expenses to customers in municipalities, and improperly assign all expenses of litigation to customers within municipalities. Additional comments stated that these proposed rule provisions do not relate cause to effect, but rather seek to impose greater burdens on customers in municipalities which have participated in the process, and inject unnecessary complexity into rate case expense issues.

The Commission disagrees with the characterization of the proposed rules and rule amendments offered by these comments, and is confident that, under the adopted regulatory scheme, municipalities will continue to exercise their statutory obligation as regulatory authorities and continue to represent the interest of municipalities at the Commission. The rules as adopted formalize the allocation methodology approved by the Commission in its most recent litigated rate case expense proceeding, and are consistent with the Commission's jurisdictional authority as set out in GURA. Litigation expenses are to be recovered from affected customers in the municipalities or coalitions of municipalities participating in the proceeding and affected customers subject to the original jurisdiction of the commission. As previously discussed, these methods are reflective of cost causation principles publicly articulated and espoused by the Commission. In the context of litigation, it is appropriate for costs to be attributed to those participants who review, control, and participate in the litigation decisions. Municipalities that have settled or approved the proposed rates do not generate any additional litigation expenses. (GUD No. 10051, FoF 44.) Moreover, adoption of a rule addressing allocation of rate case expenses results in judicial efficiency and provides greater predictability and transparency to the process for all participants.

The Commission received a comment stating that proposed §7.5530(e) and (f) (adopted as subsections (d) and (e), respectively) may result in increased litigation to determine what is "related" to the initial filing of the rate case, as parties must now consider categorization of rate case expense, an issue that did not exist previously.

The Commission disagrees with this comment. Prior to the adoption of these rule amendments, there were no Commission rules addressing the allocation of litigation expenses, and yet, that issue has been previously litigated at the Commission. The adopted rule amendments provide clarity and guidance with regard to the classification of rate case expenses and it is expected that, if anything, they will result in a decrease in litigation regarding the allocation of expenses.

The Commission received a comment stating that the proposed allocation of expenses in proposed §7.5530(f) (adopted as subsection (e)) imposes an explicit direct cost on local governments. A similar comment stated that this rule provision violates the grant of authority to cities to participate in ratemaking proceedings found in GURA §103.022(a) by threatening a penalty that would accrue only to those cities that exercise their authority under the statute.

The Commission disagrees with these comments. Proposed §7.5530(f) imposes no costs on local governments, but rather allocates costs that have been generated by the participants themselves in rate proceedings. The proposed rule formalizes the allocation methodology approved by the Commission in its most recent litigated rate case expense proceeding, and is consistent with the Commission's jurisdictional authority as set out in GURA. The proposed rules are not intended to penalize cities that litigate, but merely to allocate rate case expenses to the intervenors that generate those expenses in a manner consistent with cost causation principles previously upheld by the Commission.

The Commission received a comment stating that, under "a true cost-causation argument, all rate-case expenses should be borne by the utility." The Commission disagrees with this comment. Rate case filings are a response to increases in operating expenses and increased investment which, in turn, help utilities provide safe and reliable service. GURA requires that utilities seek recovery of those expenses by filing a request with the regulatory authority. The proposed new rules and amendments are not intended to alter that statutory scheme.

The Commission received a comment stating that proposed §7.5530 neglects to include any provision for recovery of cities' estimated expenses.

The Commission disagrees with this comment. The rule does not preclude the recovery by municipalities or utilities of actual rate case expenses. The estimated rate case expenses of any party are used to set a cap on the amount of rate case expenses estimated to be incurred during the duration of a case. Only amounts actually expended are eligible for recovery. Municipal expenses are not categorized by the rule, and all expenses that are incurred may be recovered provided they are just and reasonable.

The Commission received a comment stating that the current process works well and the Commission should leave it in place.

The Commission reiterates that the adopted new rules and amendments are not intended to reject the current process; they are intended to promote the most efficient use of intervenor resources.

The Commission received various comments in support of proposed new §1.86, §1.87, and the proposed amendments to §7.5530, which are summarized briefly as follows:

The Commission received comments stating that the proposed changes do not interfere with continued municipal participation in rate making proceedings; that the proposed rule changes do not affect a municipality's ability to intervene in rate cases, hire attorneys and other experts, propound discovery, and recover their reasonable rate case expenses; that the proposed rules do not deny the cities their original jurisdiction under GURA; that the Commission is taking reasonable and appropriate steps to ensure that both utilities and municipalities incur only reasonable rate case expenses; that the proposed rules will enhance the efficiency of the process and lessen the economic impact; that the proposal is a fair, realistic, and moderate solution to excessive regulatory litigation costs; that the proposal equalizes the role of utilities and municipalities as responsible managers of public funds; that the proposed rules are an appropriate exercise of the Commission's jurisdiction because a municipality's original jurisdiction over a utility's rates and services is subject to the Commission's jurisdiction over appeals from municipal rate orders; that the proposal should result in savings for ratepayers; that the Commission's proposed amendments to §7.5530 reflect the rate-case expense allocations in the Commission's order in GUD No. 10051; that the Commission's proposed rules generally re-

flect Commission precedent and subsequent rate case expense dockets; that §7.5530 will require cities to move from passive observer to active participant in the regulatory process; that the proposed amendments will place no additional burden on municipalities; that the proposed amendments will help encourage continued municipal oversight over the expenses incurred in ratemaking proceedings; that amendments to §7.5530 will encourage all litigants to have a sense of ownership over the expenses they incur in ratemaking litigation; that the proposed amendments are an appropriate exercise of the Commission's jurisdiction because a municipality's original jurisdiction over a utility's rates and services is subject to the Commission's jurisdiction over appeals from municipal rate orders (*Texas Coast Utilities Coalition v. R.R. Comm'n of Texas,* 423 S.W.3d 355, 360 (Tex. 2014) (citing Tex. Util. Code §103.055(a), (c)); that cities ought to have the right to make their own choices in a rate case without being forced to pay legal fees incurred by other cities; that the Commission's motivations for proposing the amendments are reasonable and should be encouraged by all participants in a ratemaking proceeding who have an interest in reducing rate case expenses; that by embodying cost-causation principles in the proposed amendments, municipalities will necessarily ensure that rate case expenses are reasonable and prudently incurred; that it is reasonable and appropriate for the Commission to undertake this rulemaking to amend §7.5530 to more closely align the Commission's rule with the mandatory reimbursement concept in §103.022(b); that the proposed amendments codify the Commission's recent practice of, where possible, assigning the recovery of rate case expenses to the party who caused the expenses to be incurred; that the proposed amendments will ensure that costs are allocated reasonably among the parties who drive the litigation costs; that the Commission's proposed amendments to §7.5530 should be adopted because they will encourage municipalities to actively oversee expenses incurred in ratemaking proceedings and will serve to create efficiencies in the ratemaking process such that ratepayers should enjoy lower costs resulting from reduced rate case expenses; that the amendments contained in proposed §7.5530(c) do not alter the Commission's rules or procedures on determining the reasonableness of rate case expenses; that proposed amendments to §7.5530 (d) - (f) memorialize recent Commission decisions to allocate rate case expenses based on the principle of cost causation; that proposed §7.5530(d) would protect the ratepayers within the environs from bearing the same level of rate case expenses as a municipality that engaged consultants, accountants, auditors, attorneys, or engineers to litigate a case; that proposed §7.5530(e) will empower parties to reduce litigation costs by tying cost liability to cost causation; that proposed §7.5530(e) and (f) would protect municipalities who allowed the proposed rates to go into effect or who entered into a settlement agreement prior to the incurrence of a majority of the litigation expenses; that the allocation provisions in the proposed amendments are subject to a showing that good cause exists to allocate reasonable rate case expenses in some other manner; that proposed §1.86 and §1.87 will balance the need for transparency in rate cases with the need for prudence in discovery; that the proposed new rules create sensible external controls to keep rate case expenses in check; that the proposed new rules apply only to the discovery phase of a ratemaking proceeding; that neither proposed new rule impedes a municipal regulator's authority to appropriately scrutinize and challenge a utility's rate request; that the proposed new rules insert the reasonable procedural tools of alignment and discovery limits into one of the most costly aspects of a ratemaking proceeding in a way that balances party interest with the fact that ratepayers ultimately will bear the cost of reasonable litigation expenses; that proposed rule §1.86 is a reasonable extension of the Commission's existing statutory ability to align municipal parties with other parties on issues of common interest under Texas Utilities Code §103.023(b); that proposed rule §1.86 merely extends the Commission's existing authority by adding a rebuttable presumption of municipal alignment only for purposes of discovery in ratemaking proceedings; that proposed new rule §1.86 places no additional burden on municipalities; that municipalities are similarly situated to challenge the utility's ability to meet its burden of proof in support of its rate request, and therefore it is reasonable for the Commission to presume that municipal parties, whether acting alone or as part of a coalition, share a common interest in a proceeding; that municipalities or municipal coalitions would not be aligned for the purposes of filing testimony, participating in a hearing on the merits, or submitting post-hearing briefs under the rules as proposed; that proposed §1.86 will help promote more efficient discovery because municipal parties who share a common interest will necessarily have to take minor steps to coordinate discovery; that, under proposed §1.86, a municipality has the right to challenge the presumption of alignment by filing a motion to realign that shows that good cause exists for realignment; that, since proposed rule §1.86 reasonably recognizes that there may be instances in which alignment, for purposes of discovery, is not appropriate, the proposed rule reasonably targets the discovery phase of a ratemaking proceeding to promote efficiencies while accounting for the rights of municipal parties to propound reasonable discovery; that, under proposed new rule §1.86, municipalities would not be aligned for purposes of providing testimony or participating in a hearing on the merits; that municipal intervenors should be aligned because they all seek to keep rates as low as possible across the board and to ensure that ordinary consumers get the best possible rates; that the Examiner would retain discretion to reorder the alignment of the parties upon proper showing of disparate interest; that, to the extent a municipality objects to alignment, the municipality has the right to file a motion to realign in whole or in part; that proposed §1.87 is a procedural device that is narrowly focused on discovery, which is often one of the most expensive aspects of a rate proceeding; that proposed §1.87 is narrowly focused on only one form of discovery without affecting several other effective discovery tools for analyzing a utility's requested rate treatment; that proposed §1.87 balances the benefit of imposing reasonable limitations on RFIs in the Commission-level proceeding with a municipality's right to sufficiently analyze and challenge the utility's requested rate treatment; that proposed §1.87 does not in any way limit the rights and abilities of Commission staff or the presiding officers overseeing the proceedings; that proposed rule §1.87 merely memorializes existing precedent, set by Examiners' use of discovery control orders to manage the amount of discovery propounded in ratemaking proceedings, by giving the presiding officer the ability to limit discovery in the interest of efficiency and justice; that, by placing a reasonable limit on discovery, parties will inevitably prioritize and coordinate RFIs they propound, which will increase the efficiency of the case and reduce costs for all parties and ultimately ratepayers; that limitation on RFIs seeks to cut back on needless and duplicative questioning; that the Examiner retains sufficient discretion under the proposed rules to adjust the limitations to take special circumstances into account; that the proposed rules and rule amendments will encourage municipalities to thoughtfully collaborate throughout the discovery phase and should eliminate duplicative discovery efforts; and that the pro-

posed new rules will reduce litigation costs while still protecting a municipality's ability to analyze a utility's rate request.

The Commission generally agrees with these comments and appreciates the interest shown by the commenters in this rulemaking. The Commission adopts certain changes to §1.87 and §7.5530, however, as previously discussed.

Texas Utilities Code §103.022(b) and §104.001 allow participants in utility rate cases to recover reasonable rate case expenses. These amendments are intended to ensure that rate case expenses are reasonable and to minimize the impact of rate case expenses on end-use customers. The adopted amendments are also intended to allocate rate case expenses to the party or parties that caused such expenses during the appeal of a municipal statement of intent. The amendments memorialize recent Commission precedent by categorizing rate case expenses of the utility as required regulatory expenses of the utility, litigation expenses of the utility, and estimated expenses of the utility.

The Commission adopts new subsection (c) to require, absent a showing of good cause, that expenses the gas utility reimburses to a municipality be recovered through rates effective only within that municipality, or if the gas utility has joined a coalition of municipalities, rate case expenses reimbursed to the municipalities within the coalition would be recovered through rates effective only within the municipalities belonging to the coalition. This assures that customers who live in a city that participates in a rate proceeding would be required to pay their own city's expenses rather than allocating such costs to all customers in the service area, some of whom are not involved in the litigation.

The Commission adopts new subsection (d) to classify utility rate case expenses as either "required regulatory expenses," "litigation expenses," or "estimated expenses," and to provide for specific recovery of those expenses based on principles of cost causation. Through this method of allocation, rate case fees and expenses shall be attributed to affected parties according to which party or parties cause the rate case fees and expenses to occur.

The Commission adopts new subsection (e) with a change previously discussed in order to allocate the categories of rate case expenses listed in new subsection (d). This allocation methodology results in rate case expenses being assigned to those parties who contribute to the rate case expenses being incurred.

The Commission adopts the amendments under Texas Utilities Code, §102.001, which gives the Railroad Commission exclusive original jurisdiction over rates in areas outside a municipality and exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction; §103.022, which allows reimbursement to the governing body of a municipality for the reasonable cost of services of a person engaged to the extent the applicable regulatory authority determines reasonable; §104.001, which authorizes the Commission establish and regulate rates of a gas utility; and §104.055, which authorizes the Commission to adopt reasonable rules with respect to certain expenses used in computing the rates to be established.

Texas Utilities Code, §§102.001, 103.022, 104.001, and 104.055 are affected by the adopted amendments.

Statutory authority: Texas Utilities Code, §§102.001, 103.022, 104.001, and 104.055.

Cross-reference to statute: Texas Utilities Code, §§102.001, 103.022, 104.001, and 104.055.

Issued in Austin, Texas, on December 9, 2014.

§7.5530. Allowable Rate Case Expenses.

(a) In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Each gas utility and/or municipality shall detail and itemize all rate case expenses and allocations and shall provide evidence showing the reasonableness of the cost of all professional services, including but not limited to:

(1) the amount of work done;

(2) the time and labor required to accomplish the work;

(3) the nature, extent, and difficulty of the work done;

(4) the originality of the work;

(5) the charges by others for work of the same or similar nature; and

(6) any other factors taken into account in setting the amount of the compensation.

(b) In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted.

(c) Absent a showing of good cause:

(1) rate case expenses reimbursed to a municipality under Texas Utilities Code, §103.022(b), shall be recovered by the utility through rates effective only within that municipality; or

(2) when a municipality has joined a coalition of municipalities for the purpose of pursuing rate case activities, rate case expenses reimbursed to the municipalities within the coalition under Texas Utilities Code, §103.022(b), shall be recovered by the utility through rates effective only within the municipalities belonging to that coalition.

(d) Reasonable rate case expenses of the utility shall be classified into three categories:

(1) required regulatory expenses, which shall consist of expenses the utility incurs that are related to the initial filing of the statement of intent and the expenses the utility incurs to provide or publish required notices;

(2) litigation expenses, which shall consist of expenses incurred after the utility files its statement of intent, excluding the cost of providing notice; and

(3) estimated expenses, which shall consist of the costs the utility estimates it will incur for potential appellate proceedings.

(e) The utility's required regulatory expenses shall be allocated uniformly to all customers affected by the proposed rate change. The utility's litigation expenses and estimated expenses, to the extent there are any, shall be allocated to affected customers in the municipalities or coalitions of municipalities participating in the appellate proceeding and affected customers subject to the original jurisdiction of the Commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2014.

TRD-201405919
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: September 1, 2015
Proposal publication date: July 25, 2014
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1030

The Texas Education Agency (TEA) adopts new §74.1030, concerning the fine arts requirement for high school graduation. The new section is adopted without changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6133) and will not be republished. In accordance with the Texas Education Code (TEC), §28.025(b-9), the adopted new section allows for each school district and open-enrollment charter school to submit for the commissioner's approval a community-based fine arts program not provided by the school district or charter school.

The 83rd Texas Legislature, Regular Session, 2013, passed House Bill 5, amending the TEC, §28.025(b-9), to allow a school district or charter school, with the commissioner's approval, to permit a student to satisfy the fine arts credit required for graduation on the foundation high school program by participating in a community-based fine arts program not provided by the school district or charter school. Pursuant to the TEC, §28.025(b-9), as amended, the community-based fine arts program must provide instruction in the essential knowledge and skills identified for fine arts by the State Board of Education under the TEC, §28.002(c). The community-based fine arts program may be provided on or off a school campus and outside the regular school day.

Adopted new 19 TAC §74.1030 requires a school district and charter school to apply to the commissioner of education for approval of a community-based fine arts program certified by the district as meeting the Texas Essential Knowledge and Skills for fine arts. The new section also establishes requirements that a community-based fine arts program must meet in order to satisfy the fine arts credit.

The adopted rule action has procedural and reporting implications, requiring a school district or charter school to submit an application to the commissioner of education for approval of a community-based fine arts program.

The adopted new section has no new locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began August 15, 2014, and ended September 15, 2014. No public comments were received.

The new section is adopted under the Texas Education Code (TEC), §28.025(b-9), which authorizes the commissioner to approve requests from school districts to allow students to participate in community-based fine arts programs to satisfy the fine arts credit required under TEC, §28.025(b-1)(7). TEC, §12.104(b)(2)(E), makes open-enrollment charter schools subject to high school graduation requirements under TEC, §28.025.

The new section implements the TEC, §28.025(b-9) and §12.104(b)(2)(E).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2014.

TRD-201405904
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 28, 2014
Proposal publication date: August 15, 2014
For further information, please call: (512) 475-1497

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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER D. SPECIAL EDUCATION SERVICES AND SETTINGS

19 TAC §89.63

The State Board of Education (SBOE) adopts amendment to §89.63, concerning special education services and settings. The amendment is adopted with changes to the proposed text as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8137). The section addresses instructional arrangements and settings. The adopted amendment addresses the mainstream, off-home campus, and vocational adjustment class/program instructional arrangements.

Section 89.63, Instructional Arrangements and Settings, establishes the definitions for the special education instructional arrangements. The instructional arrangements determine the amount of state special education funds local school districts receive and, by definition, how and/or where students with disabilities receive services.

During the statutorily required review of SBOE rules in 19 TAC Chapter 89, Adaptations for Special Populations, the SBOE received one public comment from Disability Rights Texas (DRTx)

related to 19 TAC §89.63. The SBOE directed staff to review the changes requested by DRTx and report any recommendations. On July 8, 2014, agency staff presented the issues related to the public comment from DRTx to a stakeholder group to solicit broader stakeholder input. Staff presented a report about the issues and stakeholder input to the SBOE Committee on Instruction at its July 2014 meeting. At its September 2014 meeting, the SBOE approved the proposed amendment to 19 TAC §89.63 for first reading and filing authorization, as amended by the Committee on Instruction based on public testimony and discussion. The SBOE approved the proposed amendment for second reading and final adoption at its November 2014 meeting, as amended by the Committee on Instruction based on public testimony and discussion, as follows.

The adopted amendment to 19 TAC §89.63 revises the mainstream definition in subsection (c)(1) to add the phrase "positive classroom behavioral interventions and supports" to a list of available strategies to support student and teacher success for students served in the general education classroom. The adopted amendment also revises the off-home campus definition in subsection (c)(7) and vocational adjustment class/program definition in subsection (c)(9) to provide additional clarity and flexibility for the use of these instructional arrangements with any student and, specifically, a student who continues to receive special education and related services beyond age 18.

In response to public comment, the SBOE took action to maintain language currently in rule for the homebound and hospital bedside definition in subsection (c)(2)(A) rather than approve the revision proposed for that definition.

Also in response to public comment, the SBOE took action to add language to the proposed revision for the vocational adjustment class/program definition in subsection (c)(9) to clarify that a student's job may be paid or unpaid unless otherwise prohibited by law.

The adopted amendment has no new procedural and reporting implications. The adopted amendment has no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the proposed amendment for second reading and final adoption during its November 21, 2014 meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015-2016 school year. The earlier effective date will enable districts to use the revised definitions in admission, review, and dismissal committee meetings during the remainder of the 2014-2015 school year and in preparation for the 2015-2016 school year. The effective date for the amendment is 20 days after filing as adopted.

Following is a summary of the public comments and corresponding responses regarding the proposed amendment.

Comment: The Texas Council of Administrators for Special Education (TCASE) agreed with the inclusion in proposed §89.63(c)(1) of a reference to positive classroom behavioral interventions and supports as part of the services provided to students placed in the mainstream educational environment.

Response: The SBOE agreed and took action to approve the rule as proposed.

Comment: Three providers of homebound services, a special services director, an attorney, a special education supervisor, and a special education executive director expressed disagreement with proposed §89.63(c)(2)(A), related to the documentation required in order for a student to be placed in the homebound environment. The commenters stated that, given the restrictive nature of homebound services, the proposed changes would not be beneficial to students. The commenters stated that medical providers who are not physicians might not know enough about supports that are available at the campus level and, therefore, may not have all the information needed in order to provide a reliable referral for homebound services. Commenters also expressed concern that medical providers who are not physicians may not be able to provide adequate information to admission, review, and dismissal (ARD) committees about the recommended duration and frequency of the homebound services, thereby possibly requiring ARD committees to seek additional information from a different licensed physician. A special education coordinator for legal and administrative services also expressed disagreement with proposed §89.63(c)(2)(A) and expressed concern that the proposed changes could result in more students being placed in the homebound environment. The special education coordinator for legal and administrative services recommended that the SBOE change the proposed language to allow for school districts that lie only within a county of fewer than 100,000 people to receive homebound recommendations from licensed physicians, physician assistants, and nurse practitioners.

Response: In response to public comment, the SBOE determined that additional information is needed on the issue before adopting changes to §89.63(c)(2)(A). Therefore, the SBOE took action to maintain language currently in rule for the homebound and hospital bedside definition in §89.63(c)(2)(A) rather than approve the change proposed for that definition.

Comment: The Texas Academy of Physician Assistants agreed with the proposed changes to §89.63 and recommended that proposed §89.63(c)(2)A) include a specific reference to physician assistants and nurse practitioners under the supervision of a physician licensed to practice in the United States in order to prevent any confusion.

Response: In response to public comment, the SBOE determined that additional information is needed on the issue before making changes to §89.63(c)(2)(A). Therefore, the SBOE took action to maintain language currently in rule for the homebound and hospital bedside definition in §89.63(c)(2)(A) rather than approve the change proposed for that definition.

Comment: The Arc of Texas (The Arc) recommended that proposed §89.63(c)(7)(B) be revised to remove the phrase "not operated by a school district" in order to allow districts greater flexibility in providing students with unpaid employment opportunities by allowing students to work on campus.

Response: The SBOE disagreed and determined that §89.63(c)(7)(B) relates to off-home campus educational settings. In order for students to be in an off-campus setting, the student must be placed in a setting or environment not operated by a school district.

Comment: TCASE supported the proposed amendment to §89.63(c)(7)(B).

Response: The SBOE agreed and took action to approve the rule as proposed.

Comment: The Arc expressed disagreement with proposed §89.63(c)(9), which permits a student to be employed in a paid or unpaid position. The Arc recommended that students who are in vocational adjustment classes or programs receive only paid employment. The Arc contended that to do otherwise would not provide the state with data it needed for federal requirements and would not prepare students for employment and independent living. A statewide consultant on transition and vocational education also disagreed with proposed §89.63(c)(9), indicating that the proposed change would result in fewer students being provided with access to paid employment.

Response: The SBOE disagreed and determined that there may be situations where no paid employment is available to students and, yet, students can still learn employment skills by participating in unpaid employment settings. In response to other comments, the SBOE took action to modify §89.63(c)(9) to clarify that a student's job may be paid or unpaid unless otherwise prohibited by law.

Comment: Disability Rights Texas (DRTx) recommended amending §89.63(c)(9) to read, "paid or unpaid unless otherwise prohibited by law." TCASE expressed support for this recommendation.

Response: The SBOE agreed and took action to amend §89.63(c)(9) to read, "Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student."

Comment: TCASE and a special services director expressed support for the proposed amendments to §89.63(c)(9).

Response: The SBOE agreed and took action to approve the rule, with a change to clarify that a student's job may be paid or unpaid unless otherwise prohibited by law.

The amendment is adopted under the Texas Education Code, §42.151(e), which authorizes the SBOE to adopt rules that prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement.

The amendment implements the Texas Education Code, §42.151(e).

§89.63. Instructional Arrangements and Settings.

(a) Each local school district shall be able to provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118.

(b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.

(c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect and/or support services to the student, and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.

(2) Homebound. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.

(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.

(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.

(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus.

(7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to the following, including, but not limited to, students at South Texas Independent School District and Windham Independent School District:

(A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;

(B) a student in a community setting or environment (not operated by a school district) that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by school district personnel, or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by school district personnel; or

(C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.

(8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education.

(9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals and only after the school district's career and technical education classes have been considered and determined inappropriate for the student.

(10) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(11) State supported living center. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state supported living center when the services are provided at the state supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Department of Assistive and Rehabilitative Services (DARS) Early Childhood Intervention (ECI) Services.

(e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.

(f) Other program options which may be considered for the delivery of special education and related services to a student may include the following:

(1) contracts with other school districts; and

(2) other program options as approved by the TEA.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405992
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Effective date: January 1, 2015
Proposal publication date: October 17, 2014
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SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) adopts amendments to §§89.1011, 89.1040, 89.1050, 89.1053, 89.1055, 89.1065, 89.1070, 89.1075, 89.1076, 89.1121, 89.1131, 89.1150, and 89.1195; the repeal of §89.1015 and §89.1045; and new §89.1196 and §89.1197, concerning special education services. The amendments to §§89.1011, 89.1040, 89.1050, and 89.1070 and new §89.1196 and §89.1197 are adopted with changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4571). The amendments to §§89.1053, 89.1055, 89.1065, 89.1075, 89.1076, 89.1121, 89.1131, 89.1150, and 89.1195 and the repeal of §89.1015 and §89.1045 are adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4571) and will not be republished. The sections provide clarification of provisions in federal regulations and state law and establish provisions relating to special funding, special education and related service personnel, and dispute resolution. The adopted revisions include amendments, repeals, and new rules related to: timelines for initial special education evaluations and initial admission, review, and dismissal (ARD) committee meetings; procedures related to ARD committee meetings; requirements related to evaluations for students who

have or who are suspected of having a visual impairment; use of restraint by peace officers; post-secondary transition; extended school year services; and teachers' requests for review of students' individualized education programs (IEPs) pursuant to state and federal law. In response to requirements of the 83rd Texas Legislature, Regular Session, 2013, the adopted revisions also modify graduation requirements; establish guidelines for school districts and charter schools to implement facilitated IEP meetings; and create a state IEP facilitation program.

Changes to special education requirements resulting from the 82nd and 83rd Texas Legislatures affect multiple sections of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services. Accordingly, the affected rules required revisions in order to be aligned with the relevant changes to statute.

The revisions to 19 TAC Chapter 89, Subchapter AA, Divisions 2, 4, 5, and 7 include adopted amendments, repeals, and new rules to provide clarity and to comply with the requirements of the Individuals with Disabilities Education Act (IDEA) and relevant requirements in the TEC, as follows.

Division 2. Clarification of Provisions in Federal Regulations and State Law

Section 89.1011, Referral for Full and Individual Initial Evaluation, is amended to align the rule with changes to the TEC, §29.004, made by SB 816, 83rd Texas Legislature, Regular Session, 2013, which alters the timelines for initial special education evaluations. The adopted amendment also revises the timelines for initial ARD committee meetings as a result of changes to the TEC, §29.004, made by SB 816, 83rd Texas Legislature, Regular Session, 2013, which also alters timelines for certain initial ARD committee meetings. The section title is changed to read, "Full Individual and Initial Evaluation."

Based on public comments, §89.1011(e) is modified at adoption to add language that reads, "If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible."

Section 89.1015, Time Line for All Notices, is repealed, and relevant requirements are revised and moved to §89.1050 to clarify for parents and school districts the notices required by 34 CFR, §300.322 and §300.503.

Section 89.1040, Eligibility Criteria, is amended to replace references to *mental retardation* with *intellectual disability.* The adopted amendment also includes technical edits and addresses changes resulting from HB 590, 83rd Texas Legislature, Regular Session, 2013, with regard to evaluations for students who are suspected of having or who have visual impairments.

Based on public comments, §89.1040(c)(12)(A)(ii)(I) is modified at adoption to remove the phrase, "and an orientation and mobility evaluation." Section 89.1040(c)(12)(A)(ii)(I) is also modified to read in part, "a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist." In §89.1040(c)(12)(B), the word "Braille" was lowercased.

Section 89.1045, Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings, is repealed, and relevant ARD committee requirements are moved to §89.1050.

Section 89.1050, The Admission, Review, and Dismissal (ARD) Committee, is amended to include requirements moved from 19 TAC §89.1015 and §89.1045 in order to amend ARD committee procedures in response to changes resulting from SB 816, 83rd Texas Legislature, Regular Session, 2013. The adopted amendment also includes technical edits, and the section title is changed to remove the acronym.

Based on public comment, §89.1050(d) is modified at adoption to add language that reads, "Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing."

Section 89.1053, Procedures for Use of Restraint and Time-out, is amended to address restraint by peace officers as a result of changes to TEC, §37.0021, made by HB 359, 82nd Texas Legislature, Regular Session, 2011. The adopted amendment also includes technical edits.

Section 89.1055, Content of the Individualized Education Program (IEP), is amended to make minor technical edits and to make changes to the age for transition programming as a result of changes to TEC, §29.0111, made by SB 1788, 82nd Texas Legislature, Regular Session, 2011. The adopted amendment also incorporates transition programming requirements found at 34 CFR, §300.320(b). The section title is changed to remove the acronym.

Section 89.1065, Extended School Year Services (ESY Services), is amended to allow the use of a student's documented regression in one or more critical areas addressed in his or her current IEP goals when the student's ARD committee makes the determination as to whether the student requires ESY services. The adopted amendment also includes technical edits, and the section title is changed to remove the abbreviated term.

Section 89.1070, Graduation Requirements, is amended to reflect changes to graduation requirements as a result of HB 5, 83rd Texas Legislature, Regular Session, 2013. A technical correction is made to §89.1070(a) at adoption to provide applicable cross references relating to graduation options.

Section 89.1075, General Program Requirements and Local District Procedures, is amended to incorporate changes to the TEC, §29.001, made by HB 1335, 82nd Texas Legislature, Regular Session, 2011, relating to a teacher's right to request a review of a student's IEP. The adopted amendment also includes minor technical edits.

Section 89.1076, Interventions and Sanctions, is amended to update a cross reference to statute. The adopted amendment also includes technical edits.

Division 4. Special Education Funding

Section 89.1121, Distribution of State Funds, is updated to reference the *Student Attendance Accounting Handbook* and the adjusted basic allotment (ABA) or adjusted allotment (AA). The adopted amendment also includes technical edits.

Division 5. Special Education and Related Service Personnel

Section 89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel, is amended with minor technical edits to remove references to systems that no longer exist and to update terminology related to "educational aides."

Division 7. Dispute Resolution

Section 89.1150, General Provisions, is amended to reflect additional dispute resolution options related to local and state-sponsored facilitated IEP meetings.

Section 89.1195, Special Education Complaint Resolution, is amended to make minor technical edits.

Section 89.1196, Individualized Education Program Facilitation, is a new rule required by the TEC, §29.019, resulting from SB 542, 83rd Texas Legislature, Regular Session, 2013, related to facilitated IEP meeting programs established and maintained by school districts and charter schools.

Based on a change made at adoption to §89.1197(m)(4) resulting from public comment, §89.1196(g)(4) is modified at adoption in order to maintain consistency between the two rules. Section 89.1196(g)(4) now reads, "ensuring that each committee member has an opportunity to participate."

Additionally, based on a change made at adoption to §89.1197(m)(6) resulting from public comment, §89.1196(g)(6) is modified at adoption in order to maintain consistency between the two rules. Section 89.1196(g)(6) now reads, "helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting."

Section 89.1197, State Individualized Education Program Facilitation, is a new rule required by the TEC, §29.020, resulting from SB 542, 83rd, Texas Legislature, Regular Session, 2013, related to establishing a state facilitated IEP project.

Based on public comment, §89.1197(e)(2) is modified at adoption to read, "The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1050(f) of this title (relating to The Admission, Review, and Dismissal Committee)."

Additionally, to address a comment related to completing the facilitation request form, the Texas Education Agency (TEA) will provide guidance on the form for how to request a state facilitation rather than making such a modification to the rule at adoption.

Based on public comment, §89.1197(m)(4) is modified at adoption to read "participate" rather than "speak and be heard."

Finally, based on public comment, §89.1197(m)(6) is modified at adoption to read, "helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting."

The adopted rule actions have the following procedural and reporting implications. The reporting requirements found in adopted 19 TAC §89.1053 are already in place as a result of actions taken by the 82nd Texas Legislature, Regular Session, 2011. School districts and charter schools are already required to submit data for the State Performance Plan to the TEA related to the completion of initial special education evaluations and related to secondary transition programming. The adopted amendment to the rule does not affect those data reporting requirements.

There are forms related to new 19 TAC §89.1197 that school districts, charter schools, and parents are required to use in order to request a state-funded facilitated IEP meeting and to evaluate the program.

The adopted rule actions have no new locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required. It is not known if complying with new 19 TAC §89.1196 will cause an increase in revenues to small businesses or microbusinesses. Some contractors who work as IEP meeting facilitators and some companies involved in training IEP meeting facilitators may see an increase in revenues if districts or charter schools hire them to train staff members in IEP meeting facilitation and/or to provide IEP meeting facilitation services.

The public comment period on the proposal began June 13, 2014, and ended July 14, 2014, and public hearings on the proposed rule actions were held Wednesday, June 25, 2014, and Friday, June 27, 2014. Following is a summary of the public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, Division 2, Clarification of Provisions in Federal Regulations and State Law, Division 4, Special Education Funding, Division 5, Special Education and Related Service Personnel, and Division 7, Dispute Resolution.

General Comments

Comment: An attorney and an individual who provided a list of names of individuals and organizations that purportedly support her comments indicated overall disagreement with the proposed rules. The individual also contended that the agency overstepped its rulemaking authority on a variety of points.

Agency Response: The agency disagrees. Before submitting the proposed rules to the Texas Register, the agency obtained input from parents of students with disabilities, teachers, administrators, attorneys, and representatives from a variety of educator and student-advocacy groups. Additionally, the Texas Education Code provides explicit rulemaking authority.

§89.1011, Full Individual and Initial Evaluation.

Comment: The Arc of Texas (The Arc), Disability Rights Texas (DRTx), and the Texas Council for Developmental Disabilities (TCDD) recommended that proposed §89.1011 require local educational agencies (LEAs) to inform families if a student's initial evaluation will not be completed on time.

Agency Response: The agency disagrees. LEAs are required to complete initial evaluations within the required timelines.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments contended that the proposed revisions to §89.1011 inappropriately allow the timelines for initial evaluations found in Texas Education Code (TEC), §29.004, to apply to reevaluations as well.

Agency Response: The agency disagrees. The term "full individual and initial evaluation" comes directly from TEC, §29.004, and the timelines in the statute and the rule are limited to initial evaluations.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1011(a) include a timeline and further clarification of when a referral for an initial evaluation must be made. The commenters expressed concern that students receiving response to intervention (RtI) services may remain in RtI programs longer than necessary.

Agency Response: The agency disagrees. The amount of time a student remains in an RtI program must be determined on an individualized basis. A student's parents and educators are best able to judge when a referral should take place.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments asserted that changing the word "shall" to "must" in proposed §89.1011(a) will significantly impact the initial referral for special education because it may lead to the belief that the use of interventions must precede an initial referral.

Agency Response: The agency disagrees. The words "shall" and "must" generally have the same meaning. The intent of the change is merely to use a term that is more commonly used in everyday speech.

Comment: DRTx recommended that proposed §89.1011(b) specify the steps that should be taken when LEA personnel make special education referrals.

Agency Response: The agency disagrees. LEAs are in the best position to determine local policies and guidelines for handling special education referrals from personnel.

Comment: The Arc, DRTx, and TCDD commented that proposed §89.1011(b) should include a definition of "district administrative employee."

Agency Response: The agency disagrees. The use of "district administrative employee" in §89.1011(b) is consistent with TEC, §29.004. LEAs are in the best position to determine who meets the definition of "district administrative employee."

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments contended that proposed §89.1011(b) may result in a time frame that is longer than the 15-school-day time frame required by TEC, §29.004.

Agency Response: The agency disagrees. The language in the rule is consistent with TEC, §29.004(c)(1), which states that, after the parent makes a written request for a full individual and initial evaluation, an LEA has 15 school days within which to "provide an opportunity for the parent or legal guardian to give written consent for the evaluation."

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments commented that requiring a written request for an initial evaluation in proposed §89.1011(b) may create a burden for some families.

Agency Response: The agency disagrees. The rule conforms to TEC, §29.004(c), which establishes that it is a parent's written request for a full individual and initial evaluation that triggers the beginning of the 15-school-day time frame within which an LEA must respond by either providing the parent with an opportunity to give written consent or refusing to evaluate a student and providing the parent with notice of procedural safeguards.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1011(b)(1) require that LEAs provide parents with an acknowledgement of receipt of consent for evaluation.

Agency Response: The agency disagrees with the proposed change, as it would create an unnecessary step in the evaluation process.

Comment: The Arc, DRTx, and TCDD recommended that the first sentence of proposed §89.1011(c) include a reference to 34 Code of Federal Regulations (CFR), §300.306(a)(2), which requires an LEA to provide a parent a copy of the completed evaluation report and documentation of eligibility at no cost to him or her.

Agency Response: The agency disagrees. The focus of §89.1011 is to clarify the timelines for initial evaluations. The recommendation goes beyond the scope of the proposed rule.

Comment: The Texas State Teachers Association (TSTA) recommended that proposed §89.1011(c) include language that excludes school days used for benchmark testing and district-required assessments in the computation of the timeline within which an LEA must complete a full individual and initial evaluation and the written report.

Agency Response: The agency disagrees. The recommendation would be inconsistent with TEC, §29.004.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments stated that the timeline established by proposed §89.1011(c)(1) could result in an LEA taking at least four to five months to complete an initial evaluation.

Agency Response: The agency agrees that in situations where parental consent for the initial evaluation is provided less than 35 school days before the last day of instruction for the school year, the evaluation is due 45 school days after consent is obtained, which means the evaluation will be due the next school year. The agency notes, however, that the language setting forth the timelines established by §89.1011(c)(1) comes directly from TEC, §29.004(a)(1).

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1011(c)(1) reflect the legislative intent that an extension of the initial evaluation timeline for a student who is absent for three or more school days is optional.

Agency Response: The agency disagrees. The language in §89.1011(c)(1) mirrors the language in TEC, §29.004(a)(1), which states that if a student is absent for three or more days during the evaluation period, the timeline "must be extended" by the equivalent number of days.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments commented that proposed §89.1011(c)(2) relieves an LEA of its child find obligations when it is aware of a child with a suspected disability.

Agency Response: The agency disagrees. The language in §89.1011(c)(2) is consistent with TEC, §29.004(a)(2), which establishes that the timeline for the written report of a full individual and initial evaluation begins the first school day after the date that an LEA receives the signed written consent from the student's parent.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1011(d) include references to §§89.1040, 89.1050, and 89.1055, which respectively relate to eligibility criteria; the admission, review, and dismissal (ARD) committee; and the content of the individualized education program (IEP).

Agency Response: The agency disagrees that references to the other rules are needed to understand when an ARD committee must meet to make a student's initial eligibility determination.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments

stated that proposed §89.1011(d) runs contrary to IDEA because IDEA does not provide for LEAs to take summer breaks. The individual expressed concern because the proposed rule extends the 30-day period in which the ARD committee must make final decisions about a student's initial eligibility, IEP, and placement, as appropriate, when the 30th day falls during the summer recess. The commenter additionally contended that the proposed rule treats students at year-round schools differently from other students because students at year-round schools "will not be subjected to the same fragmented and lengthy evaluation process."

Agency Response: The agency disagrees. The requirements in §89.1011(d) are not new; the requirements are transferred from what was in §89.1050(d). IDEA regulation 34 CFR, §300.301(c)(1)(ii), provides that states may establish their own timelines for evaluations, and 34 CFR, §300.323(a), mandates that IEPs be in effect at the beginning of the school year. In addition, the rule contains an exception for students whose evaluations show that they require extended school year services that summer.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1011(e) clarify that, in instances where an LEA received written consent for an evaluation at least 35 but less than 45 school days before the last instructional day of the school year, the ARD committee meeting to consider evaluations for students may be held beginning the first day of the new school year, but no later than the 15th school day of the new school year. The commenters also asked that the proposed rule address extended school year services for students whose evaluations fall within the above time frame but indicate a need for services during the summer.

Agency Response: The agency disagrees with the recommendation to add language stating that the ARD committee may meet on the first day of the new school year, but agrees with the recommendation to add language to address extended school year services. Section 89.1011(e) mirrors the language in TEC, §29.004(a-1), which states that the ARD committee must meet "no later than the 15th school day of the following year." The agency has determined that the language in the rule is sufficiently clear that the meeting may be held before the 15th school day. While TEC, §29.004, does not address situations where the initial evaluation recommends extended school year services, the agency agrees that a student whose full individual and initial evaluation indicates that the student will need extended school year services during that summer should be treated similarly to a student who falls under §89.1011(d). Therefore, the agency has added language to §89.1011(e) at adoption that reads, "If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible."

Comment: The Arc, DRTx, and TCDD commented that proposed §89.1011(f) does not clearly explain the circumstances under which certain timelines apply for students transferring between districts.

Agency Response: The agency disagrees. The language in §89.1011(f) is derived from 34 CFR, §300.301(d)(2), and is sufficiently clear.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments recommended that §89.1011(h) not define what is meant by the term "absent."

Agency Response: The agency disagrees and has determined that it is important to explain what constitutes an absence from school to avoid confusion for parents and school personnel and to establish a compliance standard for the agency.

§89.1015, Time Line for All Notices.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments commented that, by repealing §89.1015, the rules no longer provide a definition for what constitutes reasonable time for providing written notice.

Agency Response: The agency disagrees. Adopted new §89.1050(d) addresses the timeline for providing parents with notices of ARD committee meetings under 34 CFR, §300.322, and adopted new §89.1050(g) addresses the timeline for providing parents with prior written notice under 34 CFR, §300.503.

§89.1040, Eligibility Criteria.

Comment: The Texas Council of Administrators of Special Education (TCASE) and a special education director supported the use of the term "intellectual disability" in proposed §89.1040.

Agency Response: The agency agrees.

Comment: TCASE and a special education director commented that they agree with the agency's fiscal impact comments regarding proposed §89.1040(c)(12).

Agency Response: The agency agrees.

Comment: A professor emerita recommended that proposed §89.1040(c)(12) require a learning media assessment upon a student's eligibility determination for special education services.

Agency Response: The agency clarifies that the learning media assessment is part of the eligibility evaluation process.

Comment: A professor emerita commented that, in proposed §89.1040(c)(12), the use of the phrase "visual loss" should be replaced with "visual impairment or low vision" as a more appropriate term.

Agency Response: The agency disagrees. In §89.1040(c)(12), "visual loss" refers to the degree of visual impairment.

Comment: A representative from Region 14 Education Service Center (ESC) recommended that the agency change language relating to suspected visual impairment in proposed §89.1040(c)(12) to language that refers to a documented vision loss before an orientation and mobility (O&M) evaluation is administered, in order to reduce the number of O&M evaluations that otherwise might be required.

Agency Response: The agency disagrees. The rule is consistent with the requirements of TEC, §30.002(c-1).

Comment: A representative from Region 14 ESC, a coordinator of a program for teachers of students with visual impairments, a superintendent, a professor emerita, and the Alliance of and for Visually Impaired Texans (AVIT) commented that, in proposed §89.1040(c)(12)(A)(ii)(I), the requirement that a functional vision evaluation determine the need for an O&M evaluation should be deleted because an O&M evaluation is now required for all students with visual impairments.

Agency Response: The agency agrees and has changed §89.1040(c)(12)(A)(ii)(I) at adoption to remove the clause "and an orientation and mobility evaluation."

Comment: A coordinator of a program for teachers of students with visual impairments, a superintendent, and AVIT recommended that the terms "professional certified in the education of students with visual impairments" and "certified orientation and mobility instructor" in proposed §89.1040(c)(12)(A)(ii)(I) be changed to reflect "teacher of students with visual impairments" and "mobility specialist" respectively.

Agency Response: The agency agrees and has changed §89.1040(c)(12)(A)(ii)(I) at adoption to read in part, "a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist." This is consistent with §89.1131(b) and (e).

Comment: A professor emerita recommended that, for proposed §89.1040(c)(12)(A)(ii)(I), the words "or a certified orientation and mobility instructor" be omitted.

Agency Response: The agency disagrees. The language is appropriate as proposed because there are situations when it is appropriate for a certified orientation and mobility instructor to perform a functional vision evaluation. In response to other comments, however, §89.1040(c)(12)(A)(ii)(I) was modified at adoption to change "certified orientation and mobility instructor" to "certified orientation and mobility specialist."

Comment: A professor emerita recommended that proposed §89.1040(c)(12)(A)(ii)(I) require a clinical low vision evaluation.

Agency Response: The agency disagrees. For some students, a clinical low vision evaluation is not appropriate. However, a student's ARD committee could request a clinical low vision evaluation, and an evaluator conducting a functional vision evaluation should recommend a clinical low vision evaluation if appropriate for a student.

Comment: AVIT and a coordinator of a program for teachers of students with visual impairments commented that the term "braille" in proposed §89.1040(c)(12)(B) should not be capitalized.

Agency Response: The agency agrees and has made the recommended change to §89.1040(c)(12)(B) at adoption.

§89.1045, Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments stated that the repeal of current §89.1045(b) will diminish parents' rights to an ARD committee meeting and meaningful participation in a student's educational program. The commenter also stated that the proposed changes will reduce access to mediation.

Agency Response: The agency disagrees. The substance of §89.1045(b) may now be found in adopted new §89.1050(e). Additionally, a parent or LEA may request mediation through the agency at any time.

§89.1050, The Admission, Review, and Dismissal Committee.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments commented that changing "full and individual initial evaluation" to "full individual and initial evaluation" in proposed §89.1050(a) inappropriately expands TEC, §29.004, to include both initial evaluations and reevaluations.

Agency Response: The agency disagrees. The placement of "and" was moved to conform to the terminology in TEC, §29.004, and §89.1011.

Comment: An advocate commented on proposed §89.1050(c)(1)(B), asking whether a student's general education teacher must be the general education representative at a student's ARD committee meeting or if someone else who knows a student could participate in that role instead.

Agency Response: The agency clarifies that IDEA regulation 34 CFR, §300.321, and §89.1050 require that a general education teacher "of the student" attend the ARD committee meeting if a student is or may be participating in the regular education environment.

Comment: TSTA recommended clarification of language in §89.1050(c)(1)(J), specifically recommending the participation of the bilingual/ESL teacher as the language proficiency assessment committee (LPAC) representative at ARD committee meetings.

Agency Response: The agency disagrees. The agency has determined that other members of the LPAC may be equally or better equipped to serve on the ARD committee and LEAs are in the best position to determine the most appropriate professional staff member from the LPAC to participate in ARD committee meetings.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments stated that the reference to 34 CFR, §300.321(a)(3), should not be removed from proposed §89.1050(c)(2) because doing so reduces clarity.

Agency Response: The agency disagrees. IDEA regulation 34 CFR, §300.321 (relating to IEP Team), is cited in §89.1050(a), and additional reference to the citation in §89.1050(c)(2) was unnecessary. The agency has determined that it is sufficiently clear from the language in rule that a special education teacher or special education provider is a required member of the ARD committee under both the federal and state requirements.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments and the Arc, DRTx, TCDD, Texas Classroom Teachers Association (TCTA), TCASE, a special education director, and TSTA recommended that the current §89.1050(c)(2), providing that the general education teacher serving on a student's ARD committee should be a general education teacher who implements a portion of a student's IEP, be retained and incorporated into the proposed rule.

Agency Response: The agency disagrees. IDEA regulation 34 CFR, §300.321(a)(2), and §89.1050(c)(1)(B) require that a general education teacher of the student attend the ARD committee meeting if the student is or may be participating in the regular education environment. The referenced language was removed to avoid redundancy.

Comment: The Arc, DRTx, and TCDD recommended that §89.1050(d) state that parents who receive a notice of the transfer of rights required by §89.1049 also be informed in writing of their right to participate in the adult student's ARD committee meeting at the invitation of a student or an LEA under §89.1050(c)(1)(F). The commenters also recommended

including references to 34 CFR, §300.328, regarding alternative means of meeting participation, and to 34 CFR, §300.503, regarding prior written notice.

Agency Response: The agency agrees with the comment that it would be useful to clarify that school districts must allow parents who cannot attend the meeting to participate through other methods such as through telephone calls or video conferencing. Therefore, the agency has added language to §89.1050(d) at adoption that reads, "Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing." The agency disagrees with the comment that language be added regarding participation by parents of adult students. The agency has determined that the rights of parents of adult students are sufficiently described in 34 CFR, §300.520 (relating to Transfer of Parental Rights at Age of Majority), and that it is not necessary to restate those requirements in this rule. Finally, the agency disagrees with the recommendation to add a reference to 34 CFR, §300.503, because it relates to prior written notice, which differs from notice of an ARD committee meeting.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments commented that proposed §89.1050(d) does not contain the same requirements as current §89.1045 because the proposed language does not indicate that a parent may request an ARD committee meeting at any time and because the proposed language does not include the word "date."

Agency Response: The agency disagrees. The rule does not prevent a parent from requesting an ARD committee meeting at any time. Additionally, new §89.1050(d) provides greater clarity to parents and educators with regard to requesting and convening an ARD committee meeting and provides a greater degree of safeguards for students eligible for special education services.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments commented that the agency did not provide a basis for amendments to current §89.1050(d)-(g).

Agency Response: The agency disagrees. Many of the subsections were updated and moved to other parts of §89.1050 to provide clarification. Additionally, many of the revisions were made in response to TEC, §29.004.

Comment: A parent commented that proposed new §89.1050(e) will deny parents the right to be full participants of the ARD committee and will allow an LEA to circumvent due process requirements because an LEA may refuse to hold an ARD committee meeting.

Agency Response: The agency disagrees. Although an LEA may refuse to convene an ARD committee meeting, under the conditions addressed in new §89.1050(e), an LEA is required to provide the parent with a written notice within five school days of the meeting request explaining the reasons for its refusal.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments commented with regard to proposed §89.1050(e) that a parent should not be required to request an ARD committee meeting in writing.

Agency Response: The agency disagrees. The rule will provide greater clarity to parents and educators with regard to requesting and convening ARD committee meetings and a greater degree of safeguards for students eligible for special education services.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1050(e) include a reference to requesting mediation when a parent requests an ARD committee meeting. Additionally, the commenters recommended that the written notice of refusal to hold an ARD committee meeting be consistent with the prior written notice requirements of 34 CFR, §300.503. The commenters also suggested that a parent's request for an ARD committee meeting should trigger an LEA's duty to comply with proposed §89.1196(f) regarding notice of IEP facilitation.

Agency Response: The agency disagrees. Because §89.1193 makes it clear that mediation is available to parents or LEAs at any time, it is not necessary that §89.1050(e) refer to mediation. Additionally, prior written notice as contemplated under 34 CFR, §300.503, does not include an LEA's refusal to convene an ARD committee meeting; therefore, the requirements at 34 CFR, §300.503, do not apply to the notice required in §89.1050(e). Finally, the agency does not agree that it is necessary for a parent's request for an ARD committee meeting to require an LEA to provide information about IEP facilitation because LEAs are not required to offer IEP facilitation.

Comment: The Arc, TCTA, an advocate, the Continuing Advisory Committee (CAC), DRTx, TCDD, and an individual who provided a list of names of individuals and organizations that purportedly support her comments disagreed with the deletion of current §89.1050(e). The commenters expressed concern that teachers will no longer be able to indicate disagreement with the IEP, that being able to record the decisions of the ARD committee is important for the committee members and others to understand the IEP and the intent of the committee, and that ARD committee members' concerns will no longer be documented in the ARD committee report.

Agency Response: The agency disagrees. The deletion of current §89.1050(e) is required in order to align the rule with the requirements of TEC, §29.005 and §29.0051. TEC, §29.005(f), provides that a student's IEP may be required to include only information included in the model form developed by the agency under TEC, §29.0051. Because the requirements in the current §89.1050(e) such as documenting the decisions of the ARD committee and indicating each member's agreement or disagreement with the committee's decisions are not required by state or federal law, the agency cannot impose such requirements in rule. However, ARD committees may continue to include deliberations and other information that is not legally required in the IEP if they choose.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1050(f) clarify that all ARD committee members must have the opportunity to participate in ARD committee meetings and to share information and documentation with the other members of the committee. The commenters stated that such clarification will help parents know that they may share whatever reports they have with the rest of the ARD committee.

Agency Response: The agency disagrees. Because the rule provides that all members of the ARD committee have the opportunity to fully participate in ARD committee meetings, the agency has determined that no further clarification is required to explain that full participation includes the sharing of relevant documentation.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1050(f)(1) include a reference to proposed

§89.1050(f)(4) to clarify that those members of the ARD committee who disagree with the IEP may write their own statement of disagreement.

Agency Response: The agency disagrees that additional clarification or that a reference is needed. Section 89.1050(f)(4) clearly explains that parents may write their own statement of disagreement and that the statement must be included in a student's IEP.

Comment: TCTA recommended that the agency retain current §89.1050(f)(1), requiring that, in the case of a student who is in the process of being evaluated for special education eligibility, the student's current LEA and former LEA must work together as necessary and as expeditiously as possible to ensure prompt completion of the evaluation.

Agency Response: The agency disagrees. Much of the language in current §89.1050(f)(1) was retained but moved to proposed §89.1011(f). The language is derived from 34 CFR, §300.301(d)(2) and (3), and from 34 CFR, §300.304(c)(5).

Comment: The Arc, DRTx, and TCDD commented that proposed §89.1050(f)(3) is insufficient without a reference to 34 CFR, §300.503, which requires an LEA to provide prior written notice to the parents of a student with a disability a reasonable time before an LEA proposes to initiate or change the identification, evaluation, or educational placement of a student or the provision of FAPE to a student or before an LEA refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education (FAPE) to a student.

Agency Response: The agency disagrees. Prior written notice under 34 CFR, §300.503, is addressed in the subsequent subsection, new §89.1050(g). Therefore, it is not necessary to duplicate the information.

Comment: TCASE and a special education director expressed agreement with the changes in proposed §89.1050(f)(4) that clarify that the parent is the ARD committee member who must be given the opportunity to write a disagreement statement.

Agency Response: The agency agrees.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments expressed concerns that, because proposed §89.1050(f)(4) permits parents to write their own statements of disagreement, special education hearing officers may view the statements as evidence that the parents refused to collaborate in the IEP development process.

Agency Response: The agency disagrees. Permitting parents to write their own statements of disagreement with the IEP is not new. Section 89.1050(f)(4), which was previously §89.1050(h)(5), requires LEAs to offer parents the opportunity to write their own statements of disagreement. In addition, the agency has found that parents who disagree with the IEP welcome the opportunity to submit the written reasons why they disagree and has determined that requiring LEAs to provide that opportunity ensures that the parents' concerns are heard.

Comment: The Arc, DRTx, TCDD, TSTA, and TCTA recommended that proposed §89.1050(f)(4) not be limited to a parent's statement of disagreement with the IEP, but should also allow any member of the ARD committee who disagrees to submit a statement of disagreement so as to achieve full participation by all members. The Arc, DRTx, and TCDD additionally recommended that the proposed rule permit a parent's statement of disagreement to be attached to the IEP.

Agency Response: The agency disagrees. However, there is nothing in the rule that would prohibit the ARD committee from allowing members other than parents an opportunity to write a statement of disagreement if the ARD committee so chooses. The rule provides that a written statement of the basis for the disagreement must be included in the IEP, and the agency has found that ARD committees are in the best position to determine how to include a statement of disagreement in the IEP.

Comment: The Arc, DRTx, TCDD, and the Mexican American Legal Defense and Educational Fund (MALDEF) commented that proposed §89.1050(h) needs additional clarification with regard to providing a parent who is unable to speak English with a translated audio recording of a student's IEP and not a recording of a student's ARD committee meeting. MALDEF also recommended that proposed §89.1050(h) clarify that the audio recording must include all parts of a student's IEP required by 34 CFR, §300.320 and §300.324, and §89.1055.

Agency Response: The agency disagrees. The rule specifically addresses written copies and audio recordings of IEPs for parents who are unable to speak English and includes no discussion of ARD committee meetings. Therefore, the agency has determined that additional clarification is not needed. In addition, TEA has determined that references to the other rules and regulations are not necessary to clarify that the audio recording must include all parts of a student's IEP.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments expressed concern with the removal of current §89.1050(h)(7). The individual explained that the removal of current §89.1050(h)(7) results in parents not being provided with information related to the use of mediation.

Agency Response: The agency disagrees. Section 89.1050(h)(7) was removed because it is no longer necessary given that rules have been added explaining a parent's right to request mediation, file a complaint, or file a due process hearing.

Comment: TCTA expressed concern that proposed §89.1050(i)(3) makes the timeline within which a previous LEA must provide a student's education records to the new LEA contingent upon the new LEA requesting the records. According to TCTA, there have been instances in which the new LEA has been unaware that it needed to request special education records, which delayed receiving relevant portions of the student's IEP.

Agency Response: The agency disagrees. New §89.1050(i)(3) was amended to incorporate the timeline in TEC, §25.002, which requires that a student's previous LEA provide a student's records to the new LEA not later than the 10th working day after the date a request is received. Furthermore, the rule references 34 CFR, §300.323(g), which requires that the new LEA in which the student enrolls take reasonable steps to promptly obtain the student's IEP and other records and that the previous LEA take reasonable steps to promptly respond to the request from the new LEA.

§89.1053, Procedures for Use of Restraint and Time-Out.

Comment: The Arc, DRTx, and TCDD recommended that §89.1053(b) clarify that the purpose of the section is to prevent

and reduce the use of restraint and to protect and ensure the safety of students and school personnel.

Agency Response: The agency disagrees. The only substantive changes to §89.1053 are in subsections (l) and (m) and relate to the use of restraint by peace officers. The agency declines to make changes at this time to portions of the rule that were not addressed in the proposed rule, but will consider the need for changes to other portions of §89.1053 and will seek public comment on any proposed changes.

Comment: The Arc, DRTx, and TCDD recommended that §89.1053(b) define chemical restraint.

Agency Response: The agency disagrees. The only substantive changes to §89.1053 are in subsections (l) and (m) and relate to the use of restraint by peace officers. The agency declines to make changes at this time to portions of the rule that were not addressed in the proposed rule but will consider the need for changes to other portions of §89.1053 and will seek public comment on any proposed changes.

Comment: The Arc, DRTx, and TCDD recommended that §89.1053(b)(1) be amended so that the definition of "emergency" no longer includes the threat of imminent, serious property destruction.

Agency Response: The agency disagrees. The only substantive changes to §89.1053 are in subsections (l) and (m) and relate to the use of restraint by peace officers. The agency declines to make changes at this time to portions of the rule that were not addressed in the proposed rule but will consider the need for changes to other portions of §89.1053 and will seek public comment on any proposed changes.

Comment: The Arc, DRTx, and TCDD recommended that §89.1053(c) include language explicitly prohibiting the use of chemical restraint of students.

Agency Response: The agency disagrees. The only substantive changes to §89.1053 are in subsections (l) and (m) and relate to the use of restraint by peace officers. The agency declines to make changes at this time to portions of the rule that were not addressed in the proposed rule but will consider the need for changes to other portions of §89.1053 and will seek public comment on any proposed changes.

Comment: The Arc, DRTx, and TCDD recommended that §89.1053(c) include language explicitly restricting the use of restraint until after school personnel have attempted de-escalation strategies and alternatives to restraint.

Agency Response: The agency disagrees. The only substantive changes to §89.1053 are in subsections (l) and (m) and relate to the use of restraint by peace officers. The agency declines to make changes at this time to portions of the rule that were not addressed in the proposed rule but will consider the need for changes to other portions of §89.1053 and will seek public comment on any proposed changes.

Comment: The Arc, DRTx, and TCDD recommended that §89.1053(c)(4) be revised to explicitly prohibit restraints that interfere with a student's ability to breathe.

Agency Response: The agency disagrees. The only substantive changes to §89.1053 are in subsections (l) and (m) and relate to the use of restraint by peace officers. The agency declines to make changes at this time to portions of the rule that were not addressed in the proposed rule but will consider the need for changes to other portions of §89.1053 and will seek public comment on any proposed changes.

Comment: The Arc, DRTx, and TCDD recommended that §89.1053(d) be revised to require that school personnel demonstrate competence in the use of restraint. The commenters also suggested that the rule include specific training requirements.

Agency Response: The agency disagrees. The only substantive changes to §89.1053 are in subsections (l) and (m) and relate to the use of restraint by peace officers. The agency declines to make changes at this time to portions of the rule that were not addressed in the proposed rule but will consider the need for changes to other portions of §89.1053 and will seek public comment on any proposed changes.

Comment: The Arc, DRTx, and TCDD recommended that §89.1053(e) be revised to require an ARD committee meeting within 10 school days of the use of restraint to consider whether a student requires a functional behavioral assessment, a reevaluation, or a new or revised behavioral intervention plan to address the behavior that resulted in the restraint.

Agency Response: The agency disagrees. The only substantive changes to §89.1053 are in subsections (l) and (m) and relate to the use of restraint by peace officers. The agency declines to make changes at this time to portions of the rule that were not addressed in the proposed rule but will consider the need for changes to other portions of §89.1053 and will seek public comment on any proposed changes.

§89.1055, Content of the Individualized Education Program.

Comment: A parent recommended that the word "if" be replaced with the word "when" in proposed §89.1055(g) to state that a student's behavior improvement plan or behavioral intervention plan must be provided to a student's teachers when the ARD committee determines that the student needs such a plan.

Agency Response: The agency disagrees. The wording of the new §89.1055(g) is consistent with the language in TEC, §29.005(g).

Comment: TCTA commented that proposed §89.1055(g) is consistent with legislation passed by the 83rd Texas Legislature, Regular Session, 2013.

Agency Response: The agency agrees.

Comment: The Arc, DRTx, and TCDD recommended that the agency add language to proposed §89.1055(g) requiring that a behavioral intervention plan be based on a functional behavioral assessment and requiring that a student's teachers and related service providers receive a copy of the behavioral intervention plan.

Agency Response: The agency disagrees. The rule is consistent with TEC, §29.005(g), which does not require that a student's behavioral intervention plan be based on a functional behavioral assessment. Additionally, other than the specific requirements related to discipline as outlined in 34 CFR, §300.530, IDEA does not require that a student's behavioral intervention plan be based on a functional behavioral assessment. The agency has determined that including a requirement related to functional behavioral assessments in the rule would go beyond the authority in TEC, §29.005(g), and IDEA. Additionally, the agency has determined that it is not necessary to include a requirement to provide the behavioral intervention plan to a student's related service providers. IDEA regulations at 34 CFR, §300.323(d), require that a student's IEP be accessible

to a student's related services providers and require that the providers be informed about their specific responsibilities related to implementing a student's IEP and about the specific supports that must be provided for a student in accordance with his or her IEP.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1055(h) require that a student's IEP be updated annually with regard to transition programming. The commenters also recommended additional items that an ARD committee must consider when developing a student's transition program, including: age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, including a functional vocational evaluation; appropriate measurable postsecondary goals based upon transition assessments; and the transition services needed to assist a student in achieving his or her postsecondary goals, including courses needed to receive a diploma under the Foundation High School Program and/or an endorsement under the Foundation High School program. Finally, the commenters recommended that the proposed rule mandate that a student's ARD committee ensure that a student's IEP meets the requirements of a student's personal graduation plan.

Agency Response: The agency clarifies that a student's IEP must be reviewed at least annually in accordance with 34 CFR, §300.324. This includes a review of a student's transition services. The agency disagrees with the recommendation to add language because it is largely a restatement of the federal transition requirements that are included in §89.1055(i). The Foundation High School Program, endorsements, and personal graduation plans are addressed in other rules.

Comment: The Arc, DRTx, and the TCDD recommended that proposed §89.1055(h) and (i) give the ARD committee the authority to pursue all necessary issues related to transition planning beginning at age 14. The commenters also recommended that the proposed rule not divide transition services between subsections (h) and (i). Finally, the commenters contended that proposed §89.1055 cannot meet the intent of TEC, §29.011 and §29.0111, if it does not require ARD committees to begin addressing transition services by the time a student turns 14.

Agency Response: The agency disagrees. The passage of TEC, §29.0111, which requires that state transition programming under TEC, §29.011, begin not later than when a student reaches 14 years of age, does not alter the timeline in 34 CFR, §300.320(b). Federal law requires that federal transition planning be included in the first IEP to be in effect when the student turns 16 years of age or younger if determined appropriate by the ARD committee. Because the timelines for the state and federal transition requirements are now different, the requirements must be addressed in separate subsections of the rule. Nevertheless, new §89.1055(i) and 34 CFR, §320(b), permit an ARD committee to address federal transition requirements for a student who is younger than 16 if determined appropriate by the ARD committee. Therefore, an ARD committee could begin state and federal transition planning for a student before age 14 if appropriate.

Comment: TCASE and a special education director recommended adding language to proposed §89.1055(i) to clarify that the general education personal graduation plan can serve as a student's course of study. The commenters also recommended that language be added to proposed §89.1055(i) to clarify that an LEA may choose to consider measurable postsecondary goals and the transition services, including course of study, needed to assist a student in reaching those postsecondary goals when considering the transition elements enumerated in proposed §89.1055(h) for students younger than 16. The commenters contended that, as written, the rule may lead some to believe that the considerations of §89.1055(h) would not be discussed during an ARD committee meeting for a student under the age of 16.

Agency Response: The agency disagrees. The language in §89.1055(i) is consistent with 34 CFR, §320(b); therefore, the agency has determined that additional language regarding courses of study is not necessary. In addition, the agency had determined that additional language is not needed to clarify that the federal transition requirements outlined in new §89.1055(i) may be addressed for students younger than 16 because the rule specifically states that the requirements may be included in the IEP of a student younger than 16 if determined appropriate by the ARD committee.

Comment: The Arc, DRTx, and TCDD recommended revisions to proposed §89.1055(i)(2) and (3) to incorporate language referencing the Foundation High School Program and endorsements and to require a student's ARD committee to consult with general education counselors in the development of a student's transition services.

Agency Response: The agency disagrees. The Foundation High School Program and endorsements are appropriately addressed in 19 TAC Chapter 74. The agency also declines to add language requiring a student's ARD committee to consult with the general education counselor in the development of a student's transition services because the ARD committee is in the best position to determine which individuals should be consulted regarding the student's transition planning.

§89.1070, Graduation Requirements.

Comment: An individual who provided a list of names of individuals and organizations that purportedly support her comments expressed concern related to proposed §89.1070 with regard to the emphasis on academics and employability skills rather than also including references to a student's living, recreation, leisure, and adaptive behavior skills.

Agency Response: The agency disagrees. The majority of students with disabilities have the ability to achieve the same academic standards as their nondisabled peers and graduate from high school with a regular diploma if they are given high-quality instruction and appropriate access as well as the supports and accommodations required by law. Furthermore, one of the primary purposes of the IDEA is to ensure that children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. (34 CFR, §300.1(a))

Comment: An individual commented that proposed §89.1070 should be revised because the definition of employability and self-help skills relies on subjective rather than objective standards. The individual also commented that proposed §89.1070 should define "employment," "access," and "educational options" using objective standards.

Agency Response: The agency disagrees and has determined that the definition of "employability and self-help skills," which has been in rule since 2001, does not require additional clarification. In addition, the agency has determined that it is not

necessary to define the terms "employment," "access," and "educational options" because the common and plain meanings of these words are clear.

Comment: TCASE and a special education director agreed with proposed §89.1070(a), (b), and (c)(1).

Agency Response: The agency agrees.

Comment: The Arc, DRTx, TCDD, two individuals, TCASE, three special education directors, an educator, TSTA, the Coalition of Human Rights Policy Advocates (CHRPA), and six parents recommended changing proposed §89.1070(c)(2) to permit students to obtain an endorsement even if some of the course content for the endorsement is modified.

Agency Response: While the agency can appreciate the commenters' concerns, the agency disagrees. The majority of students with disabilities have the ability to achieve the same academic standards as their nondisabled peers and graduate from high school with a regular diploma if they are given the appropriate supports and accommodations to access the general education curriculum. Furthermore, the agency has determined that the rule is consistent with the language in TEC, 28.025(c-1) through (c-3), which authorizes the State Board of Education (SBOE) to adopt rules relating to endorsements. Absent from these provisions is any mention of adjustments to the requirements for students with disabilities who receive special education services. While the Foundation High School Program is designed to be more flexible than the previous graduation programs by allowing students to focus on a related series of courses that interest them, the statute includes rigorous academic requirements that a student must meet in order to earn any endorsement. Specifically, in addition to completing the curriculum requirements for the specific endorsement, a student must successfully complete a fourth credit of math, a fourth credit of science, and two additional elective credits in order to earn an endorsement. The SBOE, after receiving broad stakeholder input, adopted 19 TAC §74.13, Endorsements. Given the lack of express authority to alter the endorsement requirements for students with disabilities, the agency proposed a rule that it determined to be consistent with the statute and the SBOE rule. If the Legislature wishes to allow adjustments to the endorsement requirements for students with disabilities, that intent should be clarified in the statute. The agency notes, however, that permitting students with disabilities to meet graduation requirements under standards that are different from those applicable to their nondisabled peers could have federal accountability implications for the state. Recent letters issued by the U.S. Department of Education have begun to emphasize that federal law requires that students with disabilities be given the opportunity to graduate under the same challenging academic standards as students without disabilities. As a result, a number of states are revisiting their graduation policies with regard to students with disabilities.

Comment: The Arc, DRTx, TCDD, three special education directors, TCASE, CHRPA, and six parents recommended that changes be made to proposed §89.1070(c)(3) to permit a student's ARD committee to determine whether a student is required to perform satisfactorily on a state assessment in order to earn an endorsement.

Agency Response: The agency disagrees. As stated in response to a previous comment, the provisions in TEC, §28.025, relating to endorsements, do not refer to any adjustments to the endorsement requirements for students with disabilities. The agency has determined that the rule is consistent with the statute and the rule adopted by the SBOE.

Comment: The Arc, TCASE, CHRPA, DRTx, TCDD, and two special education directors recommended deleting proposed §89.1070(d).

Agency Response: The agency disagrees. The agency has determined that the rule is consistent with the statute and the rule adopted by the SBOE.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1070(h) be revised to restate the right of students to participate in one graduation ceremony even if a student is not graduating that year and to restate that a student has the right to continue to receive special education services until a student graduates or no longer meets the age requirements for eligibility.

Agency Response: The agency disagrees that the requirement in TEC, §28.025, needs to be restated in §89.1070(h) because the requirement in the statute is clear. Additionally, the agency disagrees that it is necessary to restate the language from other subsections of §89.1070 and from TEC, §29.001, regarding eligibility for services.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1070(k) clarify that a student's accommodations do not constitute modifications to a student's curriculum.

Agency Response: The agency declines to adopt the recommendation suggested by the commenters and has determined that proposed subsection (k) requires no further clarification.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1070 include a subsection (l) that would address the situation where a student was previously in special education but was dismissed from special education by his or her ARD committee. The commenters recommended that the rule permit the student to graduate with an endorsement even if he or she had received a modified curriculum and/or was excused from satisfactory performance on the end-of-course assessments. The commenters also recommended that the proposed rule not require a student to retake the previously modified coursework or end-of-course assessments in order to meet graduation requirements for the Foundation High School Program or for earning an endorsement.

Agency Response: The agency disagrees. Under the circumstances described by the commenters, the student would be eligible for a diploma under the Foundation High School Program even if the student had taken courses with modified curriculum. The student would not be required to retake coursework or state assessments completed while eligible for special education services in order to earn a diploma. With regard to earning an endorsement, however, the student would be required to satisfactorily complete the courses required for the endorsement without any modified curriculum and would need to perform satisfactorily on the required state assessments as specified in new §89.1070(c)(2) and (3).

§89.1075, General Program Requirements and Local District Procedures.

Comment: The Arc, TSTA, DRTx, TCDD, and an individual who provided a list of names of individuals and organizations that purportedly support her comments commented that proposed §89.1075(c) does not provide teachers with the same level of or the same types of options found in current §89.1075(c) for teachers who are involved in the implementation or review of a

student's IEP. TSTA was specifically concerned about the proposed rule not mentioning ARD committee meetings as a possible means for addressing a teacher's concerns.

Agency Response: The agency disagrees. Section 89.1075(c) was revised in order to incorporate the requirements of TEC, §29.002(11). Some of the previous language was retained in new §89.1075(c). Adopted new §89.1075(d) requires that each LEA develop a process to be used by a teacher who instructs a student with a disability: to request a review of a student's IEP; that provides a timely response to the request from an LEA; and that provides the student's parent or guardian notification of the LEA's response. While new §89.1075(d) does not mention ARD committee meetings as a possible means for reviewing a student's IEP to address the teacher's concerns, there is nothing in the rule that would prohibit an LEA from developing a process under TEC, §29.002(11), that requires or permits the review of the student's IEP to be conducted during an ARD committee meeting.

Comment: TCTA commented that proposed new §89.1075(c) should retain the requirement in current §89.1075(c) that gives a teacher who is involved in a student's instruction the opportunity to provide input into a student's IEP even if the teacher is not present at the ARD committee meeting.

Agency Response: The agency disagrees. Under both the federal and the state requirements, at least one special education teacher of the student and at least one regular education teacher of the student must be a member of the ARD committee. In the case of a student who has more than one special education or regular education teacher, the agency has determined that the LEA is in the best position to determine which teacher or teachers should serve on the student's ARD committee and whether any teachers who will not participate in the ARD committee meeting should provide input.

Comment: TCTA commented that the organization supports the clarity that proposed §89.1075(c) and (d) provide.

Agency Response: The agency agrees.

§89.1076, Interventions and Sanctions.

Comment: TCASE and two special education directors recommended that proposed §89.1076 include an additional sentence in the introductory section that references language in Senate Bill 1, Rider 70, from the 83rd Texas Legislature, Regular Session, 2013, which requires the agency to take certain measures related to special education to ease administrative and fiscal burdens on LEAs.

Agency Response: The agency disagrees and has determined that Senate Bill 1, General Appropriations Act, Rider 70, should not be referenced in the proposed rule.

§89.1121, Distribution of State Funds.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1121(d) include language permitting the use of special education program funding to support the integration of students with disabilities in community, postsecondary education, and employment settings.

Agency Response: This comment is outside of the scope of the proposed rulemaking.

§89.1195, Special Education Complaint Resolution.

Comment: TCASE and two special education directors recommended that proposed §89.1195(b) require that an individual who files a special education complaint include documentation supporting the facts upon which the complaint is based.

Agency Response: The agency disagrees with the proposed change because it would set a higher standard for filing a complaint than what is required by 34 CFR, §300.153.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1195(b) clarify that a person's authorized attorney may file a special education complaint.

Agency Response: The agency disagrees with the proposed change because it is clear in §89.1195 and in 34 CFR, §§300.151-300.153, that anyone may file a special education complaint on behalf of a student or multiple students.

Comment: The Arc, DRTx, and TCDD recommended that §89.1195(e)(1)(B) allow a parent's attorney to receive a copy of an LEA's written response to a special education complaint.

Agency Response: The agency disagrees. The confidentiality protections of the Family Educational Rights and Privacy Act (FERPA) prevent the agency from requiring an LEA to provide a copy of its written response to an attorney without first obtaining written parental consent.

§89.1196, Individualized Education Program Facilitation.

Comment: An individual and the Center for Accord recommended that proposed §89.1196(a) include a broader explanation of IEP facilitation that refers to the use of the strategy and technique rather than just a method of alternative dispute resolution. The Center for Accord also commented that facilitation can be used as a preventive measure and that defining it as an alternate dispute resolution method limits its usefulness.

Agency Response: The agency disagrees. The rule is consistent with TEC, §29.019(a). The agency has determined that no further clarification is necessary.

Comment: TCASE and a special education director commented that they agree with proposed §89.1196(b).

Agency Response: The agency agrees.

Comment: An individual recommended that the term "encouraged" be used rather than "not prohibited" in proposed §89.1196(b).

Agency Response: The agency disagrees. The terminology in the rule is consistent with the language in TEC, §29.019(e).

Comment: Several commenters suggested changes with regard to the minimum qualifications for facilitators in proposed §89.1196(c). The Arc, DRTx, and TCDD recommended that facilitators be required to have FERPA training. The Center for Accord recommended that facilitators not be required to demonstrate knowledge of special education and of the ARD committee meeting process but have expertise in the general facilitation process. The Center for Accord also commented that requiring 18 hours of training is overly restrictive. An individual recommended that training be required in IEP facilitation as opposed to training in consensus building and/or conflict resolution and that the rule mandate the same continuing education requirements for all facilitators to ensure consistency across the state.

Agency Response: The agency disagrees. Although facilitators are not required by the rule to have FERPA training, the agency has determined that §89.1196(i), which requires LEAs to ensure facilitators' compliance with FERPA, addresses the commenters'

concern. The agency has also determined that, given the unique nature of the ARD committee meeting process, it is important for facilitators to have knowledge of special education requirements and experience with the ARD committee meeting process in order to be fully effective in IEP facilitation. It is equally important that the facilitator have a significant amount of training in IEP facilitation. Finally, the agency does not agree that it should mandate the specific continuing education to be used statewide because it is best if each LEA has the freedom and flexibility to make those determinations on a local level based on an LEA's needs and available resources.

Comment: One individual commented that it is unclear how the term "demonstrated knowledge" in proposed §89.1196(c)(2) can be measured. The Center for Accord commented that proposed §89.1196(c)(2) would limit the ability of LEAs to use third-party facilitators.

Agency Response: The agency disagrees. Adopted new §89.1196(c) states that LEAs who choose to offer IEP facilitation "may determine whether to use independent contractors, employees, or other qualified individuals as facilitators." LEAs will need to determine the minimum qualifications that will establish a demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities and ensure that facilitators are duly qualified.

Comment: TCASE and a special education director commented that they agreed with proposed §89.1196(c)(4), which allows each LEA to identify and require continuing education based on their local needs and IEP facilitation process.

Agency Response: The agency agrees.

Comment: One individual commented that proposed §89.1196(d)(3) is unclear.

Agency Response: The agency disagrees. The language in this subsection is directly taken from TEC, §29.019(d), and is sufficiently clear.

Comment: One individual commented that proposed §89.1196(e) should require that, if an LEA determines to use IEP facilitation strategies, the use of facilitation should be included in its policies and procedures.

Agency Response: While the agency agrees that it would be good practice for an LEA to explain in its policies and procedures that it uses IEP facilitation strategies, the agency disagrees with the recommended change because it goes beyond the scope of what is required under TEC, §29.019, with regard to the information the agency or an LEA is required to provide to parents.

Comment: One individual recommended that the evaluation of the facilitation process required by proposed §89.1196(e)(5) focus on the effectiveness of meeting results, not on the process itself.

Agency Response: The agency disagrees. While an LEA may certainly include meeting outcomes as part of the evaluation process, the agency has determined that the evaluation of the process will provide more meaningful feedback to LEAs than would evaluating the meeting results alone.

Comment: The Arc, DRTx, and TCDD recommended that proposed §89.1196(g) require the facilitator to assist with the ARD committee meeting by not only guiding the discussion and keeping the focus on developing a mutually agreed upon IEP, as the rule has been proposed, but also to have the facilitator keep the focus on "developing mutual agreement regarding identification, evaluation, and placement, and provision of a free appropriate public education for a student." The Arc, DRTx, and TCCD additionally recommended requiring that the facilitator assist parents with alternative means of participation, including the use of interpreters.

Agency Response: The agency disagrees and has determined that the commenters' proposed changes are broader than what is authorized by TEC, §29.019. In response to other comments, however, §89.1196(g) was modified at adoption to change subsection (g)(4) to read, "ensuring that each committee member has an opportunity to participate" and to change subsection (g)(6) to read, "helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting."

Comment: The Center for Accord recommended that the language in proposed §89.1196(g)(3) be amended to require the facilitator to support, as opposed to guide, the discussions.

Agency Response: The agency disagrees and has determined that it is within the role of the facilitator to help guide the discussion if necessary.

Comment: The Center for Accord commented that proposed §89.1196(h) should be changed to alter the actions required of a facilitator before the ARD committee meeting to avoid casting the facilitator into a "directive mode." The commenter recommended changing the wording from "... to clarify the issues, gather necessary information, and explain the IEP facilitation process" to read, "to introduce him- or herself and the facilitation process, assure the parties of his/her impartiality, explain the facilitator's role as to support the collaboration of the team but not to give advice or make decisions, and to answer any questions about the facilitation process."

Agency Response: The agency disagrees. The agency has determined that, by taking time before the ARD committee meeting to understand the issues and concerns of both parties, the facilitator is better prepared to facilitate the ARD committee meeting.

Comment: The Center for Accord and one individual commented that facilitation is about dispute prevention as much as it is about dispute resolution and recommended that proposed §89.1196(j) not refer to IEP facilitation as simply an alternative dispute resolution method. The individual also commented that the information related to facilitation that will be provided by the agency should be broader to include an explanation of the proactive use of the IEP facilitation strategy.

Agency Response: The agency disagrees. The language in the rule incorporates the language of TEC, §29.019, which refers to facilitation as an alternative dispute resolution strategy. However, the agency recognizes that facilitation is also used to prevent disputes and will explain through additional information provided to the public the benefits of using facilitation to avoid potential disputes between an LEA and a parent of a student with a disability.

§89.1197, State Individualized Education Program Facilitation.

Comment: TCASE and a special education director agreed with the addition of proposed §89.1197.

Agency Response: The agency agrees.

Comment: TCASE and two special education directors recommended that proposed §89.1197(c) permit the submission by email of the IEP facilitation request form.

Agency Response: The agency disagrees. The agency has determined that email is not a confidential and reliable method for submitting a request for facilitation.

Comment: One individual commented that §89.1197(e)(1) requires a clearer explanation of how the completion of the facilitation request form will be operationalized.

Agency Response: The agency disagrees that additional clarification is required in the rule, but notes that instructions will be provided on the facilitation request form. In addition, the agency anticipates providing additional guidance regarding the facilitation program as appropriate.

Comment: The Arc, DRTx, and TCDD suggested that proposed §89.1197(e)(2) be changed to clarify that the parties need to be in dispute about only one or more required elements of an IEP, not all of the required elements, before requesting the assignment of an independent facilitator.

Agency Response: The agency agrees and has changed §89.1197(e)(2) at adoption to read, "The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1050(f) of this title (relating to The Admission, Review, and Dismissal Committee)."

Comment: The Arc, DRTx, and TCDD suggested that proposed §89.1197(e)(3) be revised to allow for flexibility in scheduling the facilitated IEP meeting to reduce potential conflicts with the facilitator's schedule.

Agency Response: The agency disagrees. The agency has determined that the proposed change could result in delaying a student's ARD committee meeting while the parties await a facilitator.

Comment: The Center for Accord recommended that proposed §89.1197(e)(5) and (6) allow facilitation even if the parties are concurrently involved in a pending mediation or even if the issues in dispute are the subject of a special education complaint or due process hearing.

Agency Response: The agency disagrees. The facilitation program is an alternate means of dispute resolution designed for low-level disputes that have not escalated to the point of being the subject of one of the formal dispute resolution processes.

Comment: Two special education directors, the Center for Accord, and TCASE commented that proposed §89.1197(e)(7) is overly restrictive and should be amended to allow for an independent facilitator on more than one occasion during the school year for a student if the issues are different. The commenters stated that if facilitation was successful in resolving a dispute related to a student, a student's parents and LEA should be given the opportunity to have the state provide another facilitator during the school year should another dispute arise related to the IEP.

Agency Response: The agency disagrees. Two of the goals of facilitation are to build and improve relationships among the ARD committee members and for the independent facilitator to model effective communication and collaboration skills. The expectation is that the independent facilitator will meet with the committee one time, and after he or she has modeled how to communicate and collaborate effectively in a meeting, the committee members will apply those skills in future meetings on their own. The agency has determined that allowing facilitation multiple times during the school year would undermine the goal of having the ARD committee members improving their relationships and working together without an external facilitator.

Comment: The Arc, DRTx, and TCDD commented that proposed §89.1197(g) should provide that, if a hearing officer or complaint decision requires the assistance of an independent facilitator, the agency must provide it at no cost to the parties. In the alternative, the commenters proposed that both the parent and an LEA should have the right to request that the agency provide an independent facilitator if required by a due process or complaint decision. TCASE and two special education directors recommended that proposed §89.1197(g) be amended to require that, if the state requires the assistance of an independent facilitator as a result of a special education complaint, the state will pay for the facilitator.

Agency Response: The agency disagrees. An LEA bears the cost of implementing corrective actions resulting from a complaint or orders of relief granted by a hearing officer in a due process hearing.

Comment: One individual commented that the term, "independent facilitator" in proposed §89.1197(g) should be changed to "neutral facilitator" to clarify that the facilitator is a neutral party.

Agency Response: The agency disagrees. The term "independent facilitator" is consistent with the terminology in TEC, §29.020.

Comment: TCASE and a special education director agreed with proposed §89.1197(i), which requires the facilitator to promptly contact both parties to clarify the issues, gather necessary information, and explain the process.

Agency Response: The agency agrees.

Comment: The Arc, DRTx, and TCDD recommended changes to proposed §89.1197(k) that would require the facilitator to have demonstrated knowledge of FERPA. These commenters, along with the Center for Accord, two special education directors, and TCASE recommended increasing the amount of requisite training. An individual recommended that the training required of facilitators be in IEP facilitation as opposed to consensus building and/or conflict resolution.

Agency Response: The agency disagrees. Although independent facilitators are not required by the rule to have FERPA training, the agency has determined that §89.1197(n), which requires facilitators to protect the confidentiality of personally identifiable information about the student under FERPA, addresses the commenters' concern. The types and amounts of required training outlined in the rule were based on feedback from stakeholders. Therefore, the agency has determined that the training requirements are appropriate.

Comment: One individual commented on proposed §89.1197(k)(1) and (2) that "it is difficult to determine demonstrated knowledge."

Agency Response: The agency disagrees. The agency has determined that it is possible and will ensure that independent facilitators demonstrate knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities and will ensure that the facilitators are duly qualified.

Comment: One individual recommended amending proposed §89.1197(m)(1) to address what to do if an ARD committee meet-

ing needs to be reconvened or if the time for the meeting needs to be extended.

Agency Response: The agency disagrees. The agency expects the facilitator to keep the committee on task within the allotted time so that the meeting is completed within that time limit. The meeting should not be extended or reconvened.

Comment: The Arc, DRTx, and TCDD recommended changes to proposed §89.1197(m)(3) to include keeping the focus on developing mutual agreement related to a student's identification, evaluation, placement, and to the provision of a free appropriate public education.

Agency Response: The agency disagrees. The agency has determined that the commenters' recommended language is broader than what is authorized by TEC, §29.020.

Comment: The Center for Accord recommended changing the language in proposed §89.1197(m)(3) from "guiding the discussion and keeping the focus on" to "supporting the discussions and helping to keep." The Center for Accord asserted that it is the role of the administrator in the ARD committee meeting to guide the discussion and keep the focus on developing a student's IEP.

Agency Response: The agency disagrees. Under §89.1197, the role of the facilitator is to assist the ARD committee with the meeting process, as needed. The agency has determined that the language in the rule clearly conveys that the facilitator's overall role is one of assistance and that additional clarification is not necessary.

Comment: An individual suggested that, instead of saying that a facilitator must ensure that "each committee member has an opportunity to speak and be heard," proposed §89.1197(m)(4) should state that the facilitator will ensure that the parties "participate."

Agency Response: The agency agrees and has revised §89.1197(m)(4) at adoption to read, "ensuring that each committee member has an opportunity to participate." A corresponding change was made to §89.1196(g)(4) for consistency.

Comment: One individual recommended that proposed §89.1197(m)(6) be changed to read, "keeping the ARD committee focused on the purpose for the meeting and managing the time."

Agency Response: The agency agrees that additional clarification is needed and has revised §89.1197(m)(6) at adoption to read, "helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting." A corresponding change was made to §89.1196(g)(6) for consistency.

Comment: One individual recommended that the evaluation referenced in proposed §89.1197(o) be related to the results of the meeting, not the process.

Agency Response: The agency disagrees. The surveys must evaluate the "independent individualized education program facilitation" per TEC, §29.020(b)(2). The agency has determined that the evaluation of the process will provide more meaningful feedback to the agency than would evaluating the meeting results alone.

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §§89.1011, 89.1040, 89.1050, 89.1053, 89.1055, 89.1065, 89.1070, 89.1075, 89.1076

The amendments are adopted under the Texas Education Code (TEC), §29.001, which authorizes the commissioner of education to adopt rules for the delivery of services to children with disabilities in the state that include rules for the administration and funding of the special education program; TEC, §29.004, as amended by Senate Bill 816, 83rd Texas Legislature, Regular Session, 2013; which authorizes the commissioner to adopt rules relating to timeframes for a full individual and initial evaluation; TEC, §29.011, which authorizes the commissioner to by rule adopt procedures for compliance with federal requirements relating to transition; TEC, §29.0111, which establishes requirements for the beginning of transition planning; TEC, §30.002, as amended by House Bill 590, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt rules for the administration of the statewide plan for education students with visual impairments; and TEC, §37.0021, which authorizes the commissioner to by rule adopt procedures for the use of restraint and time-out, and the 34 Code of Federal Regulations (CFR), Part 300, which requires states to have policies and procedures in place to ensure: (1) the provision of a free appropriate public education to children with disabilities (34 CFR, §300.100); (2) all children with disabilities are identified, located, and evaluated (34 CFR, §300.111); (3) that children with disabilities and their parents are afforded procedural safeguards (34 CFR, §300.121); (4) the provision of general supervision and compliance with monitoring and enforcement requirements (34 CFR, §300.149); (5) that one or both parents of a child with a disability are afforded the opportunity to participate in each individualized education program team meeting (34 CFR, §300.322); (6) that each public agency establishes, maintains, and implements procedural safeguards (34 CFR, §300.500); and (7) written notice must be given to the parents of a child with a disability a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate education to the child (34 CFR, §300.503).

The amendments implement the Texas Education Code, §§29.001; 29.004, as amended by Senate Bill 816, 83rd Texas Legislature, Regular Session, 2013; 29.011; 29.0111; 30.002, as amended by House Bill 590, 83rd Texas Legislature, Regular Session, 2013; and 37.0021, and 34 Code of Federal Regulations (CFR), §§300.100, 300.111, 300.121, 300.149, 300.322, 300.500, and 300.503.

§89.1011. Full Individual and Initial Evaluation.

(a) Referral of students for a full individual and initial evaluation for possible special education services must be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to scientific, research-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. This referral for a full individual and initial evaluation may be initiated by school

personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) Except as otherwise provided in this section, a written report of a full individual and initial evaluation of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or

(2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.

(d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.

(e) Notwithstanding the timelines in subsections (c) and (d) of this section, if the school district received the written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year. The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (c)(1) of this section applies to the date the written report of the full individual and initial evaluation is required. If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible.

(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the full individual and initial evaluation, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (c) and (e) of this section do not apply in such a situation if:

(1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and

(2) the parent and the new school district agree to a specific time when the evaluation will be completed.

(g) For purposes of subsections (b), (c), and (e) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.

(h) For purposes of subsections (c)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

§89.1040. Eligibility Criteria.

(a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code, §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

(1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation must include specific recommendations for behavioral interventions and strategies.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsections (c)(3) and (c)(12) of this section:

(A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.

(3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available, and an audiological evaluation performed by a licensed audiologist. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(4) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for behavioral supports and interventions.

(5) Intellectual disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:

(A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and

(B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disability is expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III) communication;

(IV) social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.

(9) Learning disability.

(A) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

(B) A student with a learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and

(ii) does not achieve adequately for the student's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or crite-

rion-referenced tests; statewide assessments; or a process based on the student's response to scientific, research-based intervention; and

(I) does not make sufficient progress when provided a process based on the student's response to scientific, research-based intervention (as defined in 20 USC, §7801(37)), as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.

(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), a student with a visual impairment is one who:

(i) has been determined by a licensed ophthalmologist or optometrist:

(I) to have no vision or to have a serious visual loss after correction; or

(II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction; and

(ii) has been determined by the following evaluations to have a need for special services:

(I) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation; and

(II) a learning media assessment by a professional certified in the education of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.

(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

(C) Beginning with the 2014-2015 school year, a full individual and initial evaluation of a student suspected of having a visual impairment must include an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist and must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community and in settings unfamiliar to the student.

(D) Beginning with the 2014-2015 school year, a person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in evaluating data used in making the determination of the student's eligibility as a student with a visual impairment.

(E) Beginning with the 2014-2015 school year, the scope of any reevaluation of a student who has been determined, after the full individual and initial evaluation, to be eligible for the district's special education program on the basis of a visual impairment must be determined, in accordance with 34 CFR, §§300.122 and 300.303-300.311, by a multidisciplinary team that includes an appropriately certified orientation and mobility specialist.

(13) Noncategorical. A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

§89.1050. The Admission, Review, and Dismissal Committee.

(a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The school district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:

(1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);

(2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);

(4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);

(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);

(7) TEC, §28.006 (Reading Diagnosis);

(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);

(10) TEC, §28.0213 (Intensive Program of Instruction);

(11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(12) TEC, §30.002 (Education for Children with Visual Impairments);

(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

(14) TEC, §33.081 (Extracurricular Activities);

(15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(16) TEC, §42.151 (Special Education).

(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Department of Assistive and Rehabilitative Services. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees must include the following:

(A) the parents of the student;

(B) not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);

(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;

(G) whenever appropriate, the student with a disability;

(H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;

(I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and

(J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as an English language learner.

(2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.

(3) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments;

(B) a student with a suspected or documented auditory impairment, the ARD committee must include a teacher who is certified in the education of students with auditory impairments; or

(C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with auditory impairments.

(4) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

(e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or

(2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.

(f) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the

student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) When mutual agreement is not reached, a written statement of the basis for the disagreement must be included in the IEP. The parent who disagrees must be offered the opportunity to write his or her own statement of disagreement.

(g) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(h) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.

(i) A school district must comply with the following for a student who is newly enrolled in the school district.

(1) When a student transfers to a new school district within the state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

(j) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

§89.1070. Graduation Requirements.

(a) Graduation with a regular high school diploma under subsections (b)(1), (b)(2)(D), (f)(1), (f)(2), or (f)(3)(D) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §42.003(a).

(b) A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance on the required state assessments is not necessary for graduation.

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in the TEC, Chapter 39, on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation. The student must also successfully complete the student's individualized education program (IEP) and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.

(D) The student no longer meets age eligibility requirements.

(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum; and

(3) performs satisfactorily as established in the TEC, Chapter 39, on the required state assessments.

(d) In order for a student receiving special education services to use a course to satisfy both a requirement under the Foundation High School Program specified in §74.12 of this title and a requirement for an endorsement under §74.13 of this title, the student must satisfactorily complete the course without any modified curriculum.

(e) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. Subsection (c) of this section applies to a student transitioning to the Foundation High School Program under this subsection.

(f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.

(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-118, 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.

(D) The student no longer meets age eligibility requirements.

(g) All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section.

(h) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (g) of this section.

(i) Employability and self-help skills referenced under subsections (b)(2) and (f)(3) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(j) For students who receive a diploma according to subsections (b)(2)(A), (B), or (C) or (f)(3)(A), (B), or (C) of this section, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

(k) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110-118, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405982
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 1, 2015
Proposal publication date: June 13, 2014
For further information, please call: (512) 475-1497

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19 TAC §89.1015, §89.1045

The repeals are adopted under the Texas Education Code, §29.001, which authorizes the commissioner of education to adopt rules for the delivery of services to children with disabilities in the state that include rules for the administration and funding of the special education program, and the 34 Code of Federal Regulations (CFR), Part 300, which requires states to have policies and procedures in place to ensure: (1) that one or both parents of a child with a disability are afforded the opportunity to participate in each individualized education program team meeting (34 CFR, §300.322) and (2) written notice must be given to the parents of a child with a disability a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate education to the child (34 CFR, §300.503).

The repeals implement the Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.322 and §300.503.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405986
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 1, 2015
Proposal publication date: June 13, 2014
For further information, please call: (512) 475-1497

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DIVISION 4. SPECIAL EDUCATION FUNDING

19 TAC §89.1121

The amendment is adopted under the Texas Education Code, §29.001, which authorizes the commissioner of education to adopt rules for the delivery of services to children with disabilities in the state that include rules for the administration and funding of the special education program.

The amendment implements the Texas Education Code, §29.001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405989
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 1, 2015
Proposal publication date: June 13, 2014
For further information, please call: (512) 475-1497

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DIVISION 5. SPECIAL EDUCATION AND RELATED SERVICE PERSONNEL

19 TAC §89.1131

The amendment is adopted under the Texas Education Code, §29.001, which authorizes the commissioner of education to adopt rules for the delivery of services to children with disabilities in the state that include rules for the administration and funding of the special education program, and the 34 Code of Federal Regulations (CFR), Part 300, which requires states to have policies and procedures in place to ensure: (1) the provision of a free appropriate public education to children with disabilities (34 CFR, §300.100) and (2) the establishment of qualifications of prepared and trained personnel to serve children with disabilities (34 CFR §300.156.

The amendment implements the Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.100 and §300.156.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405990
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 1, 2015
Proposal publication date: June 13, 2014
For further information, please call: (512) 475-1497

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DIVISION 7. DISPUTE RESOLUTION

19 TAC §§89.1150, 89.1195 - 89.1197

The amendments and new sections are adopted under the Texas Education Code (TEC), §29.001, which authorizes the commissioner of education to adopt rules for the delivery of services to children with disabilities in the state that include rules for the administration and funding of the special education program, and TEC, §29.019 and §29.020, as added by Senate Bill 542, 83rd Texas Legislature, Regular Session, 2013, which authorize the commissioner to adopt rules to implement individualized education program facilitation and a state individualized education program facilitation project, and the 34 Code of Federal Regulations (CFR), Part 300, which requires states to have policies and procedures in place to ensure the provision of minimum state complaint procedures (34 CFR, §§300.151-300.153).

The amendments and new sections implement the Texas Education Code, §§29.001 and 29.019 and 29.020, as added by Senate Bill 542, 83rd Texas Legislature, Regular Session, 2013, and 34 Code of Federal Regulations (CFR), §§300.151-300.153.

§89.1196. Individualized Education Program Facilitation.

(a) For the purpose of this section and Texas Education Code, §29.019, individualized education program (IEP) facilitation refers to a method of alternative dispute resolution that involves the use of a trained facilitator to assist an admission, review, and dismissal (ARD)

committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively. While public education agencies are not required to offer IEP facilitation as an alternative dispute resolution method, the Texas Education Agency (TEA) encourages the use of IEP facilitation as described in this section.

(b) A public education agency is not prohibited from incorporating elements of IEP facilitation into ARD committee meetings that are conducted without the assistance of a facilitator as described in this section. For example, a public education agency may provide training on communication skills, conflict management, or meeting effectiveness to individuals who participate in ARD committee meetings to enhance collaboration and efficiency in those meetings.

(c) A public education agency that chooses to offer IEP facilitation under this section may determine whether to use independent contractors, employees, or other qualified individuals as facilitators. At a minimum, an individual who serves as a facilitator must:

(1) have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;

(2) have demonstrated knowledge of and experience with the ARD committee meeting process;

(3) have completed 18 hours of training in IEP facilitation, consensus building, and/or conflict resolution; and

(4) complete continuing education as determined by the public education agency.

(d) A public education agency that chooses to offer IEP facilitation under this section must ensure that:

(1) participation is voluntary on the part of the parties;

(2) the facilitation is provided at no cost to parents; and

(3) the process is not used to deny or delay the right to pursue a special education complaint, mediation, or a due process hearing in accordance with Part B of the Individuals with Disabilities Education Act (IDEA) and this division.

(e) A public education agency that chooses to offer IEP facilitation under this section must develop written policies and procedures that include:

(1) the procedures for requesting facilitation;

(2) facilitator qualifications, including whether facilitators are independent contractors, employees, or other qualified individuals;

(3) the process for assigning a facilitator;

(4) the continuing education requirements for facilitators; and

(5) a method for evaluating the effectiveness of the facilitation services and the individual facilitators.

(f) A public education agency that chooses to offer IEP facilitation under this section must provide parents with information about the process, including a description of the procedures for requesting IEP facilitation and information related to facilitator qualifications. This information must be included when a copy of the procedural safeguards notice under 34 Code of Federal Regulations (CFR), §300.504 is provided to parents, although this information may be provided as a separate document and may be provided in a written or electronic format.

(g) A facilitator under this section must not be a member of the student's ARD committee, must not have any decision-making authority over the committee, and must remain impartial to the topics under discussion. The facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;

(2) assisting the committee in establishing a set of guidelines for the meeting;

(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;

(4) ensuring that each committee member has an opportunity to participate;

(5) helping to resolve disagreements that arise; and

(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(h) Promptly after being assigned to facilitate an ARD committee meeting, or within a timeline established under the public education agency's procedures, the facilitator must contact the parents and public education agency representative to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(i) A public education agency that chooses to offer IEP facilitation under this section must ensure that facilitators protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(j) The TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from the TEA and on the TEA website.

§89.1197. State Individualized Education Program Facilitation.

(a) In accordance with the Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators beginning with the 2014-2015 school year.

(b) For the purpose of this section, IEP facilitation has the same general meaning as described in §89.1196(a) of this title (relating to Individualized Education Program Facilitation), except that state IEP facilitation is used when the admission, review, and dismissal (ARD) committee is in dispute about decisions relating to the provision of a free and appropriate public education to a student with a disability and the facilitator is an independent facilitator provided by the TEA.

(c) A request for IEP facilitation under this section must be filed by completing a form developed by the TEA that is available upon request from the TEA and on the TEA website. The form must be filed with the TEA by one of the parties by mail, hand-delivery, or facsimile.

(d) IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.

(e) In order for the TEA to provide an independent facilitator, the following conditions must be met.

(1) The required form must be completed and signed by both parties.

(2) The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements

of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1050(f) of this title (relating to The Admission, Review, and Dismissal Committee).

(3) The request for IEP facilitation must have been filed within five calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.

(4) The dispute must not relate to a manifestation determination or determination of interim alternative educational setting under 34 Code of Federal Regulations (CFR), §300.530 or §300.531.

(5) The same parties must not be concurrently involved in special education mediation under §89.1193 of this title (relating to Special Education Mediation).

(6) The issues in dispute must not be the subject of a special education complaint under §89.1195 of this title (relating to Special Education Complaint Resolution) or a special education due process hearing under §89.1151 of this title (relating to Special Education Due Process Hearings) and §89.1165 of this title (relating to Request for Special Education Due Process Hearing).

(7) The same parties must not have participated in IEP facilitation concerning the same student under this section within the same school year of the filing of the current request for IEP facilitation.

(f) Within five business days of receipt of a request for an IEP facilitation under this section, the TEA will determine whether the conditions in subsections (c)-(e) of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.

(g) Notwithstanding subsections (b)-(e) of this section, if a special education due process hearing or complaint decision requires a public education agency to provide an independent facilitator to assist with an ARD committee meeting, the public education agency may request that the TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, the TEA will notify the parties of its decision to assign or not assign an independent facilitator. If TEA declines the request to assign an independent facilitator, the public education agency must provide an independent facilitator at its own expense.

(h) The TEA's decision not to provide an independent facilitator is final and not subject to review or appeal.

(i) The independent facilitator assignment may be made based on a combination of factors, including, but not limited to, geographic location and availability. Once assigned, the independent facilitator must promptly contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(j) The TEA will use a competitive solicitation method to seek independent facilitation services, and the contracts with independent facilitators will be developed and managed in accordance with the TEA's contracting practices and procedures.

(k) At a minimum, an individual who serves as an independent facilitator under this section:

(1) must have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;

(2) must have demonstrated knowledge of and experience with the ARD committee meeting process;

(3) must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution as specified in the TEA's competitive solicitation;

(4) must complete continuing education as determined by the TEA;

(5) may not be an employee of the TEA or the public education agency that the student attends; and

(6) may not have a personal or professional interest that conflicts with his or her impartiality.

(l) An individual is not an employee of the TEA solely because the individual is paid by the TEA to serve as an independent facilitator.

(m) An independent facilitator must not be a member of the student's ARD committee, must not have any decision-making authority, and must remain impartial to the topics under discussion. The independent facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;

(2) assisting the committee in establishing a set of guidelines for the meeting;

(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;

(4) ensuring that each committee member has an opportunity to participate;

(5) helping to resolve disagreements that arise; and

(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(n) An independent facilitator must protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(o) The TEA will develop surveys to evaluate the IEP facilitation program and the independent facilitators and will request that parties who participate in the program complete the surveys.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201405991
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 1, 2015
Proposal publication date: June 13, 2014
For further information, please call: (512) 475-1497

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CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

The State Board of Education (SBOE) adopts amendments to §111.1 and §111.25 and the repeal of §§111.11-111.17 and 111.21-111.24, concerning Texas essential knowledge and skills (TEKS) for mathematics. The amendments and repeals are adopted without changes to the proposed text as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8139) and will not be republished. Sections 111.1 and 111.25 address implementation of elementary and middle school mathematics TEKS adopted in 2012. Sections 111.11-111.17 and 111.21-111.24 address the elementary and middle school mathematics TEKS that took effect in August 2006. The adopted repeals remove the TEKS for Kindergarten-Grade 8 mathematics, and related implementation language, that were superseded by 19 TAC §§111.1-111.7 and 111.25-111.28 beginning with the 2014-2015 school year. The adopted amendments remove references to rules that are repealed.

The SBOE adopted revisions to the mathematics TEKS for elementary and middle school in April 2012 for implementation in the 2014-2015 school year. With the implementation of the new mathematics TEKS for Kindergarten-Grade 8 in 19 TAC §§111.2-111.7 and 111.26-111.28, the TEKS in 19 TAC §§111.11-111.17 and 111.21-111.24 are no longer needed and may be repealed. In addition, §111.1 and §111.25 must be amended to remove references to rules that are repealed.

The adopted rule actions have no procedural and reporting implications. The adopted rule actions have no locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the proposed amendments and repeals for second reading and final adoption during its November 21, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendments and repeals for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015-2016 school year. The earlier effective date will immediately repeal rules that have been superseded, as well as amend existing rules referencing the repealed rules, to avoid confusion. The effective date for the amendments and repeals is 20 days after filing as adopted.

No public comments were received on the proposal.

SUBCHAPTER A. ELEMENTARY

19 TAC §111.1

The amendment is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405956
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 31, 2014
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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19 TAC §§111.11 - 111.17

The repeals are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials.

The repeals implement the Texas Education Code, §7.102(c)(4) and §28.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405957
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 31, 2014
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§111.21 - 111.24

The repeals are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials.

The repeals implement the Texas Education Code, §7.102(c)(4) and §28.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405958
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 31, 2014
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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19 TAC §111.25

The amendment is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405959
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 31, 2014
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

SUBCHAPTER D. OTHER SOCIAL STUDIES COURSES

19 TAC §§113.53, 113.55 - 113.57, 113.62, 113.65, 113.66

The State Board of Education (SBOE) adopts amendments to §§113.53, 113.55 - 113.57, 113.62, 113.65, and 113.66, concerning Texas essential knowledge and skills (TEKS) for social studies. The amendments are adopted without changes to the proposed text as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8141) and will not be republished. The sections address the TEKS for other social studies courses. The adopted amendments amend existing rules to require that Advanced Placement (AP) and International Baccalaureate (IB) courses address the TEKS, as applicable.

Current SBOE rules allow students to earn credit toward high school graduation for successful completion of certain AP and IB courses. The content requirements of AP and IB social studies courses are prescribed by the College Board and the International Baccalaureate Organization, respectively.

The adopted amendments to 19 TAC Chapter 113, Subchapter D, explicitly require that students who seek to satisfy specific social studies graduation requirements through completion of AP and IB social studies courses demonstrate proficiency in all of the TEKS for the corresponding TEKS-based courses.

The adopted amendments have no procedural and reporting implications. The adopted amendments have no new locally maintained paperwork requirements.

The Texas Education Agency has determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the proposed amendments for second reading and final adoption during its November 21, 2014, meeting. The effective date for the amendments is August 24, 2015.

No public comments were received on the proposal.

The amendments are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under TEC, §28.002.

The amendments implement the Texas Education Code, §§7.102(c)(4); 28.002; and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405960
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 24, 2015
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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CHAPTER 114. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR LANGUAGES OTHER THAN ENGLISH

The State Board of Education (SBOE) adopts amendments to §§114.3, 114.13, and 114.61, concerning Texas essential knowledge and skills (TEKS) for languages other than English (LOTE). The amendments are adopted without changes to the proposed text as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8142) and will not be republished. The sections address implementation of the LOTE TEKS for elementary, middle school, and other LOTE courses adopted in 2014. The

adopted amendments change the implementation of the recently revised LOTE TEKS to the 2017-2018 school year.

Applications for appointment to LOTE TEKS review committees were accepted by the Texas Education Agency (TEA) from December 2012 to January 2013. Nominations for LOTE TEKS review committee members and appointments of expert reviewers were made in May 2013.

The LOTE TEKS review committees convened in Austin in June 2013 to begin work on draft recommendations for revisions to the TEKS. Expert reviewers provided their initial feedback on the current LOTE TEKS to the SBOE in August. The TEKS review committees met again in August 2013 to complete their initial draft recommendations. In September 2013, the first draft recommendations were provided to the board and to the board-appointed expert reviewers and posted to the TEA website for informal public feedback. During the September 2013 SBOE meeting, two expert reviewers and one representative from each LOTE TEKS review committee provided invited testimony to the Committee of the Full Board. Expert reviewers provided feedback on the committee's draft recommendations in October.

The LOTE TEKS review committees met for a third time in October 2013 in order to finalize their recommendations for revisions to the TEKS. The SBOE-appointed expert reviewers participated in this meeting and their feedback on the draft recommendations was provided to the TEKS review committee members at this meeting. The final recommendations from the review committees were posted on the TEA website in November 2013 and were shared with the expert reviewers. The experts' final feedback on the recommendations was provided to the SBOE at the January 2014 meeting. A public hearing on the proposed revisions to the LOTE TEKS was held on January 28, 2014; however, no one registered to provide testimony at the hearing. The SBOE approved proposed revisions to Chapter 114, Subchapters A-D, for first reading and filing authorization at the January 31, 2014, meeting. Also at the January meeting, the board directed staff to form two committees to make recommendations regarding the need for unique TEKS for classical languages and logographic languages.

A new course, Special Topics in Language and Culture, was developed by the LOTE TEKS review committee to address requirements in House Bill 5, 83rd Texas Legislature, Regular Session, 2013, that allow students who have completed one credit in a language other than English but who are unlikely to successfully complete a second credit in that language to substitute credit in another course. In order for the new course to be available for the implementation of the new foundation high school program graduation requirements in the 2014-2015 school year, the TEKS for the Special Topics in Language and Culture course required an earlier implementation date than the other LOTE TEKS.

A second public hearing was held on April 9, 2014; however, no one registered to provide testimony at the hearing. The SBOE approved proposed revisions to Chapter 114, Subchapters A-D, for second reading and final adoption at the April 11, 2014, meeting. The revised TEKS for LOTE approved for adoption at the April 2014 meeting were scheduled to be implemented in classrooms in the 2016-2017 school year, with the exception of the Special Topics in Language and Culture course, which was to be implemented beginning with the 2014-2015 school year. The board also directed staff to move forward with the LOTE TEKS committees' recommendation that new TEKS for classical languages be developed.

The LOTE TEKS committee for classical languages met in May 2014 to begin work on draft recommendations. The committee met again in June 2014 to finalize their recommendations for LOTE TEKS for classical languages.

At its July 2014 meeting, the SBOE approved for first reading and filing authorization proposed revisions to 19 TAC Chapter 114, Texas Essential Knowledge and Skills for Languages Other Than English, Subchapter C, High School, which included new TEKS for classical languages. The SBOE approved new TEKS for classical languages for second reading and final adoption at its September 2014 meeting. At that time, the board changed the implementation of the high school LOTE TEKS in Subchapter C, with the exception of the course for Special Topics in Language and Culture, to the 2017-2018 school year in order to align with the expected availability of LOTE instructional materials.

The adopted amendments to 19 TAC Chapter 114, Texas Essential Knowledge and Skills for Languages Other Than English, Subchapters A, B, and D, change the implementation date of the recently revised LOTE TEKS for elementary, middle school, and other LOTE courses to the 2017-2018 school year to align with the expected availability of LOTE instructional materials.

The adopted amendments have no procedural and reporting requirements. The adopted amendments have no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the proposed amendments for second reading and final adoption during its November 21, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendments for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015-2016 school year. The earlier effective date will enable districts to begin preparing for implementation of the revised TEKS. The effective date for the amendments is 20 days after filing as adopted.

SUBCHAPTER A. ELEMENTARY

19 TAC §114.3

The amendment is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405961

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 31, 2014
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §114.13

The amendment is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405962
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 31, 2014
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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SUBCHAPTER D. OTHER LANGUAGES OTHER THAN ENGLISH COURSES

19 TAC §114.61

The amendment is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under TEC, §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4); 28.002; and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405963
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 31, 2014
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER B. STUDENT ATTENDANCE ACCOUNTING

19 TAC §129.21

The State Board of Education (SBOE) adopts amendment to §129.21, concerning student attendance accounting. The amendment is adopted without changes to the proposed text as published in the October 17, 2014 issue of the *Texas Register* (39 TexReg 8144) and will not be republished. The section provides requirements for student attendance accounting for state funding purposes. The adopted amendment updates statutory references in the rule text to reflect changes from the 83rd Texas Legislature, Regular Session, 2013.

The rule provides the student attendance accounting requirements school districts must follow and describes the manner in which student attendance is earned. The rule also specifies conditions under which a student who is not actually on campus at the time attendance is taken may be considered in attendance for Foundation School Program (FSP) funding purposes.

The adopted amendment to 19 TAC §129.21 updates statutory references in the rule text to reflect changes from the last legislative session. Specifically, the amendment updates subsection (j)(3), which specifies conditions under which a student who is not on campus at the time attendance is taken may be considered in attendance for FSP funding purposes, to refer to statutory provisions added by the 83rd Texas Legislature, Regular Session, 2013, through Senate Bills 260 and 553. The provisions relate to excused absences to serve as an early voting clerk and excused absences to visit with a parent, stepparent, or guardian who has been called to duty for, is on leave from, or is immediately returned from deployment. The adopted amendment also makes a minor grammatical correction in subsection (h).

The adopted amendment has no new procedural and reporting implications. The adopted amendment has no new requirements related to locally maintained paperwork.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the proposed amendment to §129.21 for second reading and final adoption during its November 21, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015-2016 school year in order to implement the latest policy in a timely manner. The effective date for the amendment is 20 days after filing as adopted.

No public comments were received on the proposal.

The amendment is adopted under the Texas Education Code (TEC), §42.004, which authorizes the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program. TEC, §25.087, establishes grounds for excused absences.

The amendment implements the Texas Education Code, §25.087 and §42.004.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405964
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 31, 2014
Proposal publication date: October 17, 2014
For further information, please call: (512) 475-1497

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) adopts amendments to §§231.3, 231.9, 231.15, 231.17, 231.21, 231.23, 231.27, 231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, and 231.73, concerning requirements for public school personnel assignments. The amendments are adopted without changes to the proposed text as published in the September 12, 2014, issue of the *Texas Register* (39 TexReg 7256) and will not be republished. The sections establish prekindergarten-Grade 6 and Grades 6-8 assignments. The adopted amendments to 19 TAC Chapter 231, Subchapters B and C, add the new Core Subjects: Early Childhood-Grade 6 and Core Subjects: Grades 4-8 certificates to every assignment that currently includes the Generalist: Early Childhood-Grade 6 and/or Generalist: Grades 4-8 certificates as an appropriate credential for placement in a particular teaching assignment.

Current 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, provides guidance to school districts with regard to the certificates required for specific assignments of public school educators with corresponding certificates for each assignment for ease of use by school district personnel.

The adopted amendments to 19 TAC Chapter 231, Subchapters B and C, add the new Core Subjects: Early Childhood-Grade 6 and Core Subjects: Grades 4-8 certificates to all appropriate classroom assignments.

The adopted amendments have no procedural and reporting implications. Also, the adopted amendments have no locally maintained paperwork requirements.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

No comments were received regarding the proposed amendments.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC §§231.3, 231.9, 231.15, 231.17, 231.21, 231.23, 231.27, 231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, and 231.73 at the November 21, 2014 SBOE meeting.

SUBCHAPTER B. PREKINDERGARTEN-GRADE 6 ASSIGNMENTS

19 TAC §§231.3, 231.9, 231.15, 231.17, 231.21, 231.23, 231.27

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2014.

TRD-201405907
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 29, 2014
Proposal publication date: September 12, 2014
For further information, please call: (512) 475-1497

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SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

19 TAC §§231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21,

Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2014.

TRD-201405908
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 29, 2014
Proposal publication date: September 12, 2014
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to §363.1, concerning Plumbing Inspector Examination Qualifications, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5037).

The rule addresses concerns raised by some political subdivisions that have been unable to comply with the requirement that their Plumbing Inspector applicants complete a Water Supply Protection Specialist Endorsement Training program prior to sitting for the Plumbing Inspector examination.

This amended rule will permit political subdivisions to more quickly qualify candidates for examination as Plumbing Inspectors by eliminating this prerequisite for examination. In addition, it will allow those applicants that choose to take the course to receive 100 credit hours rather than the existing 50 credit hours for completion of the course program.

No comments were received on the proposed amendment.

Statutory Authority

The amendments to §363.1 are adopted under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405948
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: December 31, 2014
Proposal publication date: July 4, 2014
For further information, please call: (512) 936-5224

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.7, concerning License Statuses, with changes to the proposed text published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7533). The rule will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will clarify the rule concerning the retirement of licenses, and will afford licensees the opportunity to retire their license with a delinquent status in the same manner that licensees with an active or inactive status may retire their license. The rule will continue to prohibit, however, licensees with pending complaints or restricted licenses from retiring their license.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§461.7. License Statuses.

(a) Active Status. Any licensee with a license on active status may practice psychology pursuant to that license. Any license that is not on inactive, delinquent, retired, resigned, void or revoked status is considered to be on active status. Active status is the only status under which a licensee may engage in the practice of psychology.

(b) Inactive Status.

(1) A licensee may elect inactive status by applying to the Board and paying the fee set in Board rule §473.5(b) of this title (relating to Miscellaneous Fees (Not Refundable)).

(2) Licensees who seek inactive status must return their license to the Board. A licensee may not practice psychology under an inactive license.

(3) A licensee may place his/her active license on inactive status for a period of two years. Reactivation of this license may occur at any time during this two-year period without the person having to take an exam provided that the person has notified the Board and has paid the required fees. At the end of the two-year period, if the license has not been reactivated, the license automatically becomes void. The inactive status may be extended for additional increments of two years if, prior to the end of each two-year period, the person notifies the Board in writing that an extension is requested and submits proof to the Board of continuous licensure by a psychology licensing board in this or another jurisdiction for the past two-year period and payment of all required fees. Licensees may indefinitely remain on inactive status if he/she is licensed in this or another jurisdiction and complies with the extension requirements set forth in this paragraph. Any licensee wishing to reactivate his/her license that has been on inactive status for four years or more must take and pass the Jurisprudence Exam with the minimum acceptable score as set forth in Board rule §463.14 of this title (relating to Written Examinations) unless the licensee holds another license on active status with this Board.

(4) Any licensee who returns to active status after having been on inactive status must provide proof of compliance with Board rule §461.11 of this title (relating to Professional Development) before reactivation will occur.

(5) A licensee with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the action has been terminated.

(6) Inactive status may be extended for two additional years upon the Board's review and approval of medical documentation of a catastrophic medical condition of the licensee. The request for this extension must be received in writing before the end of the current inactive status period and requires payment of the $100 inactive status fee.

(c) Delinquent Status. A licensee who fails to renew his/her license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall be void (non-payment). A licensee may not engage in the practice of psychology under a delinquent license. The Board may sanction a delinquent licensee for violations of Board rules.

(d) Restricted status. Any license that is currently suspended, on probated suspension, or is currently required to fulfill some requirements in a Board order is considered to be on restricted status. A licensee practicing under a restricted license must comply with any restrictions placed thereon by the Board.

(e) Retirement Status. A licensee who is on active or inactive status with the Board may retire his/her license by notifying the Board in writing prior to the renewal date for the license. A licensee with a delinquent status may also retire his/her license by notifying the Board in writing prior to the license going void. However, a licensee with a pending complaint or restricted license may not retire his/her license. A licensee who retires his/her license shall be reported to have retired in good standing.

(f) Resignation Status. A licensee may resign only upon express agreement by the Board. A licensee who resigns shall be reported as:

(1) Resigned in lieu of adjudication if permitted to resign while a complaint is pending; or

(2) Resigned in lieu of further disciplinary action if permitted to resign while the license is subject to restriction.

(g) Void (Non-Payment) Status. The Board may void any license that has been delinquent for 12 months or more or any inactive license that has expired. An individual may not engage in the practice of psychology under a void license. A license that has been voided may not be reinstated for any reason. A licensee whose license has been voided must submit a new application if he or she wishes to obtain a new license with the Board.

(h) Revoked Status. A license is revoked pursuant to Board Order requiring revocation as a disciplinary action.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406051
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: January 1, 2015
Proposal publication date: September 19, 2014
For further information, please call: (512) 305-7706

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22 TAC §461.10

The Texas State Board of Examiners of Psychologists adopts new rule §461.10, concerning License Required, without changes to the proposed text published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7534). The rule will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted would incorporate the licensure requirement set out in Tex. Occ. Code Ann. §501.251, and would also clarify the Board's jurisdiction over non-exempt providers of psychological services, when those services occur, either in whole or in part, within the State.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406053

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: January 1, 2015
Proposal publication date: September 19, 2014
For further information, please call: (512) 305-7706

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.11, concerning Licensed Psychologist, without changes to the proposed text published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7535). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would allow licensed specialists in school psychology to use their title while acquiring the supervised experience required for full licensure, without compromising the reasonable measures of protection afforded the public elsewhere in the rule. By way of example, the amendment would not detract from a supervisee's duty to inform the recipient of services of their supervisory status, or how the recipient may contact the supervisor directly. Thus, the public would be apprised of the provider's licensure status and level of education and training in the same manner as provisionally licensed psychologists and licensed psychological associates undergoing the required periods of supervised experience.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406054
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: January 1, 2015
Proposal publication date: September 19, 2014
For further information, please call: (512) 305-7706

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22 TAC §463.23

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.23, concerning Criteria for Examination Consultants, without changes to the proposed text published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7537). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is being offered to expand the pool of licensees eligible to serve as examiners for the Board's Oral Examination. The proposed amendment will also expand the pool of licensees eligible to serve on the Board's Written Exam Committee, and in the Vignette Writing Workshop.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406056
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: January 1, 2015
Proposal publication date: September 19, 2014
For further information, please call: (512) 305-7706

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22 TAC §463.24

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.24, concerning Oral Examination Workgroup, without changes to the proposed text published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7537). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will eliminate dated requirements, ensure the rule correctly reflects the Workgroup's duties, and eliminate redundant provisions.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406057

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: January 1, 2015
Proposal publication date: September 19, 2014
For further information, please call: (512) 305-7706

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22 TAC §463.31

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.31, concerning Use of Other Mental Health Licensing During Practicum, Internship, or Supervised Experience, without changes to the proposed text published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7538). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would allow all licensees of this Board to use their title when delivering psychological services during the supervised experience required for full licensure, without compromising the reasonable measures of protection afforded the public elsewhere in the Board's rules. The rule will continue to prohibit however, the delivery of psychological services under a mental health license issued by another agency or jurisdiction, while acquiring the supervised experience required for full licensure.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2014.

TRD-201406059
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: January 1, 2015
Proposal publication date: September 19, 2014
For further information, please call: (512) 305-7706

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER P. PROVIDER NETWORK DEVELOPMENT

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§412.751 - 412.754, 412.756, 412.758, 412.760, 412.762, 412.764 and 412.766 and new §§412.751 - 412.764, concerning provider network development. New §412.760 is adopted with changes to the proposed text as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6021). The repeal of §§412.751 - 412.754, 412.756, 412.758, 412.760, 412.762, 412.764 and 412.766 and new §§412.751 - 412.759 and §§412.761 - 412.764 are adopted without changes, and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Health and Safety Code, §533.035 requires local mental health authorities (LMHAs) to assemble a network of providers and identifies LMHAs as providers of last resort. An LMHA must demonstrate to the department that it has made every reasonable attempt to solicit the development of an available and appropriate provider base, and may only serve as a provider of servicers if there is not a willing provider of the needed services available. In developing a network, the LMHA is required to consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money.

Rules to implement these provisions were developed through a negotiated rulemaking process, in accordance with the requirements of Government Code, Chapter 2008, concerning Negotiated Rulemaking. The rules, adopted in 2007, established a uniform process for planning implementation that provides a framework within which each LMHA must work with stakeholders in assembling a network of providers. This approach recognized the wide variance among LMHAs in terms of the extent to which they would be able to assemble a network and how quickly such a transition could occur. The rules also defined the conditions under which LMHAs could continue to provide services. This basic framework was codified in by the 80th Legislature as Health and Safety Code, §533.03521 and §533.0358.

The purpose of this subchapter is to describe the planning, procurement, and individual choice procedures for LMHAs to use in developing local provider networks. Repeal of the existing rules is necessary due to substantial changes being made to address issues that have been identified since implementation of the initial rules in 2008.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 412.751 - 415.754, 412.756, 412.758, 412.760, 412.762, 412.764 and 412.766 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The new rules have been reorganized and the language simplified. Redundant provisions have been eliminated, and new definitions have been added to clarify terminology. Other changes made to the new rules include various grammatical, punctuation, and formatting changes. More specific changes are described in the following summaries.

Section 412.751 and §412.752 state the purpose of the subchapter and its application to providers and funds.

Section 412.753 defines terms used in the chapter. New definitions have been added for the following terms: critical infrastructure, discrete services, individual, licensed psychiatric hospital, LOC or level of care, Local Authority Network Advisory Committee (LANAC), network development, performance contract, Planning and Network Advisory Committee (PNAC), routine outpatient services, and specialized services.

Section 412.754 sets out basic requirements for network development. New language clarifies that the local network development plan involving the PNAC is not intended to limit procurement and LMHAs are expected to consider opportunities for network development that develop between planning periods.

Section 412.755 identifies the circumstances under which an LMHA may continue its role as a service provider. New provisions impose additional conditions for LMHAs that rely on the need to protect critical infrastructure as the reason to continue providing services directly to individuals.

Section 412.756 describes the functions and content of the department's website (http://www.dshs.state.tx.us/mhcommunity/LPND/default.shtm) and identifies the planning templates and schedule the department will develop in conjunction with the Local Authority Network Advisory Committee.

Section 412.757 describes the process for LMHAs to evaluate the potential for network development that requires an LMHA to establish a procurement plan if there is potential for network development in the local service area.

Section 412.758 describes the content of the plan. The revised language separates content required for all LMHAs and content required only for LMHAs with potential for network development. Previously required elements not directly related to the criteria for approval have been removed. The description of the rationale an LMHA must provide is described in more detail than in the current rule to be repealed. LMHAs must explain any proposed procurement restrictions related to the type of service to be procured, the volume of services to be procured, the geographic area in which services would be procured, and the number of providers to be accepted. An LMHA must also provide a basis for the volume of service to be provided by the LMHA.

Section 412.759 requires each LMHA to solicit public comment on its draft plan and to submit a summary of the input received along with the proposed plan to the department. A new requirement is to solicit input from licensed psychiatric hospitals in the local service area.

Section 412.760 identifies key factors considered in reviewing local plans; individual choice and access have been added to the list. The proposed preamble stated that "The previous requirement for the department to solicit stakeholder involvement has been revised with specific reference to the LANAC. The adopted text in subsection (a)(1) has been revised to delete the reference to the LANAC and has been revised to "The department shall establish a mechanism for stakeholder involvement in the review process" in response to a department staff comment further explained in the COMMENTS Section. This section also sets out the statutory criteria for approval and establishes that the department may require an LMHA to revise its plan before the department approves the plan. Finally, a new provision has been added allowing an LMHA to propose a plan amendment if it determines that it is unable to conduct the procurement as originally approved by the department. This section also includes a requirement for each LMHA to post its approved plans on its website. A list of the LMHA's contracted providers must also be posted on the website.

Section 412.761 describes requirements for procurement conducted by LMHAs using funds disbursed by the department, including elements that must be included in the procurement document and procedures for publication. Procurement requirements that duplicated other department rules have been removed from the proposed subchapter. This section includes several new provisions. The rule will prohibit LMHAs from applying more rigorous standards to external providers than to LMHA staff and programs, and require them to pay external providers a fair and reasonable rate in relation to the prevailing market.

Section 412.762 establishes a new reporting process to provide the department with information about procurement results. This replaces a previous requirement for LMHAs to amend their plans if procurement does not achieve the planned level of contracting.

Section 412.763 requires LMHAs to provide an appeals process for providers who submit a letter of interest or participate in a procurement process, and establishes an avenue for state review.

Section 412.764 sets out the procedures for giving individuals a choice of service providers. It includes a new requirement for LMHAs to maintain and provide individuals with a standardized profile for every provider in the local network. The department will establish the provider profile template, and LMHAs may request modifications to the template in their local plans. The new rule will require LMHAs to offer individuals an opportunity to choose from available providers in the LMHA's network at least once a year instead of at every treatment plan review. LMHAs will no longer be required to provide individuals with access to a telephone and the Internet. This section includes a new requirement for LMHAs to work with local stakeholders to develop and implement a plan to promote individual transition to the external network when a new provider joins the network.

COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period. However, the department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following change that will provide the department with the flexibility to establish an alternative mechanism for stakeholder involvement in the review process if the LANAC is eliminated.

Change: Concerning §412.760(a)(1), the department replaced the proposed text, "The department shall solicit input from the LANAC as part of the evaluation process" with the text "The department shall establish a mechanism for stakeholder involvement in the review process." The Sunset Commission has recommended elimination of the LANAC, and if that recommendation is adopted, the department will establish a different mechanism for stakeholder involvement.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§412.751 - 412.754, 412.756, 412.758, 412.760, 412.762, 412.764, 412.766

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; §533.035(b), which authorizes the department to disburse department federal and department state funds to a mental health authority for the provision of community mental health services in the local service area; §533.03521,which requires the department to review and approve local network development plans; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405968
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: January 1, 2015
Proposal publication date: August 8, 2014
For further information, please call: (512) 776-6972

♦ ♦ ♦

25 TAC §§412.751 - 412.764

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; §533.035(b), which authorizes the department to disburse department federal and department state funds to a mental health authority for the provision of community mental health services in the local service area; §533.03521,which requires the department to review and approve local network development plans; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§412.760. Plan Approval and Implementation.

(a) Department review. The department shall review each plan to ensure compliance with the requirements of this subchapter and to determine whether the LMHA is making reasonable attempts to develop its provider network.

(1) The department shall establish a mechanism for stakeholder involvement in the review process.

(2) In reviewing an LMHA's plan, the department shall evaluate the level of effort made by the LMHA to achieve compliance and the rationale and any supporting documentation for its decisions and plans. This evaluation must include:

(A) the LMHA's response to public comment;

(B) the LMHA's past efforts and progress made in developing a network of external providers;

(C) the specific context of the local service area, including population density and distribution, existing service organizations, and local priorities;

(D) the potential impact on individual choice and access; and

(E) input from the LMHA's PNAC.

(3) The department may require an LMHA to submit additional information or documentation.

(b) Department approval. The department shall notify an LMHA of its decision within the timeframe established at the beginning of the planning cycle.

(1) The department shall approve the plan if it determines that the LMHA:

(A) is in compliance with the requirements of this subchapter; and

(B) is making reasonable attempts to develop an available and appropriate external provider base that is sufficient to meet the needs of individuals in its local service area.

(2) The department may require the LMHA to make revisions before approving the plan. If revisions are required, the department will determine a timeframe for resubmission.

(c) Posting the approved plan. After the department approves the plan, the LMHA shall post the approved version on its website. The posting must include the summary of public comments and the LMHA's response.

(d) Implementation. An LMHA shall conduct procurement as described in its approved plan.

(e) Amendment. If an LMHA determines it is unable to conduct the procurement as originally approved by the department, it shall submit a request for plan amendment to the department within 30 days of making the determination. An amendment is not required to expand the scope of a planned procurement or to conduct additional procurements outside of what is approved by the department. The department will evaluate the amendment request using the same process used for the original plan. Any proposed amendment must be approved in writing by the department and posted on the LMHA's website before it is implemented.

(f) List of external providers. The LMHA must maintain a current list of external providers on its website, including the name of each organization or private practitioner and the services provided. The list shall include the number of contracts and agreements with individual peer support providers, but not the names of individual peer support providers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405969

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: January 1, 2015
Proposal publication date: August 8, 2014
For further information, please call: (512) 776-6972

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.77

The Texas Board of Criminal Justice adopts amendments to §151.77, Purchasing and Contracting with Historically Underutilized Businesses (HUBs), without changes to the proposed text as published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7076).

The adopted amendments are necessary to update grammatical and formatting changes.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code Chapter 2161 and §493.012.

Cross Reference to Statutes: Texas Government Code §492.013.

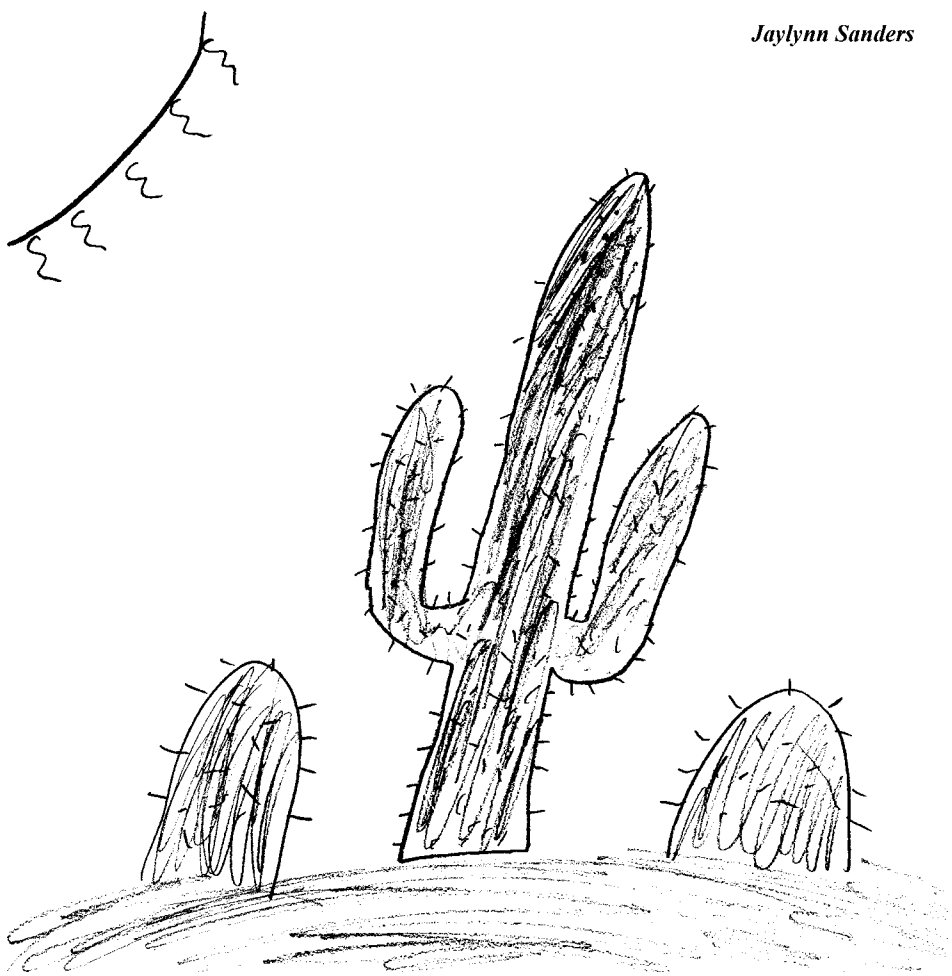
The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 11, 2014.

TRD-201405953
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Effective date: December 31, 2014
Proposal publication date: September 5, 2014
For further information, please call: (936) 437-6700

♦ ♦ ♦

Jaylynn Sanders



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 37 TAC §163.37 concerning Reports and Records. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.37.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this notice.

§163.37. Reports and Records.

TRD-201405952
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 11, 2014

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 16, Chapter 66, Registration of Property Tax Consultants. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§66.1. Authority and Purpose

§66.10. Definitions

§66.20. Registration Requirements

§66.21. Pre-registration and Upgrade Education

§66.22. Examination - Licensed Attorney

§66.23. Registration - Endorsement

§66.25. Continuing Education

§66.65. Advisory Council

§66.70. Responsibilities of Registrant - General

§66.71. Responsibilities of Registrant - Records

§66.72. Responsibilities of Registrant - Private Provider

§66.80. Fees

§66.90. Sanctions - Administrative Sanctions/Penalties

§66.100. Code of Ethics and Professional Responsibility

TRD-201406107
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 15, 2014

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The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 16, Chapter 71, Warrantors of Vehicle Protection Products. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§71.1. Authority

§71.10. Definitions

§71.20. Registration and Renewal Requirements--General

§71.22. Registration Requirements--Financial Security Requirements

§71.70. Responsibilities of Registrant

§71.80. Fees

§71.90. Administrative Penalties and Sanctions

TRD-201406106
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 15, 2014

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 16, Chapter 79, Weather Modification. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§79.1. Authority

§79.10. Definitions

§79.11. License and Permit Required

§79.12. License and Permit Exemptions

§79.13. Application for License

§79.14. Issuance of License

§79.15. Renewal of License

§79.17. Notice of Intention to Obtain Permit

§79.18. Permit Application

§79.20. Requests for Public Meeting on Permit Application

§79.21. Issuance of Permit

§79.22. Description of Permit

§79.31. Recordkeeping Requirements

§79.32. Additional Recordkeeping Requirements for Operations Employing Aircraft

§79.33. Reporting Requirements

§79.41. Amendment, Revocation, or Suspension

§79.42. Good Cause

§79.43. Notice and Hearing

§79.44. Emergency Order To Cease Operations

§79.51. Application for License Amendment

§79.52. Issuance of License Amendment

§79.53. Application for Permit Amendment

§79.54. Issuance of Permit Amendment

§79.55. Exception for Minor Permit Amendments

§79.61. Hail Suppression as Objective of Permit

§79.62. Issuance of Permit When Election Held

§79.80. Fees.

TRD-201406108
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 15, 2014

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Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board files this notice of intention to review Texas Administrative Code, Title 22, Chapter 271, pursuant to the requirements of Texas Government Code §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 271 and has determined that the reasons for initially adopting the rules continue to exist: §271.1, Definitions; §271.2, Applications; §271.3, Jurisprudence Examination Administration; §271.5, Licensure Without Examination; §271.6, National Board Examination; and §271.7, Criminal History Evaluation Letters.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Chapter 272, pursuant to the re-

quirements of Texas Government Code §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 272 and has determined that the reasons for initially adopting the rules continue to exist: §272.1, Open Records; §272.2, Historically Underutilized Business; and §272.3, Bid and Purchasing Protest Procedures

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Chapter 273, pursuant to the requirements of Texas Government Code §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 273 and has determined that the reasons for initially adopting the rules continue to exist: §273.1, Surrender of License; §273.2, Use of Name of Retired or Deceased Optometrist; §273.3, Contact Lenses as Prize or Premium; §273.4, Fees (Not Refundable); §273.5, Limited License for Clinical Faculty; §273.6, Provisional License; §273.7, Inactive Licenses; §273.8, Renewal of License; §273.9, Public Interest Information; §273.10, Licensee Compliance with Guaranteed Student Loan Corporation; §273.11, Public Participation in Meetings; §273.12, Profile Information; §273.13, Contract or Employment with Community Health Centers; and §273.14; Licenses for Military and Military Spouse.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Chapter 275, pursuant to the requirements of Texas Government Code §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 275 and has determined that the reasons for initially adopting the rules continue to exist: §275.1, General Requirements and §275.2, Required Education.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

TRD-201406140

Chris Kloeris
Executive Director
Texas Optometry Board
Filed: December 17, 2014

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Adopted Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 86, concerning Retail Creditors, pursuant to Texas Government Code, §2001.039. Chapter 86 contains Subchapter A, concerning Registration of Retail Creditors; and Subchapter B, concerning Retail Installment Contract. Subchapter A consists of §86.101, concerning Consumer Notifications; and §86.102, concerning Annual Registration Fees. Subchapter B consists of §86.201, concerning Documentary Fee.

Notice of the review of 7 TAC Part 5, Chapter 86 was published in the *Texas Register* as required on November 7, 2014 (39 TexReg 8745). The commission received no comments in response to that notice.

The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC Chapter 86 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 86, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 5, Chapter 86.

TRD-201406005
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 12, 2014

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Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of §151.77 concerning Purchasing and Contracting with Historically Underutilized Businesses (HUBs), pursuant to Texas Government Code §2001.039, which requires rule review every four years.

The proposed rule review was published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7076).

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice adopts amendments to §151.77.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

§151.77. Purchasing and Contracting with Historically Underutilized Businesses (HUBs).

TRD-201405954
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 11, 2014

♦ ♦ ♦

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 1, Chapter 2, concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner under the Secure and Fair Enforcement for Mortgage Licensing Act. Chapter 2 consists of Subchapter A, concerning Application and Renewal Fees for Office of Consumer Credit Commissioner Applicants; and Subchapter B, concerning Operational Requirements for Office of Consumer Credit Commissioner Licensees.

Notice of the review of 7 TAC Chapter 2 was published in the *Texas Register* as required on November 7, 2014 (39 TexReg 8745). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC Chapter 2 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 2, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 1, Chapter 2.

TRD-201406001
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: December 12, 2014

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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: 4 TAC §215.17(a)(2)

Case # _____

Office Use Only

Request for Forest Zone Determination

Requested by: [ ] Chief appraiser [ ] Taxing unit

I. Requesting Party Information. Name	Phone number Fax number
Address	City, State, Zip Code

II. 1) The date of receipt of the application by chief appraiser: _____

2) For request from taxing unit only:

The date of submission of the appraisal record to the appraisal review board:_____

3) The date on which a copy of this request and other information submitted is sent to the applicant:_____

III. For request from chief appraiser only:

List all taxing units in which the subject land is located:_____

_____

IV. Attach the following items:

1) a copy of application for restricted-use timberland appraisal;

2) a map showing site location and a map of site showing the zone location if location or acreage is contested;

3) information documenting the case if the minimum 50 square feet per acre of basal area is contested;

4) any other applicable information or evidence required according to the **Instructions for Submitting Information or Evidence**, as prescribed in 4 TAC 215.17(a)(3) to support each party's position; and

5) any other information or evidence considered necessary by the requesting party to support its position.

V. Describe the grounds upon which the application may be denied (attach separate sheet if more space is needed):

Signature of the requesting party	Date

Please mail to: Zone Determination, Texas A&M Forest Service, 200 Technology Way Ste. 1281, College Station, TX 77845

Figure: 4 TAC §215.17(a)(3)(A)

Notice of Zone Determination Request from a Chief Appraiser

To: the applicant (Name, Address, Phone Number) and each taxing unit (Name, Address, Phone Number)

You, the applicant, and each taxing unit in which the applicant's land is located, are given notice, pursuant to Tax Code, Section 23.9806(b), that a zone determination has been requested by the chief appraiser to the Director of Texas A&M Forest Service (or the Director). Tax Code, Section 23.9806(a) requires the chief appraiser to request such a determination before an application may be denied. The Director's determination is conclusive and shall be accepted by the chief appraiser.

The Tax Code, Section 23.9806(e) allows the applicant and each taxing unit to present information and evidence to the Director to support each party's position before the Director issues a determination letter. **Please follow the instruction as described in the enclosed "Instruction for Submitting Information or Evidence" when submitting information or evidence to the Dir**ector.

Attached to this notice are: 1) a copy of the request and all information or evidence submitted to the Director by the chief appraiser; and 2) a copy of Texas Administrative Code (or TAC), Title 4 Agriculture, Section 215.5, 215.9, or 215.13, whichever applicable to this case, which set forth the determination criteria that the Director uses to determine a zone upon request from a chief appraiser or a taxing unit.

Complete rules concerning the Director's determination upon request from a chief appraiser or taxing unit, as set forth in TAC, Title 4, Chapter 215, can be found at the web: http://txforestservice.tamu.edu/, or in TAC as described.

Issued by: _____, Chief Appraiser Date:_____

Figure: 4 TAC §215.17(a)(3)(B)

Instructions For Submitting Information or Evidence

I. INFORMATION OR EVIDENCE REQUIRED

The Director of the Texas A&M Forest Service (or the Director) shall determine the type, location, and size of a forest zone, if any, in which the applicant's land is located, based on the submitted written information by all parties. The following specifies the information or evidence required by the Director from the chief appraiser, the applicant, and taxing unit(s) in which the land is located to support each party's position if not previously submitted to the chief appraiser. Failure to provide the required information may result in an unfavorable determination for that party.

(a) AMZ-public rights-of-ways.

A management plan must be submitted from the applicant that addresses harvest restrictions to ensure the continued aesthetic value of the zone. The landowner must comply with the parts of the management plan that relates to the zone in order to qualify the land as a AMZ-public rights-of-way. In addition, depending on which of the following three Categories is contested by the chief appraiser or taxing unit in which the land is located, to support his/her/its position, the applicant must provide the corresponding information or evidence:

Category (1) the age or the height of standing trees in the claimed zone, if contested;

Category (2) the width or the acreage of the claimed zone, if contested; also, provide a map showing tract location and a map of tract showing the zone location when location or acreage is contested; and

Category (3) average basal area within the zone, if contested;

Additional information requested:

(4) any other information or evidence considered necessary by the applicant to support his/her/its position in response to the contest(s) within the above three Categories.

(5) if the contest(s) is/are not in the above three Categories, submit information or evidence considered necessary by the applicant to support his/her/its position in response to the contest(s) if not previously submitted to the chief appraiser.

To support their positions, the chief appraiser and the taxing unit(s) in which the land is located shall follow the same provisions described above as those for the applicants: submit the information or evidence on the same three Categories described above as those for the applicant and any other information or evidence considered necessary to support their positions if the contest(s) is/are in those three Categories; when the contest(s) is/are not within those three Categories, provide any necessary and relevant information or evidence to support the chief appraiser or taxing unit's position.

(b) CWHZ

A management plan developed with inputs from an endangered species specialist that addresses federal and state critical habitat requirements by species must be submitted from the landowner. The plan must address harvesting restrictions and how the landowner provides at least three of the seven benefits for

protection of the qualified endangered or threatened species. The seven benefits are: 1. habitat control; 2. erosion control; 3. predator control; 4. providing supplemental supplies of water; 5. providing supplemental supplies of food; 6. providing shelters; and 7. making census counts to determine population. The landowner must comply with the parts of the management plan that relates to the zone in order to qualify the land as a CWHZ. In addition, depending on which of the following three Categories is contested by the chief appraiser or taxing unit, to support his/her/its position, the applicant must provide the corresponding information or evidence:

Category (1) memorandum of understanding, conservation agreements, or other documentation with a federal, state, or private organization pertaining to protection of qualified species, if presence of qualified species in the claimed zone is contested;

Category (2) the animal or plants in the claimed zone, if whether the animal or plant is the qualified species for the purpose of CWHZ determination is contested; and

Category (3) a map showing tract location and a map of tract showing the zone location if the location or acreage is contested;

Additional information requested:

(4) any other information or evidence considered necessary by the applicant to support his/her/its position in response to the contest(s) within the above three Categories.

(5) if the contest is not in the above three Categories, submit information or evidence considered necessary by the applicant to support his/her/its position in response to the contest(s) if not previously submitted to the chief appraiser.

To support their positions, the chief appraiser and the taxing unit(s) in which the land is located shall follow the same provisions described above as those for the applicants: submit the information or evidence on the same three Categories described above as those for the applicant and any other information or evidence considered necessary to support their positions if the contest(s) is/are in those three Categories; when the contest(s) is/are not within those three Categories, provide any necessary and relevant information or evidence to support the chief appraiser or taxing unit's position.

(c) SMZ

A management plan that addresses best management practices for the claimed SMZ consistent with the silvicultural nonpoint source pollution management program developed by the Texas State Soil and Water Conservation Board must be submitted by the landowner. The plan must address harvesting restrictions. The landowner must comply with the parts of the plan that relates to the zone in order to qualify the land as a SMZ. In addition, depending on which of the following four Categories is contested by the chief appraiser or taxing unit, to support his/her/its position, the applicant must provide the corresponding information or evidence:

Category (1) the status of the waterway or waterbody, if the qualification of the claimed waterway/waterbody is contested;

Category (2) the width and the acreage of the claimed SMZ, if contested:

(A) if an SMZ is 50-foot minimum width, the applicant must provide a location map. The map need only show the centerline of the stream, or waterbody location, length or perimeter, and computed acreage of SMZ;

(B) if an SMZ exceeds the 50-foot minimum width and has uniform width, the applicant must submit a topographic map as evidence to justify in part the need for wider buffers. The map must show the centerline of the stream; and

(C) if an SMZ exceeds the 50-foot minimum width and has variable width, the applicant must submit a topographic map and the boundaries must be mapped and acreage computed to the agency's satisfaction. It is the applicant's responsibility to compute the acreage and state how it was measured e.g., Global Positioning System (GPS), traverse, or dot-grid);

Category (3) the age and the number of trees per acre or average basal area per acre for newly established SMZ claimed, if contested; and

Category (4) average basal area per acre, if contested;

Additional information requested:

(5) any other information or evidence considered necessary by the applicant to support his/her/its position in response to the contest(s) within the above four Categories.

(6) if the contest(s) is/are not within the above four Categories, submit any necessary and relevant information or evidence considered necessary by the applicant to support his/her/its position in response to the contest(s) if not previously submitted to the chief appraiser.

To support their positions, the chief appraiser and the taxing unit(s) in which the land is located shall follow the same provisions described above as those for the applicants: submit the information or evidence on the same four Categories described above as those for the applicant and any other information or evidence considered necessary to support their positions if the contest(s) is/are in those four Categories; when the contest(s) is/are not within those four Categories, provide any necessary and relevant information or evidence to support the chief appraiser or taxing unit's position.

[ ] II. DEADLINE TO RESPOND TO REQUEST FROM A CHIEF APPRAISER

For the applicant and each of the taxing units in which the land is located, the information or evidence must be submitted to the Director in writing no later than **30 days** after the date of receipt of the notice of the zone determination request from the chief appraiser if **on or prior to April 1** or **15 days** after the date of receipt of the request if **after April 1.**

If each taxing unit in which the land is located submits any information or evidence to the Director that was not provided to the applicant by the chief appraiser, each taxing unit must deliver a copy of the information or evidence to the applicant. The applicant may respond to the additional information or evidence submitted by each taxing unit. Such information or evidence must be submitted in writing to the Director not later than 15 days after the date of receipt from the taxing unit.

[ ] III. DEADLINE TO RESPOND TO REQUEST FROM A TAXING UNIT

The applicant and the chief appraiser may respond to a zone determination request from a taxing unit by submitting additional information or evidence to the Director. Such information or evidence must be submitted in writing within 15 days of receipt of the request from the taxing unit.

IV. Mailing Address and Phone Number

Please mail or hand deliver the information or evidence for zone determination to the Texas A&M Forest

Service at:

Attn: Zone Determination
200 Technology Way, Ste. 1281
College Station, TX 77845

The phone number of the Texas A&M Forest Service is (979) 458-6630.

Figure: 4 TAC §215.17(c)(3)(A)

Notice of Zone Determination Request from a Taxing Unit

To: the applicant (Name, Address, Phone Number) and the chief appraiser (Name, Address, Phone Number)

You, the applicant, and the chief appraiser, are given notice, pursuant to Texas Administrative Code, Title 4 Agriculture, Section 215.17(c)(3) (or 4 TAC 215.17(c)(3)) that a zone determination has been requested by the taxing unit in which your land is located to the Director of Texas A&M Forest Service (or the Director). Tax Code, Section 41.03(b) requires the taxing unit to seek a determination letter from the Director if a taxing unit challenges a determination that a land qualifies for restricted-use timberland appraisal based on a zone claimed. The Director's determination is conclusive and shall be accepted by the appraisal review board.

4 TAC 215.17(c)(4) allows the applicant and the chief appraiser to present information and evidence to the Director to support his/her/its position before the Director issues a determination letter. **Please follow the instruction as described in the enclosed "Instruction FOR Submitting Information or Evidence" when submitting information or evidence to the Director.**

Attached to this notice are: 1) a copy of the request and all information or evidence submitted to the Director by the taxing unit; and 2) a copy of Texas Administrative Code, Title 4 Agriculture, Section 215.5, 215.9, or 215.13, whichever applicable to this case, which set forth the determination criteria that the Director uses to determine a zone upon request from a a taxing unit or a chief appraiser.

Complete rules concerning the Director's determination upon request from a chief appraiser or taxing unit, as set forth in TAC, Title 4, Chapter 215, can be found at the web: http://txforestservice.tamu.edu/, or in TAC as described.

Issued by: _____, Taxing Unit Date:_____

Figure: 4 TAC §215.21(a)(1)

Case # _____

Office Use Only

Director's Determination Letter on Request for Forest Zone Determination

To: Requesting party (Name, Address)

Date of Request: _____, 2_____

THE INFORMATION OF THE ZONE REQUESTED FOR DETERMINATION

Applicant's Name: _____

Applicant's Address: _____

_____

Location of the zone claimed: _____

_____

Type of zone claimed:

[ ] aesthetic management zone (AMZ)

[ ] critical wildlife habitat zone (CWHZ)

[ ] streamside management zone (SMZ)

Pursuant to the Texas Administrative Code, Title 4, Chapter 215, the Director of the Texas A&M Forest Service has determined that:

[ ] the above application is approved. The land at the above location is located in a [ ] AMZ, [ ] CWHZ, or [ ] SMZ. The number of acres included in the zone is_____acres.

[ ] the above application is denied.

The explanation is as follows: _____

_____

_____

_____

_____

_____

_____

Issued: _____, Texas A&M Forest Service

Director

Date: _____

Copies sent to: [ ] applicant [ ] taxing unit [ ] chief appraiser [ ] appraisal review board

Figure: 4 TAC §215.35(b)

Case # _____

Office Use Only

Application for Designation of Aesthetic Management Zone—Special or Unique Areas

Please note: separate application is required for each site claimed. Please check the Texas Administrative Code, Title 4, Chapter 215 for definition, selection criteria and requirements related to this application.

I. Applicant Information Applicant's Name	Phone number Email.
Address	City, State, Zip Code

II. Is the proposed designated area under timber-use appraisal? — Yes —No

Please note that if the answer is no, you need not proceed with completing this form as this application applies only to areas already under timber-use appraisal

III. Feature Warranting Designation
- — Natural Beauty (e.g. woodland trails, old-growth forests)
- — Topography (e.g. overlooks, waterfalls)
- — Historical Significance (e.g. Native American villages, early settlements)

IV. Size of Proposed Designated Area (Include the actual site and any appropriate buffers, in acres)

V. Location of Proposed Designated Site (If available, provide coordinates for center of area.

County	Survey/Abstract	Latitude (if available)	Longitude (if available)

VI. Attach a site map showing features, buffers, access routes, indication of how boundaries are marked, map scale, and North arrow. Also provide a general location map showing site.

VII. If the site claimed is a historical site, has it been recorded with the Texas Archeological Research Laboratory, University of Texas at Austin? — Yes — No

VIII. Describe the significance of feature(s) and why this special area designation is warranted (attach separate sheet if more space is needed):
IX. Attach: 1) a letter from qualified specialist recommending this site; 2) a statement listing the specialist's qualifications; and 3) a brief management strategy including harvest restriction requirements and present average basal area per acre.
I, the undersigned, certify that the above information submitted are true and correct. Signature of the applicant:_____Date: _____

Please mail the completed application to: Attn: AMZ-Special or Unique Area, Forest Resource Development Department, Texas A&M Forest Service, 200 Technology Way, Suite 1281, College Station, TX 77845.

Figure: 4 TAC §215.35(d)

Case # _____

Office Use Only

Director's Action on Application for AMZ—Special or Unique Area

To: the applicant (Name, Address, Phone Number)

Date of Application: _____, 2___

THE INFORMATION OF THE ZONE CLAIMED BY THE APPLICANT

Location of the zone claimed:

_____

_____

The size of the zone claimed:_____

Feature Warranting Designation claimed:

[ ] Natural Beauty

[ ] Topography

[ ] Historical Significance

Pursuant to the Texas Administrative Code, Title 4, Chapter 215, the Director of the Texas A&M Forest Service has determined that the above application is:

[ ] approved. The land at the above location is designated as AMZ—Special or Unique Area for purpose of restricted-use timberland appraisal related to ad valorem taxation, due to its:

[ ] Natural Beauty

[ ] Topography

[ ] Historical Significance

The number of acres included in the zone is_____ acres.

[ ] denied

[ ] If approved, state the special or unique features or other information as necessary:

[ ] If denied, state the explanations: _____

_____

Issued: _____, Texas A&M Forest Service

Director

Figure: 16 TAC §401.317(d)(2)(A)

Number of Matches Per Play	**Prize Payment***	**Prize Pool Percentage Allocated to Prize****
All five (5) of first set plus one (1) of second set.	Grand Prize	61.4514%
All five (5) of first set and none of second set.	$1,000,000	10.8398%
Any four (4) of first set plus one (1) of second set.	$10,000	2.8714%
Any four (4) of first set and none of second set.	$100	0.8901%
Any three (3) of first set plus one (1) of second set.	$100	1.7228%
Any three (3) of first set and none of second set.	$7	3.7385%
Any two (2) of first set plus one (1) of second set.	$7	2.3717%
Any one (1) of first set plus one (1) of second set.	$2	4.9129%
None of first set plus one (1) of second set.	$2	11.2014%

* The Grand Prize and the Match 5 + 0 Set Prize are not multiplied. All other Set Prize amounts shall be multiplied by the Power Play multiplier described in subsections (c)(1) and (d)(2)(B) of this section.

**The Prize Pool Percentage allocation reflects Set Prizes as multiplied by the Power Play multipliers.

Figure: 16 TAC §401.317(d)(2)(B)(ii)

10x	1 of 39	2.5641%
5x	1 of 39	2.5641%
4x	3 of 39	7.6923%
3x	10 of 39	25.6410%
2x	24 of 39	61.5385%

Figure: 16 TAC §401.317(d)(2)(B)(iv)

Expected Prize Payout: Number of Matches Per Play	**Set Prize**	**Power Play Prize Amount With Multiplier of 2x, 3x, 4x, 5x or 10x**
All five (5) of first set plus one (1) of second set	Grand Prize	Grand Prize*
All five (5) of first set plus none of second set	$1,000,000	$1,000,000*
Any four (4) of first set plus one (1) of second set	$10,000	$20,000 - $100,000
Any four (4) of first set plus none of second set	$100	$200 - $1,000
Any three (3) of first set plus one (1) of second set	$100	$200 - $1,000
Any three (3) of first set plus none of second set	$7	$14 - $70
Any two(2) of first set plus one (1) of second set	$7	$14 - $70
Any one (1) of first set plus (1) of second set	$2	$4 - $20
None of first set plus one (1) of second set	$2	$4 - $20
* The Grand Prize and the Match 5 + 0 Set Prize are not multiplied.		

Figure: 16 TAC §401.317(e)

Number of Matches Per Ticket	Probability Distribution		Probable/Set Prize Amount
	Winners	Probability	
All five (5) of first set plus one (1) of second set	1	1:285,981,696.0000	Grand Prize
All five (5) of first set and none of second set	31	1:9,225,216.0000	$1,000,000
Any four (4) of first set plus one (1) of second set	305	1:937,644.9049	$10,000
Any four (4) of first set and none of second set	9,455	1:30,246.6098	$100
Any three (3) of first set plus one (1) of second set	18,300	1:15,627.4151	$100
Any three (3) of first set and none of second set	567,300	1:504.1102	$7
Any two (2) of the first set plus one (1) of second set	359,900	1:794.6143	$7
Any one (1) of the first set plus one (1) of the second set	2,609,275	1:109.6020	$2
None of the first set plus one (1) of second set	5,949,147	1:48.0710	$2
Overall	9,513,714	1:30.0599	

Figure: 16 TAC §401.317(f)(1)

Terminal Type	**Manual Entry**	**Playslip with No Payment Option Selected**
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT Mini (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Not Applicable.
Gemini (Self-service Terminal)	CVO only - designated on on-line game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."

Figure: 16 TAC §401.317(k)(4)(C)(i)

Number of Matches Per Play	**Prize Payment***	**Prize Pool Percentage Allocated to Prize****
All five (5) of first set plus one (1) of second set.	Power PLUS Grand Prize	6.9873%
All five (5) of first set and none of second set.	$500,000	10.8304%
Any four (4) of first set plus one (1) of second set.	$15,000	8.6066%
Any four (4) of first set and none of second set.	$150	2.6681%
Any three (3) of first set plus one (1) of second set.	$150	5.1639%
Any three (3) of first set and none of second set.	$10	10.6722%
Any two (2) of first set plus one (1) of second set.	$10	6.7705%
Any one (1) of first set plus one (1) of second set.	$3	14.7259%
None of first set plus one (1) of second set.	$3	33.5751%

* The Power PLUS Grand Prize and the Match 5 + 0 Set Prize are not multiplied. All other Set Prize amounts shall be multiplied by the Power Play multiplier described in subsections (c)(1), (d)(2)(B), and (k)(D) of this section.
**The Prize Pool Percentage allocation reflects Set Prizes as multiplied by the Power Play multipliers.

Figure: 16 TAC §401.317(k)(4)(D)

Number of Matches Per Play	**Set Prize**	**Power Play Prize Amount with multiplier of 2x, 3x, 4x, 5x, or 10x**
All five (5) of first set plus one (1) of second set.	Power PLUS Grand Prize	Grand Prize*
All five (5) of first set and none of second set.	$500,000	$500,000*
Any four (4) of first set plus one (1) of second set.	$15,000	$30,000 - $150,000
Any four (4) of first set and none of second set.	$150	$300 - $1,500
Any three (3) of first set plus one (1) of second set.	$150	$300 – $1,500
Any three (3) of first set and none of second set.	$10	$20 - $100
Any two (2) of first set plus one (1) of second set.	$10	$20 - $100
Any one (1) of first set plus one (1) of second set.	$3	$6 - $30
None of first set plus one (1) of second set.	$3	$6 - $30
*Grand Prize and the Match 5+0 Set Prize are not multiplied.		

Figure: 16 TAC §401.317(k)(4)(G)

Number of Matches Per Ticket	Probability Distribution		Probable/Set Prize Amount
	Winners	Probability	
All five (5) of first set plus one (1) of second set	1	1:285,981,696.0000	Grand Prize
All five (5) of first set and none of second set	31	1:9,225,216.0000	$500,000
Any four (4) of first set plus one (1) of second set	305	1:937,644.9049	$15,000
Any four (4) of first set and none of second set	9,455	1:30,246.6098	$150
Any three (3) of first set plus one (1) of second set	18,300	1:15,627.4151	$150
Any three (3) of first set and none of second set	567,300	1:504.1102	$10
Any two (2) of the first set plus one (1) of second set	359,900	1:794.6143	$10
Any one (1) of the first set plus one (1) of the second set	2,609,275	1:109.6020	$3
None of the first set plus one (1) of second set	5,949,147	1:48.0710	$3

Figure: 30 TAC §101.300(13)

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

Where:

E_H = The historical adjusted emissions for a facility.

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

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

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

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

Figure: 30 TAC §101.303(c)

$$ERC = BE - SE$$

Where:

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

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

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

Figure: 30 TAC §101.306(b)(2)

$$ERC = A \times \left(ER_p - ER_r\right)$$

Where:

ERC = The amount of emission reduction credits needed rounded to the nearest tenth of a ton per year.

A = The maximum projected annual activity level.

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

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

Figure: 30 TAC §101.306(b)(3)

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

Where:

$ERCs$ = The amount of emission reduction credits needed in tenths of a ton per year.

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

i = Each emission unit in the source cap.

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

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

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

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

Figure: 30 TAC §101.353(a)

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

Where:

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

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

(A) for a facility in operation on or before January 1, 1997, is the average level of activity, as certified by the executive director, for 1997, 1998, and 1999;

(B) for an existing facility that began operation after January 1, 1997, is:

(i) the level of activity authorized by the executive director until two consecutive calendar years of actual level of activity data is available, beginning after the end of the adjustment period; or

(ii) when two complete consecutive calendar years of actual level of activity data is available, beginning after the end of the adjustment period, the level of activity becomes the average of the facility's actual level of activity over those two consecutive calendar years of actual level of activity data; or

(C) for a facility using alternative emission specifications in §117.310(a)(17) or §117.2010(c)(6) of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications), is the lower of the level of activity as calculated in variable (A) or (B), or the level of activity limited by an enforceable limit or commitment necessary to qualify for an alternative emission specification in §117.310(a)(17) or §117.2010(c)(6) of this title.

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

Figure: 30 TAC §101.370(15)

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

Where:

E_H = The historical adjusted emissions for a facility.

A_1 = The facility's activity during the first of any two consecutive calendar years selected in accordance with §101.373(b)(2) of this title (relating to Discrete Emission Reduction Credit Generation and Certification), not to exceed any applicable local, state, or federal requirement.

ER_1 = The facility's emission rate during the first of any two consecutive calendar years selected in accordance with §101.373(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

A_2 = The facility's activity during the second of any two consecutive calendar years selected in accordance with §101.373(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

ER_2 = The facility's emission rate during the second of any two consecutive calendar years selected in accordance with §101.373(b)(2) of this title, not to exceed any applicable local, state, or federal requirement.

Figure: 30 TAC §101.373(c)(1)

$$DERC = [SA \times (BER - SER)]$$

Where:

$DERC$ = The number of DERCs generated.

SA = Strategic activity

BER = The lower of the emission rate used in reporting or representing emissions in the emissions inventory used for the state implementation plan or the average of the actual emission rates during the two-year baseline period.

SER = Strategic emission rate

Figure: 30 TAC §101.376(d)(2)(A)(i)

$$DERCs = \sum_{i=1}^{N}\left[\left(EH_i \times ER_i\right) - \left(H_i \times R_i\right)\right] \times \frac{d}{2000}$$

Where:

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

i = Each emission unit in the source or system cap.

EH_i = The expected new daily heat input, in MMBtu per day.

ERi = The expected new emission rate, in lb/MMBtu.

H_i = The actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.123(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable.

R_i = The actual emission rate, in pounds (lb)/MMBtu, as defined in §§117.123(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable.

d = The number of days that emissions are expected to exceed the source or system cap.

Figure: 30 TAC §101.376(d)(2)(A)(ii)

$$DERCs = \sum_{i=1}^{N}\left[\left(EH_{Mi} \times ER_i\right) - \left(H_{Mi} \times R_i\right)\right] \times \frac{d}{2000}$$

Where:

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

i = Each emission unit in the source or system cap.

EH_{Mi} = The expected new maximum daily heat input, in MMBtu per day.

ER_i =The expected new emission rate, in lb/MMBtu.

H_{Mi} = The maximum daily heat input, in MMBtu/day, as defined in §§117.123(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), or 117.1220(c)(2) of this title as applicable.

Ri = In lb/MMBtu, is defined as in §§117.123(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), or 117.1220(c)(2) of this title as applicable.

d = The number of days in the use period.

Figure: 30 TAC §101.376(d)(2)(B)

$$DERCs needed = (ELA) \times (EER - RER)$$

Where:

ELA = The expected level of activity.

EER = The expected emission rate per unit activity.

RER = The regulatory emission rate per unit activity.

Figure: 30 TAC §101.376(d)(2)(C)

$$DERCs = (ELA - PLA) \times (PER)$$

Where:

ELA = The expected level of activity.

PLA = The permitted level of activity.

PER = The permitted emission rate per unit activity.

Figure: 30 TAC §101.376(e)(5)(A)

$$DERCs = (ALA) \times (AER - RER)$$

Where:

ALA = actual level of activity

AER = actual emission rate per unit activity

RER = regulatory emission rate per unit activity

Figure: 30 TAC §101.376(e)(5)(B)

$$Credits used = (ALA - PLA) \times (AER)$$

Where:

ALA = actual level of activity

PLA = permitted level of activity

AER = permitted emission rate per unit activity

Figure: 30 TAC §101.394(a)(1)

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

Where:

S = the allocation for the site.

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

(1) For 2014, AC^{1} = 3,105.9 tons;

(2) For 2015, AC^{1} = 2,932.9 tons;

(3) For 2016, AC^{1} = 2,761.2 tons; and

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

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

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

Figure: 30 TAC §101.394(a)(4)

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

Where:

S = the greater of 5.0 tons or the allocation for the site.

i = each site located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties and subject to this division.

n = the total number of sites subject to this division.

LA = the level of activity baseline for a site, calculated as the annual level of activity for any 12 consecutive months during the period of 2000-2004 for the site, as certified by the executive director.

AC = 4,390.8 tons per year of highly reactive volatile organic compounds less the total amount allocated to those sites receiving a minimum of 5.0 tons.

Figure: 30 TAC §115.112(a)(1)

Table I(a): Required Control for a Storage Tank 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 control system
≥ 1.5 psia and < 11 psia	> 25,000 gal and ≤ 40,000 gal	Internal floating roof [cover], or External floating roof (any type), or Vapor control system
≥ 1.5 psia and < 11 psia	> 40,000 gal	Internal floating roof [cover], or External floating roof with primary seal (any type) and secondary seal, or Vapor control system
≥ 11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe or Vapor control system
≥ 11 psia	> 25,000 gal	Submerged fill pipe and Vapor control system

Table II(a): Required Control for a Storage Tank 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 control system
≥ 1.5 psia and < 11 psia	> 40,000 gal	Internal floating roof, or External floating roof with primary seal (any type) and secondary seal, or Vapor control system
≥ 11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe or Vapor control system
≥ 11 psia	> 40,000 gal	Submerged fill pipe and Vapor control system

Figure: 30 TAC §115.112(c)(1)

Table I(b). Required Control for a Storage Tank 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 control system
≥ 1.5 psia and < 11 psia	> 25,000 gal	Internal floating roof or external floating roof (any type) or Vapor control system
≥ 11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe or Vapor control system
≥ 11 psia	> 25,000 gal	Submerged fill pipe and Vapor control system

Figure: 30 TAC §115.112(e)(1)

Table 1: Required Control for a Storage Tank Storing Volatile Organic Compounds 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 control system
≥ 1.5 psia and < 11 psia	> 25,000 gal and ≤ 40,000 gal	Internal floating roof, or External floating roof (any type), or Vapor control system
≥ 1.5 psia and < 11 psia	> 40,000 gal	Internal floating roof, or External floating roof with primary seal (any type) and secondary seal, or Vapor control system
≥ 11 psia	> 1,000 gal and ≤ 25,000 gal	Submerged fill pipe or Vapor control system
≥ 11 psia	> 25,000 gal	Submerged fill pipe and Vapor control system

Table 2: Required Control for a Storage Tank 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 control system
≥ 1.5 psia and < 11 psia	> 40,000 gal	Internal floating roof, or External floating roof with primary seal (any type) and secondary seal, or Vapor control system
≥ 11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe, or Vapor control system
≥ 11 psia	> 40,000 gal	Submerged fill pipe, and Vapor control system

Figure: 30 TAC §115.118(a)(3)

$$EI_{Reportable} = (E_{1Seal} - E_{2Seals}) \times \left(\frac{G_m - G_a}{G_a}\right) \times \left(\frac{G_{8thL}}{\pi D}\right) \times 90$$

Where:

$EI_{Reportable}$ = The calculated emissions inventory reportable emissions that must be reported in the annual emissions inventory submittal required by §101.10 of this title (relating to Emissions Inventory Requirements).

E_{1Seal} = The AP-42 estimate of emissions from a floating roof 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 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 §115.420(b)(9)

Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents) =

$$\frac{W_v}{(Vm - Vw - Ves)}$$

Where:

W_v = weight of VOC, in pounds, contained in V_m gallons of coating

V_m = volume of coating, generally assumed to be one gallon

V_w = volume of water, in gallons, contained in V_m gallons of coating

V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

Figure: 30 TAC §115.420(b)(10)

Pounds of volatile organic compounds (VOC) per gallon of solids =

$$\frac{W_v}{(Vm - Vv - Vw - Ves)}$$

Where:

W_v = weight of VOC, in pounds, contained in V_m gallons of coating

V_m = volume of coating, generally assumed to be one gallon

V_v = volume of VOC, in gallons, contained in V_m gallons of coating

V_w = volume of water, in gallons, contained in V_m gallons of coating

V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

Figure: 30 TAC §115.420(c)(1)(OO)

$$\text{Grams of Volatile Organic Compounds per Liter of Coating} = \frac{Ws - Ww - Wes}{Vs - Vw - Ves}$$

Where:

W_s =weight of total volatiles in grams

W_w =weight of water in grams

W_{es} =weight of exempt compounds in grams

V_s =volume of coating in liters

V_w =volume of water in liters

V_{es} =volume of exempt compounds in liters

Figure: 30 TAC §115.420(c)(1)(EEEE)

$$PP_c = \sum_{i=1}^{n} \frac{\frac{W_i}{MW_i} \times VP_i}{\frac{W_w}{MW_w} + \sum_{e=1}^{n} \frac{W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

Where:

W_i = weight of the "i"th volatile organic compounds (VOC) compound, grams

W_w = weight of water, grams

W_e = weight of nonwater, non-VOC compound, grams

MW_i = molecular weight of the "i"th VOC compound, g/g-mole

MW_w = molecular weight of water, g/g-mole

MW_e = molecular weight of exempt compound, g/g-mole

PP_c = VOC composite partial pressure at 20 degrees Celsius, millimeters of mercury (mm Hg)

VP_i = vapor pressure of the "i"th VOC compound at 20 degrees Celsius, mm Hg

Figure: 30 TAC §115.420(c)(13)(A)

$$VOC\ T_{bc/cc} = \frac{VOC_{bc} + (2 \times VOC_{cc})}{3}$$

Where:

$VOC\ T_{bc/cc}$ = the volatile organic compounds (VOC) content, in pounds of VOC per gallon (less water and exempt solvent) as applied, in the basecoat/clearcoat system

VOC_{bc} = the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given basecoat

VOC_{cc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given clearcoat

Figure: 30 TAC §115.420(c)(13)(G)

$$VOC\ T_{3\text{-}stage} = \frac{VOC_{bc} + VOC_{mc} + (2 \times VOC_{cc})}{4}$$

Where:

$VOC\ T_{3\text{-}stage}$ = the volatile organic compounds (VOC) content, in pounds of VOC per gallon (less water and exempt solvent) as applied, in the three-stage system

VOC_{bc} = the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given basecoat

VOC_{mc} = the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given midcoat

VOC_{cc} = the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given clearcoat

Figure: 30 TAC §115.421(7)

Affected Operation	Pounds of Volatile Organic Compounds (VOC) per Gallon of Coating	Kilogram of VOC per Liter of Coating
Sheet Basecoat (Exterior and Interior) and Over-Varnish	2.8	0.34
Two-Piece Can Exterior (Base-Coat and Over-Varnish)	2.8	0.34
Two- and Three-Piece Can Interior Body Spray, Two-Piece Can Exterior End (Spray or Roll Coat)	4.2	0.51
Three-Piece Can Side-Seam Spray	5.5	0.66
End Sealing Compound	3.7	0.44

Figure: 30 TAC §115.421(8)(A)

Coating Type	Pounds of Volatile Organic Compounds (VOC) per Gallon of Coating	Kilogram of VOC per Gallon of Coating
Clear Coat or an Interior Protective Coating for Pails and Drums	4.3	0.52
Low-Bake Coating or Coating Using Air or Forced Air Driers	3.5	0.42
Extreme Performance Coating, Including Milling Maskants	3.5	0.42
All Other Coating Applications that Pertain to MMPP, Including High-Bake Coatings	3.0	0.36

Figure: 30 TAC §115.421(9)

Product Category	Pounds of volatile organic compounds (VOC) per 1,000 Square Feet of Coated Surface	Kilograms of VOC per 100 Meters Squared of Coated Surface
Printed Interior Wall Panels Made of Hardwood Plywood and Thin Particle Board (Less Than ¼ Inch) in Thickness	6.0	2.9
Natural Finish Hardwood Plywood Panels	12.0	5.8
Hardwood Paneling with Class II Finish (American National Standard Institute Standard PS-59-73)	10.0	4.8
Product Category	Pounds of volatile organic compounds (VOC) per 1,000 Square Feet of Coated Surface	Kilograms of VOC per 100 Meters Squared of Coated Surface

Figure: 30 TAC §115.421(10)(B)

VOC LIMITS FOR SPECIALTY COATINGS
(IN GRAMS OF VOC PER LITER OF COATING, LESS WATER AND EXEMPT SOLVENT)

Coating type	Limit:
Ablative Coating	600
Adhesion Promoter	890
Adhesive Bonding Primers:	
Cured at 250°F or below	850
Cured above 250°F	1030
Adhesives:	
Commercial Interior Adhesive	760
Cyanoacrylate Adhesive	1,020
Fuel Tank Adhesive	620
Nonstructural Adhesive	360
Rocket Motor Bonding Adhesive	890
Rubber-based Adhesive	850
Structural Autoclavable Adhesive	60
Structural Nonautoclavable Adhesive	850
Antichafe Coating	660
Bearing Coating	620
Caulking and Smoothing Compounds	850
Chemical Agent-Resistant Coating	550
Clear Coating	720
Commercial Exterior Aerodynamic Structure Primer	650
Compatible Substrate Primer	780
Corrosion Prevention Compound	710
Cryogenic Flexible Primer	645
Dry Lubricative Material	880
Cryoprotective Coating	600
Electric or Radiation-Effect Coating	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	800
Elevated-Temperature Skydrol-Resistant Commercial Primer	740
Epoxy Polyamide Topcoat	660
Fire-Resistant (interior) Coating	800
Flexible Primer	640
Flight-Test Coatings:	
Missile or Single Use Aircraft	420
All Other	840
Fuel-Tank Coating	720
High-Temperature Coating	850
Insulation Covering	740
Intermediate Release Coating	750
Lacquer	830
Maskants:	
Bonding Maskant	1,230

Critical Use and Line Sealer Maskant	1,020
Seal Coat Maskant	1,230
Metallized Epoxy Coating	740
Mold Release	780
Optical Anti-Reflective Coating	750
Part Marking Coating	850
Pretreatment Coating	780
Rain Erosion-Resistant Coating	850
Rocket Motor Nozzle Coating	660
Scale Inhibitor	880
Screen Print Ink	840
Sealants:	
Extrudable/Rollable/Brushable Sealant	280
Sprayable Sealant	600
Silicone Insulation Material	850
Solid Film Lubricant	880
Specialized Function Coating	890
Temporary Protective Coating	320
Thermal Control Coating	800
Wet Fastener Installation Coating	675
Wing Coating	850

Figure: 30 TAC §115.421(11)

Operation (Including Application, Flashoff, and Oven Areas)	Coating Delivered (Minus Water and Exempt Solvent) Pounds of Volatile Organic Compounds (VOC) per Gallon of Coating	Coating Delivered (Minus Water and Exempt Solvent) Kilogram of VOC per Liter of Coating	Solids Deposited Pounds of VOC per Gallon of Solids	Solids Deposited Kilograms per Liter of Solids
Prime Application (Body and Front-End Sheet Metal)	1.2	0.15	Not Applicable	Not Applicable
Primer Surfacer Application	2.8	0.34	15.1	1.81
Topcoat Application	2.8	0.34	15.1	1.81
Final Repair Application End Sealing Compound	4.8	0.58	*	*

* As an alternative to the emission limitation of 4.8 pounds of VOC per gallon of coating applied for final repair, if a source owner does not compile records sufficient to enable determination of a daily weighted average VOC content, compliance with the final repair emission limitation may be demonstrated each day by meeting a standard of 4.8 pounds of VOC per gallon of coating (minus water and exempt solvents) on an occurrence weighted average basis. Compliance with such alternative emission limitation shall be determined in accordance with the procedure specified in §115.425(3) of this title.

Figure: 30 TAC §115.421(12)

Coating Type (Minus Water and Exempt Solvent)	Pounds of Volatile Organic Compounds (VOC) per Gallon of Coating	Kilograms of VOC per Liter of Coating
Primer or Primer Surfacers	5.0	0.60
Precoat	5.5	0.66
Pretreatment	6.5	0.78
Single-Stage Topcoats	5.0	0.60
Basecoat or Clearcoat Systems	5.0	0.60
Three-Stage Systems	5.2	0.62
Specialty Coatings	7.0	0.84
Sealers	6.0	0.72
Wipe-Down Solutions	1.4	0.17

Figure: 30 TAC §115.421(14)

Coating Type (Minus Water and Exempt Solvent)	Pounds of Volatile Organic Compounds (VOC) per Gallon of Coating	Kilograms per Liter of Coating
Clear Topcoat	5.9	0.71
Wash Coat	6.5	0.78
Final Repair Coat	6.0	0.72
Semitransparent Wiping and Glazing Stain	6.6	0.79
Semitransparent Spray Stains and Toners	6.9	0.83
Opaque Ground Coats and Enamels	5.5	0.66
Clear Sealers	6.2	0.74
Clear Shellac	5.4	0.65
Opaque Shellac	5.0	0.60
Varnish	5.0	0.60
All Other Coatings	7.0	0.84

Figure: 30 TAC §115.421(15)(A)(iv)

$$0.9\ (0.8\ (TC_1 + TC_2 + \ldots)) \geq (ER_{TC1})\ (TC_1) + (ER_{TC2})\ (TC_2) + \ldots) \quad \text{(Inequality 1)}$$

$$0.9\ \{1.8\ (TC_1 + TC_2 + \ldots)\} + \{1.9\ (SE_1 + SE_2 + \ldots)\} + \quad \text{(Inequality 2)}$$
$$\{9.0\ (WC_1 + WC_2 + \ldots)\} + \{1.2\ (BC_1 + BC_2 + \ldots)\} +$$
$$\{0.791\ (ST_1 + ST_2 + \ldots)\} \geq \{ER_{TC1}\ (TC_1) + ER_{TC2}\ (TC_2) + \ldots\} +$$
$$\{ER_{SE1}\ (SE_1) + ER_{SE2}\ (SE_2) + \ldots\} + (ER_{WC1}\ (WC_1) + ER_{WC2}\ (WC_2) + \ldots\} +$$
$$\{ER_{BC1}\ (BC_1) + ER_{BC2}\ (BC_2) + \ldots\} + \{ER_{ST1}\ (ST_1) + ER_{ST2}\ (ST_2) + \ldots\}$$

Where:

TC_i = kilograms of solids of topcoat "i" used;

SE_i = kilograms of solids of sealer "i" used;

WC_i = kilograms of solids of washcoat "i" used;

BC_i = kilograms of solids of basecoat "i" used;

ST_i = liters of stain "i" used;

ER_{TCi} = volatile organic compounds (VOC) content of topcoat "i" in kilograms of VOC per kilogram of solids, as delivered to the application system;

ER_{SEi} = VOC content of sealer "i" in kilograms of VOC per kilogram of solids, as delivered to the application system;

ER_{WCi} = VOC content of washcoat "i" in kilograms of VOC per kilogram of solids, as delivered to the application system;

ER_{BCi} = VOC content of basecoat "i" in kilograms of VOC per kilogram of solids, as delivered to the application system; and

ER_{STi} = VOC content of stain "i" in kilograms of VOC per kilogram of solids, as delivered to the application system.

Figure: 30 TAC §115.421(16)(A)

Coating Category	Grams of volatile organic compounds (VOC) per liter coating (minus water and exempt solvent)[a, b]	Pounds of VOC per gallon coating (minus water and exempt solvent)[a, b]	Grams of VOC per liter solids[c] when t≥4.5°C (40°F)	Grams of VOC per liter of solids[c] when t<4.5°C (40°F)[d]
General use	340	2.83	571	728
Specialty:				
Air flask	340	2.83	571	728
Antenna	530	4.42	1,439	-----
Antifoulant	400	3.33	765	971
Heat resistant	420	3.5	841	1,069
High-gloss	420	3.5	841	1,069
High-temperature	500	4.17	1,237	1,597
Inorganic zing high-build	340	2.83	571	728
Military exterior	340	2.83	571	728
Mist	610	2.08	2,235	-----
Navigational aids	550	4.58	1,597	-----
Nonskid	340	2.83	571	728
Nuclear	420	3.50	841	1,069
Organic zinc	360	3.00	630	802
Pretreatment wash primer	780	6.50	11,095	-----
Repair and maintenance of thermoplastics	550	4.58	1,597	-----
Rubber camouflage	340	2.83	571	728
Sealant for thermal spray aluminum	610	5.08	2,235	-----
Special marking	490	4.08	1,178	-----
Specialty interior	340	2.83	571	728
Tack coat	610	5.08	2,235	-----
Undersea weapons systems	340	2.83	571	728
Weld-through preconstruction primer	650	5.42	2,885	-----

[a]The limits are expressed in two sets of equivalent units: grams per liter of coating (minus water and exempt solvent); and grams per liter of solids. Either set of limits may be used to demonstrate compliance.

[b] To convert from grams/liter to pounds/gallon, multiply by (3.785 liters/gallon)(pound/453.6 grams) or 1/120. For compliance purposes, metric units define the standards.

[c] VOC limits expressed in units of mass of VOC per volume of solids were derived from the VOC limits expressed in units of mass of VOC per volume of coating assuming the coatings contain no water or exempt compounds and that the volumes of all components within a coating are additive.

[d] These limits apply during cold-weather time periods (i.e., temperatures below 4.5 degrees Celsius (40 degrees Fahrenheit)). Cold-weather allowances are not given to coatings in categories that permit less than 40% solids nonvolatiles) content by volume. Such coatings are subject to the same limits regardless of weather conditions.

Figure: 30 TAC §115.421(16)(B)(i)

$$R = \frac{(V_s)(\text{VOC limit}) - m_{VOC}}{D_{th}} \qquad \text{(Equation 1)}$$

Where:

R = Maximum allowable thinning ratio for a given batch (liters of thinner per liter of coating as supplied);

V_s = Volume fraction of solids in the batch as supplied (liter of solids per liter of coating as supplied);
VOC limit = Maximum allowable as-applied volatile organic compounds (VOC) content of the coating (grams of VOC per liter of solids);

m_{VOC} = VOC content of the batch as supplied (grams of VOC per liter of coating as supplied); and

D_{th} = Density of the thinner (grams per liter).

Figure: 30 TAC §115.421(16)(B)(ii)

$$V_s = \frac{I - (m_{volatiles})}{D_{avg}} \quad \text{(Equation 2)}$$

Where:

V_s = Volume fraction of solids in the batch (liter of solids per liter of coating);

$m_{volatiles}$ = Total volatiles in the batch, including volatile organic compounds (VOC), water, and exempt compounds (grams per liter of coating); and

D_{avg} = Average density of volatiles in the batch (grams per liter).

Figure: 30 TAC §115.423(3)(A)

$$E = (VOC_a - S) / VOC_a$$

Where:

E = the required overall control efficiency

VOC_a = the volatile organic compounds (VOC) content of the coatings used on the coating line expressed on a pounds of VOC per gallon of solids basis. The owner or operator may choose to use either a daily weighted average or the maximum VOC content.

S = the applicable emission limit from §115.421 of this title expressed on a pounds of VOC per gallon of solids basis (as calculated in paragraph (1) of this section)

Figure: 30 TAC §115.425(3)(B)(i)

	Primer	**Basecoat**	**Clearcoat**
Volatile Organic Compounds (VOC) (pounds per gallon)	Vp	Vb	Vc
Volume solids of coating (minus water and exempt solvents) (%)	Sp	Sb	Sc
Target dry film build (mils)	Tp	Tb	Tc

Figure: 30 TAC §115.450(b)(12)

$$\textbf{Pounds of VOC per gallon of solids} = \frac{W_V}{W_M - V_V - V_W - V_{ES}}$$

Where:

W_V = The weight of volatile organic compounds (VOC) contained in VM 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 VM gallons of coating measured in gallons.

V_W = The volume of water contained in VM gallons of coating measured in gallons.

V_{ES} = The volume of exempt solvent contained in VM gallons of coating measured in gallons.

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-Base Coat/ Clear Coat, Baked, Interior and Exterior Parts	4.3	10.34
Primers, Air-Dried, Exterior Parts	4.8	13.80
Base Coat, Air-Dried, Exterior Parts	5.0	15.59
Clear Coat, Air-Dried, Exterior Parts	4.5	11.58
Non-Base Coat/ 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 §115.460(b)(12)

$$PP_c = \sum_{i-1}^{n} \frac{\left(\frac{W_i}{MW_i} \times VP_i\right)}{\frac{W_w}{MW_w} + \Sigma_{e-1}^{n} \frac{W_e}{MW_e} + \Sigma_{i-1}^{n} \frac{W_i}{MW_i}}$$

Where:

PP_c = The volatile organic compound (VOC) composite partial vapor pressure of a solution at 20 degrees Celsius in millimeters of mercury (mmHg)

W_i = The weight of VOC_i in grams (g)

MW_i = The molecular weight of VOC_i in g per g-mole

VP_i = The vapor pressure of VOC_i at 20 degrees Celsius in mmHg

W_w = The weight of water in g

MW_w = The molecular weight of water in g per g-mole

W_e = The weight of non-water exempt compound e in g

MW_e = The molecular weight of non-water exempt compound e in g per g-mole

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 §117.410(a)(7)(A)(ii)

$$E_{avg} = \frac{\sum_{i=1}^{N} (E_i \times PR_i)}{\sum_{i=1}^{N} PR_i}$$

Where:

E_{avg} = daily production rate weighted average nitrogen oxides (NO_X) emission rate, pounds per ton (lb/ton) of calcium oxide;

E_i = daily average NO_X emission rate for kiln i, lb/ton of calcium oxide;

i = each lime kiln at the site;

N = the total number of kilns at the site; and

PR_i = production rate of calcium oxide for kiln i, tons/day.

Figure: 30 TAC §117.423(b)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the nitrogen oxides (NO_X) 30-day rolling average emission cap in pounds per day;

i = each emission unit in the emission cap;

N = the total number of emission units in the emission cap;

H_i = for units subject to §117.405 of this title, the actual historical average of the daily heat input for each unit included in the source cap, in million British thermal units per day (MMBtu/day), as certified to the executive director, for a 24 consecutive month period between January 1, 2012 and December 31, 2013. For units subject to §117.410 of this title, the actual historical average of the daily heat input for each unit included in the source cap, in MMBtu/day, as certified to the executive director, for a 24 consecutive month period between January 1, 2000, and December 31, 2001. All sources included in the source cap must use the same 24 consecutive month period. If sufficient historical data are not available for this calculation, the executive director and the United States Environmental Protection Agency may approve another method for calculating H_i; and

R_i = the lowest of:

(i) the applicable NO_X emission specification of §117.405 or §117.410 of this title;

(ii) any permit NO_X emission limit for any unit subject to a permit issued in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), in pounds per million British thermal units (lb/MMBtu), that applies to emission unit i in the absence of trading, in the Dallas-Fort Worth eight-hour ozone nonattainment area, in effect on December 31, 2012, for units subject to §117.405 of this title, and December 31, 2000, for units subject to §117.410 of this title; and

(iii) the actual emission rate as of the dates specified in clause (ii) of this figure. All calculations of emission rates must presume that emission controls in effect on the dates specified in clause (ii) of this figure are in effect for the two-year period used in calculating the actual heat input.

Figure: 30 TAC §117.423(b)(4)

$$\text{Cap}_{\text{ICE}} = \frac{\text{MRC} \times \text{ES}}{\text{HR} \times \left(454 \times 10^{-6}\right)}$$

Where:

Cap_{ICE} = source cap allowable emission rate in pounds per hour;

ES = emission specification in grams per horsepower-hour (g/hp-hr);

MRC = engine manufacturer's rated heat input in million British thermal units per hour; and

HR = engine manufacturer's rated heat rate at the engines horsepower (hp) rating, in British thermal units per horsepower-hour.

Figure: 30 TAC §117.423(b)(5)

$$C_{instack} = A_{NO_x} \times \left(1 - \frac{\%H_2O}{100}\right) \times \left[\left(20.9 - \frac{\%O_2}{\left(1 - \frac{\%H_2O}{100}\right)}\right) \times \frac{1}{5.9}\right]$$

$$\text{Cap}_{GT} = C_{instack} \times MF \times \left(\frac{46}{28} \times 10^{-6}\right)$$

Where:

$C_{instack}$ = the nitrogen oxides (NO_X) in-stack concentration in parts per million by volume (ppmv);

A_{NOX} = the applicable NO_X emission specification of §117.405 or §117.410 of this title (expressed in parts per million by volume NO_X at 15% oxygen (O_2), dry basis);

$\%H_2O$ = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the executive director, at megawatt (MW) rating and International Standards Organization (ISO) flow conditions;

$\%O_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated from the manufacturer's data or other data as approved by the executive director, at MW rating and ISO conditions;

Cap_{GT} = source cap allowable emission rate in pounds per hour; and

MF = the turbine manufacturer's rated exhaust flow rate, in pounds per hour at MW rating and ISO flow conditions.

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.

Texas State Affordable Housing Corporation

Draft Annual Action Plan Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment its draft 2015 Annual Action Plan, which is a component of the 2015 State Low Income Housing Plan. A copy of the draft 2015 Annual Action Plan may be found on the Corporation's website at www.tsahc.org. The public comment period for the Corporation's Draft 2015 Annual Action Plan is December 12, 2014, through January 16, 2015.

Written comment may be sent to Janie Taylor, 2200 E. Martin Luther King Jr. Boulevard, Austin, Texas 78702 or by email to jtaylor@tsahc.org.

TRD-201405955
David Long
President
Texas State Affordable Housing Corporation
Filed: December 11, 2014

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Texas Department of Agriculture

Notice Regarding Percentage Volume of Texas Grapes Required by Texas Alcoholic Beverage Code, §16.011

Texas Alcoholic Beverage Code, §16.011 (§16.011), establishes an exception to the bar on the sale of wine in dry areas for wineries that sell or dispense wine that contains less than seventy five percent (75%), by volume, of Texas grown grapes or fruit. Texas Agriculture Code, §12.039 (§12.039), provides that the commissioner of agriculture may reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under §16.011.

Due to state legislative budget cuts, the department did not receive the Texas Grape Production and Demand Report from the Texas Wine Marketing Research Institute (TWMRI), as provided for in §12.039. The department received information on the grape production forecast, issued by the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) (grape forecast report) on August 12, 2014. The grape forecast report predicts Texas grape production for 2014 will be 12,400 tons. The final production rate for 2013 was 5,800 tons. The production rate estimated for 2014 represents an increase of 114% compared to 2013 and an increase of 84% relative to the five year average production rate of 6,730 tons. Final grape production numbers for 2014 will be released in July 2015. The forecast report is based on a survey of Texas grape growers statewide. The department has determined that based on the information issued by USDA-NASS, which is the best information available, there is no justification for changing the current percentage of Texas grown grapes and fruit that is required to be in wine produced by wineries located in dry areas from the statutorily-established 75% rate. Accordingly, the department is maintaining the seventy-five percent (75%) rate for the 2015 calendar year.

Additionally, as noted below, for situations where a winery is not able to obtain enough Texas grapes to meet its needs, the department will review individual appeals for reduction of the level set for calendar year 2015. The USDA grape forecast report will be issued in July 2015. TDA staff will review the USDA-NASS grape forecast report when it becomes available and submit to the commissioner at that time a recommendation for any needed adjustments to the 75% rate, as a result of the USDA-NASS data. The commissioner will review any such recommendation and make adjustments to the rate, as deemed necessary. Any change to the rate will be published in the *Texas Register* and posted on the Texas Department of Agriculture website.

In accordance with §12.039(g), the percentage established under this subsection must ensure the use of that variety of grape or other fruit grown in this state is maximized while allowing for the acquisition of grapes or other fruit grown outside of this state in a quantity sufficient to meet the needs of wineries in this state. Therefore, if a winery in a dry area of Texas finds a particular variety of grape or other fruit is not available to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may submit documentation or other information requested by the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs and to comply with requirements of §16.011. Requests for a reduction in the percentage requirement should:

(1) Be submitted to Wendy Womack, coordinator for marketing, at wendy.womack@TexasAgriculture.gov.

(2) Provide details as to the variety and quantity of grapes or other fruit used by the winery in addition to the origin of those products;

(3) Provide details as to why the winery was unable to obtain a sufficient quantity of Texas grown grapes or fruit; and

(4) Include the winery name, name of the person submitting the request, winery location (street address, city, zip code and county).

If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, the commissioner may reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of grape or fruit.

TRD-201406129
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 16, 2014

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Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the pub-

lic to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the law.

Case Title: *Texas Commission on Environmental Quality v. Higman Barge Line, Inc.,* No. D-1-GN-14-005141; In the District Court of Travis County, Texas; 98th Judicial District.

Background: This case involves a tract of approximately 17 acres located 4.5 miles east-northeast of the City of Port Arthur, Jefferson County, Texas ("the Site"). The Site is bounded on the south by the State Marine of Port Arthur Superfund Site, to the west by Old Yacht Club Road, to the north by vacant property, and to the east by Sabine Lake. Drainage from the Site empties directly into Sabine Lake.

From 1982 until 1997, Palmer Barge Line, Inc. ("Palmer") owned and operated a barge, marine vessel, and marine equipment maintenance and servicing facility at the Site. Primary operations included cleaning, degassing, maintenance and inspection of marine vessels and equipment. Typical cleaning operations included the removal of sludge, liquid ("heels"), chemical products and other constituents. Palmer also conducted marine salvage operations and repairs, offloaded chemicals (including petroleum products), and operated unlined earthen wastewater impoundments. Palmer stored offloaded used oil, waste oil, chemicals and wastewater in aboveground storage tanks, open-top sludge tanks, roll-off boxes and drums. Palmer also stored fuel oil, gasoline, naphtha and toluene at the Site. Various parties, including Higman Barge Lines, Inc., contributed materials to the Site through these operations.

Various substances were released on the Site, including volatile organic compounds, semi-volatile organic compounds, polychlorinated biphenyls, pesticides and metals. Hazardous substances included aldrin, aroclor-1254, arsenic, benzene, benzo(a)pyrene, benzo(a)anthracine, benzo(b)flouranthene, butyl benzyl phthalate, dieldrin, 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, heptachlor epoxide, lead, methoxychlor, naphthalene and pentachlorophenol.

The U.S. Environmental Protection Agency ("EPA") issued a Record of Decision ("ROD") in 2005 requiring the cleanup of the Site. A Unilateral Administrative Order for Remedial Design/Remedial Action was issued to the Potentially Responsible Parties ("PRP's") in 2007. Remedial Action and cleanup were completed according to the requirements of the ROD and the Site no longer poses a threat to human health or the environment. Institutional controls (i.e., deed restrictions) are in place and have been recorded at the local county offices to ensure that the Site's use remains industrial/commercial. Pursuant to a state-federal agreement, the Texas Commission on Environmental Quality ("TCEQ") contributed funds to EPA for its response actions. On February 6, 2012, the Site was removed from the National Priorities List of Superfund Sites. 76 Fed. Reg. 76314 (Dec. 7, 2011).

The TCEQ filed the lawsuit on December 8, 2014, naming Higman Barge Line, Inc., as a defendant and seeking recovery of its response costs incurred at the Site.

Nature of the Settlement: The lawsuit will be settled by an agreed final judgment in district court.

Proposed Settlement: The proposed consent decree provides for the recovery of the TCEQ's response costs.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. Copies may be obtained in person, by mail or by email for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General (MC-066), P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

TRD-201405966
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 11, 2014

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Comptroller of Public Accounts

Notice of Legal Banking Holidays

Texas Tax Code §111.053(b) requires that, before January 1 of each year, the Texas Comptroller of Public Accounts publish a list of the legal holidays for banking purposes for that year. This is the 2015 Eleventh District Holiday Schedule. Pursuant to the Federal Reserve Bank of Dallas website, the Federal Reserve Bank of Dallas and its branches in El Paso, Houston, and San Antonio, Texas, will be closed on the following holidays in 2015:

Thursday, January 1, New Year's Day

Monday, January 19, Martin Luther King Jr. Day

Monday, February 16, Presidents Day

Monday, May 25, Memorial Day

Monday, September 7, Labor Day

Monday, October 12, Columbus Day

Wednesday, November 11, Veterans Day

Thursday, November 26, Thanksgiving Day

Friday, December 25, Christmas Day

The Federal Reserve standard holiday schedule mandates that if January 1, July 4, November 11 or December 25 fall on a Sunday, the following Monday will be observed as a holiday. If January 1, July 4, November 11 or December 25 occur on a Saturday, the preceding Friday will not be observed as a holiday.

For 2015, July 4 occurs on a Saturday; therefore, the preceding Friday will **not** be observed as a holiday.

TRD-201405949
Jette Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 11, 2014

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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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/22/14 - 12/28/14 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 12//22/14 - 12/28/14 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/15 - 01/31/15 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/15 - 01/31/15 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201406130
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 17, 2014

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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 WesTex Community Credit Union (Kermit) seeking approval to merge with City-County Federal Credit Union (Pecos), with WesTex Community Credit Union being the surviving credit union.

An application was received from Tarrant County's Credit Union (Fort Worth) seeking approval to merge with Corps of Engineers Federal Credit Union (Fort Worth), with Tarrant County's 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-201406133
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 17, 2014

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Smart Financial Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, or attend school in, and businesses in Brazoria County, Texas, to be eligible for membership in the credit union.

An application was received from Community Service Credit Union (#1), Huntsville, Texas to expand its field of membership. The proposal would permit persons who reside, work, attend school or worship in, businesses and entities located in Grimes County, Texas, to be eligible for membership in the credit union.

An application was received from Community Service Credit Union (#2), Huntsville, Texas to expand its field of membership. The proposal would permit persons who reside, work, attend school or worship in, businesses and entities located in San Jacinto County, Texas, to be eligible for membership in the credit union.

An application was received from Community Service Credit Union (#3), Huntsville, Texas to expand its field of membership. The proposal would permit persons who reside, work, attend school or worship in, businesses and entities located in Trinity County, Texas, to be eligible for membership in the credit union.

An application was received from Community Service Credit Union (#4), Huntsville, Texas to expand its field of membership. The proposal would permit persons who reside, work, attend school or worship in, businesses and entities located in Madison County, Texas, to be eligible for membership in the 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. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. 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-201406132
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 17, 2014

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

InvesTex Credit Union, Houston, Texas - See *Texas Register* issue dated September 26, 2014.

Assemblies of God Credit Union, Springfield, Missouri - See *Texas Register* issue dated October 31, 2014.

Application to Amend Articles of Incorporation - Approved

Ward County Teachers Credit Union, Monahans, Texas - See *Texas Register* issue dated November 7, 2014.

TRD-201406134
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 17, 2014

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Employees Retirement System of Texas

Request for Application Texas Employees Group Benefits Program Health Maintenance Organizations

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas (ERS) is issuing a Request for Application (RFA) from qualified Health Maintenance Organizations (HMOs) to provide services within their approved service

areas in Texas under the Texas Employees Group Benefits Program (GBP) during Fiscal Year 2016, beginning September 1, 2015 through August 31, 2016. The locations in Texas for which Applications may be made are included in the RFA. HMOs shall provide the level of benefits required in the RFA and meet other requirements that are in the best interest of ERS, the GBP, its Participants and the state of Texas. If selected, HMO shall be required to execute a Contractual Agreement (Contract) provided by, and satisfactory to, ERS.

An HMO wishing to submit an Application shall meet the minimum requirements and criteria as described in Article II of the RFA. Each Application will be evaluated individually and relative to the Applications of other qualified HMO's.

The RFA will be available on or after January 8, 2015, from ERS' website and will include documents for the HMO's review and response. To access the RFA, qualified HMOs shall email their request to the attention of iVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall include: 1) The HMO's full legal name; 2) Point of contact's full name; 3) Point of contact's physical address; 4) Point of contact's phone and fax number; and 5) Point of contact's email address. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFA.

General questions concerning the RFA and/or ancillary bid materials should be sent to the iVendor Mailbox where responses, if applicable, are updated frequently. The submission deadline for all RFA questions will be on or after January 26, 2015, at 4:00 p.m. CT (please refer to the RFA for specific deadline).

To be eligible for consideration, the HMO is required to submit its Application in accordance with the instructions set forth in the RFA. All materials shall be received by ERS no later than 12:00 Noon CT on or after February 12, 2015 (please refer to the RFA for specific deadline).

ERS reserves the right to reject any and/or all Applications and/or call for new Applications if deemed by ERS to be in the best interests of ERS, the GBP, its Participants and the state of Texas. ERS also reserves the right to reject any Application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation of an Application. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interests of ERS, the GBP, its Participants and the state of Texas.

TRD-201406103
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: December 15, 2014

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 26, 2015. 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 January 26, 2015. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Acme Brick Company; DOCKET Number: 2014-1331-AIR-E; IDENTIFIER: RN100225184; LOCATION: Millsap, Parker County; TYPE OF FACILITY: brick manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4), Federal Operating Permit (FOP) Number O1597, Special Terms and Conditions (STC) Number 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct monthly visible emissions observations; and 30 TAC §122.143(4), FOP Number O1597, STC Number 9, and THSC, §382.085(b), by failing to comply with weekly monitoring requirements; PENALTY: $23,668; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(2) COMPANY: Aqua Utilities, Incorporated dba Aqua Texas; DOCKET Number: 2014-1139-MWD-E; IDENTIFIER: RN102177581; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011255001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0011255001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011255001, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $4,813; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486.

(3) COMPANY: Arnold Crushed Stone, Incorporated; DOCKET Number: 2014-1109-WQ-E; IDENTIFIER: RN105421895; LOCATION: Blum, Hill County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826.

(4) COMPANY: BASF TOTAL Petrochemicals LLC; DOCKET Number: 2014-1426-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacture; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2551, Special Terms and Conditions Number 23, and New Source Review Permit Numbers 36644, PSDTX903M5, and N007M1, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,125; Supplemental Environmental Project offset amount of $2,850 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892.

(5) COMPANY: Braskem America, Incorporated; DOCKET Number: 2014-1048-PWS-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory and submit the results to the executive director; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements; and 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the active source within 24 hours of notification of a distribution total coliform-positive sample result on a routine sample collected for the month of March 2012; PENALTY: $3,370; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486.

(6) COMPANY: City of Big Spring; DOCKET Number: 2014-1170-MWD-E; IDENTIFIER: RN101721249; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: water reclamation plant wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010069003, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $5,250; Supplemental Environmental Project offset amount of $4,200 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706.

(7) COMPANY: City of Pflugerville; DOCKET Number: 2014-1300-MWD-E; IDENTIFIER: RN101611440; LOCATION: Pflugerville, Travis County; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011845002, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $21,000; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753.

(8) COMPANY: City of Wellington; DOCKET Number: 2014-1297-PWS-E; IDENTIFIER: RN101205052; LOCATION: Wellington, Collingsworth County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933.

(9) COMPANY: COMAL IRON & METAL, INCORPORATED; DOCKET Number: 2014-1351-MLM-E; IDENTIFIER: RN103219572; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: iron and metal recycling services; RULES VIOLATED: 30 TAC §330.15(c), by failing the respondent caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste; 30 TAC §335.4, by failing the respondent caused, suffered, allowed, or permitted the unauthorized handling of industrial hazardous waste; and 30 TAC §335.261(b)(16)(F)(i) and 40 Code of Federal Regulations §273.14(a), by failing to properly label containers used to store used batteries with the words Universal Waste - Batteries or Used Batteries; PENALTY: $5,750; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480.

(10) COMPANY: CRYSTAL CLEAR WATER SUPPLY CORPORATION; DOCKET Number: 2014-1175-PWS-E; IDENTIFIER: RN101437994; LOCATION: near San Marcos, Guadalupe County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.42(c)(1), 290.110(e)(2) and (5), and 290.111(a)(2) and (h), by failing to provide a minimum treatment consisting of coagulation with direct filtration for groundwater under the influence of surface water and failed to submit surface water monthly operating reports for systems that use groundwater under the direct influence of surface water; PENALTY: $8,100; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480.

(11) COMPANY: EMIL B. CORPORATION dba Macarthur Cleaners (Facility 1 and 3) and dba One Hour Mac Cleaners (Facility 2); DOCKET Number: 2014-0993-DCL-E; IDENTIFIER: RN103956314 (Facility 1), RN102338266 (Facility 2), and RN103956215 (Facility 3); LOCATION: Irving, Dallas County (Facility 1 and Facility 2) and Lewisville, Denton County (Facility 3); TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ; 30 TAC §337.20(e)(3)(A), (4) and (5)(B), by failing to install a dike or other secondary containment structure of the required material and size around all dry cleaning containers; 30 TAC §337.20(e)(6), by failing to conduct weekly inspections of each secondary containment structure; and 30 TAC §337.70(a) and (b) and §337.72(2), by failing to maintain documentation of dry cleaning waste disposal manifests on site for five years; PENALTY: $4,133; ENFORCEMENT COORDINATOR: Allyson Plantz, (512) 239-4593; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(12) COMPANY: Mike L. Louden; DOCKET Number: 2014-0980-PWS-E; IDENTIFIER: RN107110207; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h) and Texas Health and Safety Code (THSC), §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for all groundwater supplies for the purpose of microbiological control and distribution protection; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.41(c)(3)(B), by failing to extend the well casing a minimum of 18

inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent that has 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 §290.41(c)(3)(N), by failing to provide each well with a flow measuring device to measure production yields and provide for the accumulation of water production data; 30 TAC §290.41(c)(3)(O), by failing to protect the wells with intruder-resistant fences with lockable gates or enclose the wells in locked and ventilated well houses; 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet of Well Numbers 1 and 2; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(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; and 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 easily located during emergencies; PENALTY: $3,542; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421.

(13) COMPANY: MOMO HOLDING COMPANY, INCORPORATED dba Fast Trak; DOCKET Number: 2014-1134-PST-E; IDENTIFIER: RN100814342; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (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)(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 §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month. by failing to conduct reconciliation of detailed inventory control records at least once each 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 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; PENALTY: $28,011; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206.

(14) COMPANY: NILU ENTERPRISES, INCORPORATED dba Escamillas Drive Thru Barn 2; DOCKET Number: 2014-1226-PST-E; IDENTIFIER: RN101433985; LOCATION: Crystal City, Zavala County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887.

(15) COMPANY: Peaster Independent School District Public Facility Corporation; DOCKET Number: 2014-1153-MWD-E; IDENTIFIER: RN102078045; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: Wastewater Treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013589001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(17), and TPDES Permit Number WQ0013589001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze effluent samples for *Escherichia coli* for the quarterly monitoring periods ending September 30, 2013, December 31, 2013, and March 31, 2014; PENALTY: $12,000; Supplemental Environmental Project offset amount of $12,000 applied to Galveston Bay Foundation, Incorporated; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(16) COMPANY: PIXLEY WATER WORKS, INCORPORATED; DOCKET Number: 2014-0829-PWS-E; IDENTIFIER: RN101182814; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(B), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class C or higher license; PENALTY: $61; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892.

(17) COMPANY: QW Transport, LLC; DOCKET Number: 2014-1573-PST-E; IDENTIFIER: RN107747958; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: common carrier; RULE VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing respondent deposited a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $2,450; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951.

(18) COMPANY: Texas Department of Transportation; DOCKET Number: 2014-0996-PST-E; IDENTIFIER: RN101696169; LOCATION: Giddings, Lee County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: $2,813; Supplemental Environmental Project offset amount of $2,251 applied to Angelina Beautiful Clean; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753.

(19) COMPANY: Y J K Incorporated dba Granger Food Store; DOCKET Number: 2014-1319-PST-E; IDENTIFIER: RN101375889; LOCATION: Granger, Williamson 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 underground storage tanks for releases at a frequency of at least once every month; PENALTY: $4,500; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753.

TRD-201406124
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 16, 2014

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Enforcement Orders

An agreed order was entered regarding Tuong Cong Huynh dba AM Mini Mart 15, Docket No. 2012-0507-PST-E on December 12, 2014, assessing $16,212 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Terra Firma Materials, L.L.C., Docket No. 2012-2620-MLM-E on December 12, 2014, assessing $22,501 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Benbrook Texas Limited Partnership, Docket No. 2012-2700-MWD-E on December 12, 2014, assessing $65,371 in administrative penalties with $61,771 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chau Management, Inc. dba Times Market 105, Docket No. 2013-0568-PST-E on December 12, 2014, assessing $12,937 in administrative penalties with $2,587 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding I 35 Sandpit, Inc., Docket No. 2013-0670-MLM-E on December 12, 2014, assessing $12,496 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Haz-Pak, Inc., Docket No. 2013-0750-MLM-E on December 12, 2014, assessing $2,995 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jai Ambica Corporation dba Seagoville Chevron, Docket No. 2013-1479-PST-E on December 12, 2014, assessing $16,607 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cibolo Creek Municipal Authority, Docket No. 2013-1588-MWD-E on December 12, 2014, assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Galveston, Docket No. 2013-1847-MWD-E on December 12, 2014, assessing $15,750 in administrative penalties with $3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Memc Pasadena, Inc., Docket No. 2013-1858-AIR-E on December 12, 2014, assessing $158,200 in administrative penalties with $31,640 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wendell Reese dba Pecan Shadows Water Supply Corporation, Docket No. 2013-2019-PWS-E on December 12, 2014, assessing $4,790 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Bradley dba Bradley Services, Docket No. 2013-2055-MLM-E on December 12, 2014, assessing $4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chez Eugene Weaver, Docket No. 2013-2087-LII-E on December 12, 2014, assessing $958 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LGI Land, LLC, Docket No. 2013-2128-MLM-E on December 12, 2014, assessing $32,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bay Ridge Christian College, Docket No. 2014-0015-PWS-E on December 12, 2014, assessing $780 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Com-

mission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Springtown, Docket No. 2014-0076-MLM-E on December 12, 2014, assessing $5,900 in administrative penalties with $1,180 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Munson Point Property Owners Association, Docket No. 2014-0080-PWS-E on December 12, 2014, assessing $1,552 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Virginia Franklin Fuller dba Franklin Water Systems 3, Docket No. 2014-0105-PWS-E on December 12, 2014, assessing $1,899 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhonda C. Vanover dba Seven Estates, Docket No. 2014-0110-PWS-E on December 12, 2014, assessing $2,805 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hasmukh D. Bhakta dba Ft Hancock Mini Mart, Docket No. 2014-0143-PST-E on December 12, 2014, assessing $8,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bartley Woods Water Supply Corporation, Docket No. 2014-0146-MLM-E on December 12, 2014, assessing $3,018 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Texas Aggregates, Inc., Docket No. 2014-0151-AIR-E on December 12, 2014, assessing $18,269 in administrative penalties with $3,653 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company, Docket No. 2014-0152-AIR-E on December 12, 2014, assessing $38,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pamela Sue Hughes dba Big Q Mobile Home Estates, Docket No. 2014-0159-PWS-E on December 12, 2014, assessing $2,678 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beeville, Docket No. 2014-0221-PWS-E on December 12, 2014, assessing $6,929 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stolt-Nielsen USA Inc., Docket No. 2014-0373-AIR-E on December 12, 2014, assessing $20,251 in administrative penalties with $4,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2014-0377-AIR-E on December 12, 2014, assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Original Adventure Camp Inc, Docket No. 2014-0468-PWS-E on December 12, 2014, assessing $1,183 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pelican Island Storage Terminal, LLC, Docket No. 2014-0549-AIR-E on December 12, 2014, assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of O'Brien, Docket No. 2014-0601-PWS-E on December 12, 2014, assessing $864 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201406137
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 17, 2014

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40279

Application: Stericycle, Inc. 2901 NE Loop 289, Lubbock, Texas 79403, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration 40279, to operate a Type V municipal solid waste medical waste transfer station. The proposed facility, Stericycle-Lubbock, will be located at 2901 NE Loop 289, Lubbock, Texas 79403, in Lubbock County. The Applicant is requesting authorization to store and transfer municipal solid waste which includes medical waste, non-hazardous pharmaceuticals, non-hazardous chemotherapy waste, and confidential documents. The registration application is available for viewing and copying at the City of Lubbock Public Library-Patterson Branch Library, located at 1836 Parkway Drive, Lubbock, Texas 79403 and may be viewed online at http://www.lnvinc.com/files/stericycle/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.61383&lng=-101.80067&zoom=13&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action: The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information: Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to http://www14.tceq.texas.gov/epic/eComment/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at http://www.tceq.texas.gov/. Further information may also be obtained from Stericycle, Inc. at the address stated above or by calling Mr. R. Mark Triplett, P.E., BCEE Regional Environmental Manager at (504) 220-9732.

TRD-201406135
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 17, 2014

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 101 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 101, Subchapter H, §§101.300 - 101.303, 101.306, 101.309, 101.350 - 101.354, 101.356, 101.359, 101.360, 101.370 - 101.373, 101.376, 101.378, 101.379, 101.390 - 101.394, 101.396, 101.399, and 101.400; and the repeal of §§101.304, 101.358, and 101.374, 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 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would revise the Emission Reduction Credit and Discrete Emission Reduction Credit Programs by repealing the rules for generating credits from area and mobile sources and for use by mobile sources; clarifying how reductions are surplus to the SIP; updating for changed federal standards; clarifying provisions for substituting credits from one ozone precursor for another; removing the requirement to submit original certificates for trades and use; clarifying the equations for generating credits; and clarifying that limitations on protocols apply to both generation and use.

The commission will hold public hearings on this proposal in Arlington on January 15, 2015, at 6:30 p.m. in the City of Arlington Council Chamber, at 101 West Abram Street, and in Houston on January 20, 2015, at 2:00 p.m. in the auditorium, at the Texas Department of Transportation, 7600 Washington Avenue. 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 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.

Written comments may be submitted to Kris Hogan, 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.texas.gov/rules/ecomments/*.

File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2014-007-101-AI. The comment period closes January 30, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Joseph Thomas, Air Quality Planning Section, at (512) 239-0012.

TRD-201406036
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 12, 2014

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapters 115 and 117 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 Texas Administrative Code (TAC) Chapter 115, Control of Air Pollution from Volatile Organic Compounds; Chapter 117, Control of Air Pollution from Nitrogen 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 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would revise Chapter 115 to implement reasonably available control technology (RACT) for all emission sources addressed in a control techniques guidelines (CTG) and all non-CTG major sources of volatile organic compounds (VOC) in the Dallas-Fort Worth (DFW) 2008 eight-hour ozone moderate nonattainment area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, as required by Federal Clean Air Act (FCAA), §172(c)(1) and §182(f). The proposed rulemaking would revise the VOC rules to expand the applicability of the existing RACT rules to include Wise County. **(Rule Project No. 2013-048-115-AI)**

The proposed rulemaking would revise Chapter 117 to implement RACT for all major sources of nitrogen oxides (NO_x) in the DFW 2008 eight-hour ozone moderate nonattainment area as required by FCAA, §172(c)(1) and §182(f). The proposed rulemaking would extend implementation of RACT to major sources of NO_x located in newly designated Wise County. Although not necessary to satisfy RACT requirements, the proposed rulemaking would also provide compliance flexibility to testing requirements of Chapter 117 for temporary boilers and process heaters, and it would clarify the definition of electric power generating system to distinguish rule requirements for independent power producers located in all Texas ozone nonattainment areas. **(Rule Project No. 2013-049-117-AI)**

The proposed DFW attainment demonstration SIP revision contains FCAA-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 for 2018, and a contingency plan. **(Rule Project No. 2013-015-SIP-NR)**

The proposed DFW reasonable further progress (RFP) SIP revision contains an analysis of the DFW area's progress toward attainment of the 2008 eight-hour ozone NAAQS, demonstrating an 18% emissions reduction in ozone precursors from the 2011 base year through the 2018 attainment year, a 3% emissions reduction demonstration for contingency for each milestone year, and updated RFP motor vehicle emissions budgets for each milestone year. **(Rule Project No. 2013-014-SIP-NR)**

The commission will hold two public hearings on this proposal: in Arlington on January 15, 2015 at 6:30 p.m. in the City of Arlington Council Chamber at the Arlington Municipal Building located at 101 W. Abram Street; and in Austin on January 22, 2015 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearings will be 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.

Written comments may be submitted to Derek Baxter, 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.texas.gov/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 2013-048-115-AI for the proposed VOC rule amendments; Rule Project Number 2013-049-117-AI for the proposed NO_x rule amendments; SIP Project Number 2013-015-SIP-NR for the proposed DFW Attainment Demonstration SIP revision; and SIP Project Number 2013-014-SIP-NR for the proposed DFW RFP SIP revision. The comment period closes January 30, 2015. Copies of the proposed rulemaking 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.state.tx.us/implementation/air/sip/sipplans.html.* For further information regarding the proposed rules and SIP revisions, please contact Eddy Lin, Air Quality Planning Section, at (512) 239-3932.

TRD-201406041
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 12, 2014

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Permit Major Amendment Permit Number 2270

APPLICATION: Fort Bend Regional Landfill, L.P., 14115 Davis Estates Road, Needville, Fort Bend County, Texas 77461, a Texas limited partnership, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I Municipal Solid Waste Limited Scope Permit Major Amendment proposing to incorporate the acceptance of Class 1 Non-Hazardous Industrial Solid Waste and other, similar wastes, including soil contaminated by petroleum products, crude oils, or chemicals, and wastes from oil, gas and geothermal activities in accordance with the limitations and conditions included in the permit and its supporting documents; to revise the liquid waste stabilization operations included in the current Site Operating Plan; and to make other minor revisions to the current permit. The facility is located at the address listed above. The TCEQ received the application on November 3, 2014. The permit application is available for viewing and copying at Albert George Branch Library, 9230 Gene Street, Needville, Fort Bend County, Texas 77461, and may be viewed online at http://www.scsengineers.com/State_Info/index.html. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part

of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.3961&lng=-95.7247&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE: TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING: You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING: After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST: If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION: All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040.

Further information may also be obtained from Fort Bend Regional Landfill, L.P. at the address stated above or by calling Mr. Marcos Elizondo, Region Landfill Operations and Engineering, WCA Texas Management General, Inc. at (979) 793-4430.

TRD-201406136
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 17, 2014

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Notice of Water Quality Applications

The following notices were issued on December 5, 2014, through December 12, 2014.

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

BYK Additives Inc 1212 Church Street, Gonzales, Texas 78629, which operates the Kennard Site, a bentonite clay mine and storage site, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001925000, which authorizes the discharge of stormwater and groundwater at a daily average flow not to exceed 300,000 gallons per day per outfall via Outfalls 001, 002, and 003. The draft permit would authorize the discharge of stormwater and groundwater at a daily average flow not to exceed 300,000 gallons per day per outfall via Outfalls 001 and 003. The facility is located at 8627 U.S. Highway 90A, adjacent to the south side of U.S. Highway 90A, approximately six miles south-southeast of the City of Gonzales, Gonzales County, Texas 78629.

Holmes Food Inc which operates the Holmes Foods Poultry Processing Plant and Wastewater Land Application Site, for the slaughtering of chickens and processing of poultry products for commercial marketing, has applied for a renewal of TCEQ Permit No. WQ0002013000, which authorizes the disposal of utility wastewater (consisting of cooling tower and boiler blowdown) and process wastewater at a daily average flow not to exceed 700,000 gallons per day via irrigation of 341.27 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility is located at 101 South Liberty Avenue, Nixon, Gonzales County, Texas 78140. The land application site is

located on Farm-to-Market Road 1681, approximately one mile northwest of the City of Nixon, Wilson and Gonzales Counties, Texas 78140.

KLAAS TALSMA for a Major Amendment of TPDES Permit No. WQ0003145000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to increase the total land application area from 437 acres to 471 acres and reconfigure the land application areas. The currently authorized maximum capacity of 2,200 head, of which 1,900 head are milking cows, remains unchanged. The facility is located on the south side of County Road 540, approximately three-tenths mile southwest from the intersection of County Road 540 and County Road 209. This intersection is located approximately four miles from the intersection of County Road 209 and US Highway 67 in Erath County, Texas.

Dos Republicas Coal Partnership, which operates Eagle Pass Mine, has applied for a major amendment to TPDES Permit No. WQ0003511000 to add new active mining area acreage; add new Outfalls 014M-020M to discharge stormwater and mine seepage from "active mining area"; add new post-mining Outfalls 001R, 003R, 004R, 006R-008R, and 014R-020R, with associated effluent limitations, to discharge stormwater from "post-mining areas"; remove Outfalls 002, 005, 009, 010, 011, 012, and 013; allow for water in all ponds to be used for dust suppression; add Outfall 021 to discharge stormwater runoff from fueling areas, fuel storage areas, vehicle and equipment maintenance areas, truck washing stations, and coal handling and storage areas; and add new Outfall 022M to discharge mine pit water from "active mining area" and stormwater from inside the rail loop. The current permit authorizes the discharge of mine seepage from active mining areas and stormwater at an intermittent and variable flow via Outfalls 001 through 013. The facility is located on the northeast side of State Highway 1588, three miles northeast of U.S. Highway 277, and approximately five miles northeast of the City of Eagle Pass, Maverick County, Texas.

Holiday Beach Water Supply Corporation P.O. Box 807, Fulton, Texas 78358, which operates the Holiday Beach WTP, a potable water treatment plant, has applied for a renewal of TPDES Permit No. WQ0004290000, which authorizes the discharge of reverse osmosis reject water at a daily average flow not to exceed 120,000 gallons per day via Outfall 001. The facility is located at 5 Saint Charles Loop East, on the west side of State Highway 35, 0.5 miles southwest of the intersection of State Highway 35 and Holiday Boulevard, and approximately 8.0 miles northeast of the City of Rockport, Aransas County, Texas 78382.

Weatherford US LP which operates Weatherford Technology and Training Center, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0004760000 to remove Outfall 002 from the permit, add Outfalls 004 and 005, which discharge stormwater, condensate, and water from external washing of buildings and uncontaminated pavement on an intermittent and flow-variable basis, remove requirements to sample Outfall 001 within the first 30 minutes of discharge during normal business hours, remove rubber mixer area washdown wastewater as an authorized wastestream for discharge, and to recalculate total copper effluent limitations using site-specific criteria. The existing permit authorizes the discharge of treated domestic wastewater, laboratory rinse water, and rubber mixer area wash down at a daily average flow not to exceed 10,800 gallons per day; and rig testing area washdown wastewater and potentially impacted stormwater on an intermittent and flow variable basis via Outfall 002. The application also includes a request for the approval of a Water Effect Ratio (WER) of 4.55 for dissolved copper at Outfall 001. The facility is located approximately 0.75 mile west of U.S. Highway 290 and two miles east of Eldridge Road on Spencer Road in the City of Houston, Harris County, Texas 77041.

Enterprise Products Operating LLC which proposes to operate the Houston Ship Channel Expansion Facility, a liquefied petroleum gas product transfer facility, has applied for new TPDES Permit No. WQ0005132000 to authorize the discharge of wet surface air cooler blowdown, filter backwash, and stormwater on a flow-variable basis via Outfall 001. The draft permit authorizes a daily average dry-weather flow not to exceed 200,000 gallons per day and a daily maximum dry-weather flow not to exceed 400,000 gallons per day via Outfall 001. The facility will be located at 15602 Jacintoport Boulevard, Houston, Harris County, Texas 77015. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

City of Floresville has applied for a renewal of TPDES Permit No. WQ0010085001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 815 Goliad Road, at the intersection of Standish Street and Goliad Road, Floresville in Wilson County, Texas 78114.

City of Flatonia has applied for a renewal of TPDES Permit No. WQ0010101001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 345 East Interstate Highway 10 Frontage Road, approximately 500 feet north of Interstate Highway 10 and 1300 feet east of State Highway 95 on the north side of the City of Flatonia in Fayette County, Texas 78941.

City of Lockhart and Guadalupe Blanco River Authority has applied for a renewal of TPDES Permit No. WQ0010210001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,100,000 gallons per day. The facility is located at 109 Larremore Street, in the City of Lockhart, Caldwell County, Texas 78644.

Matagorda County Water Control and Improvement District No 5 has applied for a renewal of TPDES Permit No. WQ0010217001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located immediately west of the intersection of Pecan Street and 6th Street, Blessing, in Matagorda County, Texas 77419.

City of Karnes City has applied for a renewal of TPDES Permit No. WQ0010352003 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 800 West Riddleville Street, Karnes City, in Karnes County, Texas 78118.

City of Tyler has applied for a renewal of TPDES Permit No. WQ0010653001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 13,000,000 gallons per day. The existing permit also authorizes the land application of Class A or Class B sludge for beneficial use on a total of 30.9 acres of land on two non-contiguous tracts, marketing and distribution of Class A sludge and for the use of onsite sludge lagoons for temporary store of digested sludge. The facility and sludge disposal site No. 1 are located at 14939 County Road 46, approximately 20,000 feet west-northwest of the intersection of State Highway Loop 323 and U.S. Highway 69 and approximately 7 miles northwest of the Smith County Courthouse in the City of Tyler in Smith County, Texas 75704. Sludge land disposal site No. 2 is located on County Road 45, approximately 0.47 mile west of the intersection of U.S. Highway 110 and County Road 45, Tyler, in Smith County, Texas 75704.

San Antonio River Authority has applied for a renewal of TPDES Permit No. WQ0010749008, which authorizes the discharge of treated do-

mestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 15775 Interstate 35 South, Atascosa, in Bexar County, Texas 78002.

Flying L Public Utility District has applied for a renewal of TCEQ Permit No. WQ0011291001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 112,500 gallons per day via surface irrigation of 178 acres of public access golf course. The wastewater treatment facility and disposal site are located immediately west of Bottle Springs Road, approximately 1.75 miles southeast of the intersection of Farm-to-Market Road 689 and Farm-to-Market Road 1077 in Bandera County, Texas 78003.

Texas Lehigh Cement Company LP has applied for a renewal of TCEQ Permit No. WQ0011976001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,700 gallons per day via surface irrigation of 3.0 acres of non-public access company-owned landscape. This permit will not authorize a discharge of pollutants into water in the state. The wastewater treatment facility and disposal site are located at 701 Cement Plant Road, Buda in Hays County, Texas 78610.

Spring Center Inc has applied for a renewal of TPDES Permit No. WQ0012637001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located at 22820 Interstate Highway 45 North, Spring in Harris County, Texas 77373.

Polonia Water Supply Corporation has applied for a renewal of TPDES Permit No. WQ0014033002, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 3,000 gallons per day. The facility is located west of Farm-to-Market Road 1322, 4.3 miles south of the junction of Farm-to-Market Road 1322 and U.S. Highway 183 in Caldwell County, Texas 78644.

Texas Parks and Wildlife Department has applied for a renewal of TCEQ Permit No. WQ0014247001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 8,200 gallons per day via non-public access subsurface gravity drainfields with a total area of 43,000 square feet. This permit will not authorize a discharge of pollutants into waters in the state. The Amphitheater facility and disposal area are located approximately 1,500 feet east of Goodnight Peak on Park Road 5 (Palo Duro Drive). The Sagebrush facility and disposal site are located approximately 2,000 feet east of Goodnight Peak on Park Road 5 (Palo Duro Drive) in Randall County, Texas 79015.

Harris County Municipal Utility District No 374 has applied for a renewal of TPDES Permit No. WQ0014354001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located approximately 1.6 miles southwest of the intersection of U.S. 290 and Barker Cypress Road, in Cypress in Harris County, Texas 77433.

Montgomery County Municipal Utility District No 119 has applied for a renewal of TPDES Permit No. WQ0014656001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,080,000 gallons per day. The facility is located at 27194 Mia Ridge Lane, Spring, in Montgomery County, Texas 77386.

Quadvest LP has applied for a major amendment to TPDES Permit No. WQ0014675001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 320,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The facility will be located approximately 2,400 feet southeast of the intersection of Bauer Road and Botkins Road in Harris County, Texas 77477.

JM Texas Land Fund No 4 LP has applied for a renewal of TPDES Permit No. WQ0014797001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 0.45 miles east and 1.2 miles south of the intersection of Becker Road and House Road, approximately 6 miles west of the City of Cypress in Harris County, Texas 77447.

Fernco Development Ltd AND Lenco Development Ltd and Norco Development Ltd has applied for a renewal of TPDES Permit No. WQ0014825001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 7200 White Oak Circle, Houston, in Harris County, Texas 77040.

Trio Residential Developers Inc has applied for a new permit, draft TCEQ Permit No. WQ0015219001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day via surface irrigation of 40.5 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located along the north right-of-way of Ammann Road at its intersection with Rolling Acres Trail in Kendall County, Texas 78006.

Leander Municipal Utility District No 3 has applied for a new TPDES Permit No. WQ0015238001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility will be located four miles southeast of the intersection of U.S. Highway 183 and State Highway 29, outside the City of Leander, in Williamson County, Texas 78628.

Nash FM 529 LLC has applied for a new TPDES Permit no. WQ0015264001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility will be located approximately 2,000 feet southeast from the intersection of Beckendorff Road and Porter Road in Harris County, Texas 77493.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the TPDES Permit No. WQ0012680001 issued to H & R Realty Investments, LLC, to authorize the change of the five-day biochemical oxygen demand (BOD_3) effluent limits to five-day carbonaceous biochemical oxygen demand ($CBOD_5$) effluent limits. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 3318 County Road 89, approximately 1 1/3 miles southwest of the intersection of Farm-to-Market Road 1128 and Farm-to-Market Road 518 in Brazoria County, Texas 77584.

City of Kosse has applied for a minor amendment to TPDES Permit No. WQ0011405001 to change from a 21 day residence time period for disinfection to disinfection by chlorination. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1,650 feet northeast of the intersection of West Filmore Street and the Union Pacific Railroad on the west side of Burleson Branch in Limestone County, Texas 76653.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ

can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201406138
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 17, 2014

♦ ♦ ♦

Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Lobby Activities Report due July 10, 2014

James R. Hines, 2906 Forest Meadow Dr., Round Rock, Texas 78665

Deadline: Semiannual Report due July 15, 2014, for Candidates and Officeholders

Louie T. Des Champs III, P.O. Box 738, San Augustine, Texas 75972

Deadline: 30-Day Pre-Election Report due October 6, 2014, for Candidates and Officeholders

Michael Binkley, 2918 Daisy Court, Garland, Texas 75040

George Hardy IV, 1518 Stone Trail Drive, Sugar Land, Texas 77479

Dorothy M. Olmos, 102 Funston Street, Houston, Texas 77012

David Palmquist, 561 Upper Elgin River Road, Elgin, Texas 78621

Fred Robert Vernon II, 15303 West Little York, Houston, Texas 77084

Deadline: 8-Day Pre-Election Report due October 27, 2014, for Candidates and Officeholders

James T. "Tyler" Lindsey, 1104 Holiday Drive, Tool, Texas 75143

Dorothy M. Olmos, 102 Funston Street, Houston, Texas 77012

Deadline: Monthly Report due October 6, 2014, for Committees

Adam J. Pacheco, Associated General Contractors of El Paso PAC, 120 Paragon Lane, Ste. 101, El Paso, Texas 79912

Deadline: 30-Day Pre-Election Report due October 6, 2014, for Committees

Phyllis Campbell, Texas Association of Benefit Administrators PAC, 149-131, 6009 W. Parker Rd., Ste. 149, Plano, Texas 75093-8121

Susan T. Clark, Fort Bend County Democratic Party (CEC), 2915 Hampton Drive, Missouri City, Texas 77459

John C. Eberlan, Sustain Excellent Education, P.O. Box 6254, Katy, Texas 77491

Jack Calvin Turner, Metropolitan Anesthesia Consultants, LLP Political Action Committee, 6761 Lakefair Circle, Dallas, Texas 75214

Deadline: 8-Day Pre-Election Report due October 27, 2014, for Committees

Augustus L. Campbell, Senate District 7 Democratic PAC, 11814 Palmetto Shore Drive, Houston, Texas 77065

Patricia P. Baig, Republican Party of Fort Bend County (CEC), P.O. Box 461, Sugar Land, Texas 77487-0461

Phyllis Campbell, Texas Association of Benefit Administrators PAC, 149-131, 6009 W. Parker Rd., Ste. 149, Plano, Texas 75093-8121

John C. Eberlan, Sustain Excellent Education, P.O. Box 6254, Katy, Texas 77491

Todd M. Smith, Texas Conservative Tea Party Coalition, 2204 Hazeltine Lane, Austin, Texas 78747

Deadline: Personal Financial Statement due October 8, 2014

D. Bailey Wynne, 4130 Briargrove Ln., Dallas, Texas 75287

TRD-201405999
Natalia L. Ashley
Executive Director
Texas Ethics Commission
Filed: December 12, 2014

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Texas Facilities Commission

Request for Proposals #303-5-20480

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-5-20480. TFC seeks a five (5) or ten (10) year lease of approximately 5,862 square feet of office space in Arlington, Tarrant County, Texas.

The deadline for questions is January 20, 2015 and the deadline for proposals is January 27, 2014, at 3:00 p.m. The award date is March 18, 2015. 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 Program Specialist, 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=114976.*

TRD-201406091
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 12, 2014

♦ ♦ ♦

Request for Proposals #303-6-20481

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-6-20481. TFC seeks a five (5) or ten (10) year lease of approximately 2,458 square feet of office space in Houston, Harris County, Texas.

The deadline for questions is January 16, 2015, and the deadline for proposals is January 23, 2015, at 3:00 p.m. The award date is February 18, 2015. 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 Program Specialist, 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=115011.*

TRD-201406139
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 17, 2014

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Texas Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission (HHSC) adopted amendments to 1 TAC §355.456, concerning Reimbursement Methodology, in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9885). Due to an editing error, the wrong effective date appears at the end of the rule notice. The effective date on page 9887 should be "January 1, 2015", instead of "December 28, 2014".

TRD-201406158

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Youth Empowerment Services (YES) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. The Centers for Medicare and Medicaid Services has approved this waiver through March 31, 2018. The proposed effective date for the amendment is January 15, 2015, with no changes to cost neutrality.

Based on the legislative direction of a rider to the current appropriations act, HHSC and the Department of State Health Services (DSHS) will initiate the expansion of the YES waiver. *See* General Appropriations Act, 83rd Legislature, R.S., Chapter 1411, Article II, Rider 80, at II-76 (HHSC and DSHS). Currently, the waiver serves Bexar, Cameron, Tarrant, Harris, Fort Bend, Brazoria, Galveston, Hidalgo, Travis, and Willacy counties; this amendment will expand the geographical limitation area to include Burnet, McLennan, and Williamson counties. In addition, HHSC requests CMS to approve an increase in the number of waiver slots to allow the program to serve up to 650 individuals.

The YES waiver program is designed to provide community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The waiver is currently approved to serve up to 400 eligible youth who are at least age three but under age 19 and who are predicted to remain in the waiver for 12 months.

To obtain copies of the proposed waiver amendment, interested parties may contact Sara McGhee by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 487-3448, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201405941
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: December 10, 2014

♦ ♦ ♦

Public Notice of Intent to Submit State Plan Amendment for Nursing Facilities

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective January 19, 2015.

The amendment is being proposed to allow existing pediatric nursing facilities time to develop and implement pro-active plans to transition away from business models that are dependent upon an entire nursing facility qualifying for the pediatric care nursing facility reimbursement class to business models dependent upon a distinct unit within a larger facility qualifying for this class. The proposed amendment will revise the reimbursement methodology requiring pediatric care nursing facilities to maintain an average daily census of 80 percent children, to allow a greater number of adults who were admitted to the facility as children, but who are no longer children (i.e., individuals who have "aged in place"), to be counted as children for purposes of determining whether the facility meets the qualification requirements for remaining a pediatric care facility. Under the current State Plan language, the number of such individuals who may be counted as children for this purpose is 15 percent of the average daily census of the facility; the proposed amendment increases the allowed percentage to 33 percent of the facility's average daily census. HHSC does not intend to increase this percentage again in the future.

The proposed amendment is not estimated to result in any additional annual aggregate expenditure in federal fiscal years 2015 or 2016.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Victor Perez, Director of Rate Analysis for Long Term Services and Supports, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 462-6223; by facsimile at (512) 730-7475; or by e-mail at victor.perez@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201406123
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: December 16, 2014

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Texas Department of Housing and Community Affairs

Request for Real Estate Broker and Auction Services

The Texas Department of Housing and Community Affairs (Department) is looking at two types of service options for assistance in real estate transactions. Real Estate Auction Services for the disposition of owned real estate, and Real Estate Brokerage Services for the acquisition and disposition of real estate.

POSTING DATE AND DEADLINE FOR SUBMISSION. The RFP was posted on Friday, December 19, 2014. The deadline for submission in response to RFP is 2:00 p.m., Central Time, Friday, January 23, 2014. No submittal received after the deadline will be considered. No incomplete or unsigned response or late qualification summaries will be accepted after the deadline.

Individuals or firms interested in submitting a proposal should visit our website at: http://www.tdhca.state.tx.us/ under the "What's New" section or visit http://esbd.cpa.state.tx.us/, for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to the Department in writing to Julie Dumbeck (julie.dumbeck@tdhca.state.tx.us).

PLACE AND METHOD OF QUALIFICATION DELIVERY. Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Attention: Purchasing RFP #332-RFP15-1002

Mailing Address:

P.O. Box 13941

Austin, TX 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3991

TRD-201405950
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 11, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of COMPANION PROPERTY & CASUALTY INSURANCE COMPANY to SUSSEX INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Orange, California.

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, MC 305-2C, Austin, Texas 78701.

TRD-201406154
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: December 17, 2014

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Texas Lottery Commission

Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §§402.400 General Licensing Provisions, 402.401 Temporary License, 402.404 License and Registry Fees, 402.410 Amendment of a License - General Provisions, 402.411 License Renewal, and 402.412 Signature Requirements; and on new 16 TAC §402.104 Delinquent Obligations will be held on Wednesday, January 14, 2015, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Eric Williams at (512) 344-5241 at least 72 hours prior to the public hearing.

TRD-201405975
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 12, 2014

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Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.317 ("Powerball®" On-Line Game Rule) will be held on Wednesday, January 14, 2015, at 11:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Eric Williams at (512) 344-5241 at least 72 hours prior to the public hearing.

TRD-201406092
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 15, 2014

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Texas Board of Physical Therapy Examiners

Correction of Error

The Texas Board of Physical Therapy Examiners proposed amendments to 22 TAC §341.6, regarding License Restoration, in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9457). Due to an editing error, the word "application" in subsection (d)(2)(C) on page 9458 was not underlined to indicate that it is new rule language. The subparagraph should read as follows:

"(C) the application [~~restoration~~] fee; and"

TRD-201406159

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on December 15, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of RB3, LLC dba Reach Broadband to Amend its State-Issued Certificate of Franchise Authority, Project Number 43960.

The requested amendment is to reduce the service area footprint to delete the cities of Coleman, Comanche, Eden, Iraan, Mason and Menard, Texas.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 43960.

TRD-201406147
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2014

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on December 9, 2014, for a state-issued certificate of fran-

chise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Industry I-Net, Inc. for a State-Issued Certificate of Franchise Authority, Project Number 43937.

The requested SICFA service area consists of the incorporated city limits of Industry and Carmine, Texas, and unincorporated areas of Austin, Colorado, Fayette, Lee and Washington Counties, Texas.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 43937.

TRD-201405974
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2014

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 15, 2014, to amend a certificate of convenience and necessity for a proposed transmission line in Martin County, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend its Certificate of Convenience and Necessity for the Proposed Glass to Sale Ranch 138-kV Transmission Line in Martin County, Docket Number 43889.

The Application: The proposed project is designated as the Glass to Sale Ranch 138-kV Transmission Line Project. The facilities include construction of a new 138-kV transmission line to connect the proposed Glass Substation to the proposed Sale Ranch Substation in order to serve new load, the planned Atlas Pipeline Mid-Continent WestTex, LLC Buffalo Gas Processing Plant (Atlas).

The total estimated cost for the project is approximately $23,700,000 and is estimated to be approximately 7 miles in length. The proposed project is presented with only one route because Sharyland proposes to construct the project along right-of-way that either has already been acquired or is expected to be acquired by Atlas. The Public Utility Commission of Texas (Commission) may approve the route or any of the route segments presented in the application.

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 January 29, 2015. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43889.

TRD-201406141
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2014

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Notice of Application to Amend Sewer Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application to amend a sewer certificate of convenience and necessity (CCN) in Chambers County, Texas.

Docket Style and Number: *Application of Gulf Coast Waste Disposal Authority for an Amendment to Sewer Certificate of Convenience and Necessity in Chambers County,* Docket Number 43930.

The Application: Gulf Coast Waste Disposal Authority (GCA) filed with the Public Utility Commission of Texas (Commission) an application to amend its sewer certificate of convenience (CCN) Number 20465 in Chambers County, Texas. GCA seeks to amend its CCN to voluntarily decertify a small portion of its service area at the request of the Chambers County Improvement District No. 2. GCA does not currently provide sewer service in the subject area.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43930.

TRD-201405973
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2014

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Notice of Petition for True-Up of 2012 Federal Universal Service Fund Impacts to Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on December 12, 2014, for true-up of 2012 Federal Universal Service Fund (FUSF) Impacts to Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Blossom Telephone Company for True-Up of 2012 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 43956.

The Application: Blossom Telephone Company (Blossom) filed a true-up report in accordance with ordering paragraph 2 of the final Order in Docket Number 41797. In Docket Number 41797 the Public Utility Commission of Texas approved Blossom's application to recover funds from the TUSF and ordered a true-up of the FUSF revenue changes. This application addresses Blossom's final and actual FUSF impact for 2012.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43956.

TRD-201406142

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2014

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Notice of Petition for True-Up of 2012 Federal Universal Service Fund Impacts to Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on December 12, 2014, for true-up of 2012 Federal Universal Service Fund (FUSF) Impacts to Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. for True-Up of 2012 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 43957.

The Application: Valley Telephone Cooperative, Inc. (VTCI) filed a true-up report in accordance with Findings of Fact Numbers 14 thru 17 of the final Order in Docket Number 41332. In Docket Number 41332 the Public Utility Commission of Texas approved VTCI's application to recover funds from the TUSF and ordered a true-up of the FUSF revenue changes. This application addresses VTCI's final and actual FUSF impact for 2012.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43957.

TRD-201406143
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2014

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Notice of Petition for True-Up of 2012 Federal Universal Service Fund Impacts to Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on December 12, 2014, for true-up of 2012 Federal Universal Service Fund (FUSF) Impacts to Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Ganado Telephone Company, Inc. for True-Up of 2012 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 43959.

The Application: Ganado Telephone Company, Inc. (Ganado) filed a true-up report in accordance with ordering paragraph 2 of the final Order in Docket Number 41846. In Docket Number 41846 the Public Utility Commission of Texas approved Ganado's application to recover funds from the TUSF and ordered a true-up of the FUSF revenue changes. This application addresses Ganado's final and actual FUSF impact for 2012.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43959.

TRD-201406144
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2014

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Public Notice of Workshop

Staff of the Public Utility Commission of Texas (commission staff) will hold a workshop regarding Project No. 43871, *PUC Rulemaking Project to Amend Chapter 24 for the Implementation of Phase II of the Economic Regulation of Water and Sewer Utilities;* Project No. 43876, *PUC Form Revisions for Phase II of the Implementation of the Economic Regulation of Water and Sewer Utilities (Class A Utilities);* Project No. 43967, *PUC Form Revisions for Phase II of the Implementation of the Economic Regulation of Water and Sewer Utilities (Class B and C Utilities);* and Project No. 43969, *PUC Rulemaking Project to Amend Chapter 22 for the Implementation of Phase II of the Economic Regulation of Water and Sewer Utilities* on Tuesday, January 27, 2015, at 9:00 a.m. The workshop will be held in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

By January 16, 2015, commission staff will file in each respective project number (1) a schedule indicating in what order the projects will be discussed, and (2) proposed drafts of revisions to the existing rules and forms. The schedule and proposed revisions will also be made available on the section of the commission's public website associated with each project.

Questions concerning the workshop or this notice should be referred to Chrissy Mann, Attorney, Legal Division, (512) 936-7377 or at chrissy.mann@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201406153
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 17, 2014

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Texas Department of Transportation

Notice of Intent to Prepare an Environmental Impact Statement - Lone Star Regional Rail Project (Central Texas)

The Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT), and the Lone Star Rail District (LSRD) intend to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) to disclose the impacts of construction and operation of a proposed regional passenger rail service system along the IH-35 corridor connecting the greater Austin and San Antonio metropolitan areas. The proposed project would provide for implementation of passenger rail service within the existing Union Pacific Railroad (UPRR) corridor that extends from Williamson County to Bexar County, Texas. The EIS may include a potential alternative that would provide for the development and operation of a new freight bypass to carry some of the existing freight rail traffic between Taylor and San Antonio to allow the addition of passenger service along the existing UPRR line.

FHWA, TxDOT, and the LSRD invite the public, governmental agencies, and all other interested parties to comment on the scope of the EIS.

A scoping meeting to hear comment from governmental agencies will be held on January 13, 2015 at the Capital Metro Board Room, located at 2910 E. 5th Street, Austin Texas. The meeting will begin at 9:00 a.m. and will end at 11:00 a.m. A second scoping meeting to hear comment from governmental agencies will be held on January 15, 2015, at the Media Briefing Room of the San Antonio City Hall, located at 100 Military Plaza, San Antonio, Texas. The meeting will begin at 10:00 a.m. and will end at 12:00 p.m.

Scoping meetings to hear comment from the public will be held on:

January 20, 2015, at the Carver Cultural Center, located at 226 N. Hackberry in San Antonio, Texas from 5:00 p.m. to 8:00 p.m.

January 21 2015, at the Carver Museum and Library, located at 1165 Angelina Street, Austin, Texas from 5:00 p.m. to 8:00 p.m.

January 26, 2015, at the San Marcos Activity Center, located at 501 E. Hopkins Street, San Marcos, Texas from 5:00 p.m. to 8:00 p.m.

January 27, 2015, at the Elgin High School, located at 14000 County Line Road, Elgin, Texas from 5:30 p.m. to 8:30 p.m.

January 28, 2015, at the Georgetown Events Center (Chamber of Commerce), Banquet Room, located at 1 Chamber Way (100 Stadium Drive), Georgetown, Texas from 5:00 p.m. to 8:00 p.m.

January 29, 2015, at the Seguin Coliseum, located at 950 S. Austin Street, Seguin, Texas from 5:00 p.m. to 8:00 p.m.

You may submit comments orally or in writing at the scoping meetings. All other comments (whether from a governmental entity or from the public) should be provided in writing within ninety (90) days of the publication of this notice at the address listed below.

Information about the project can be found at http://eis.lonestarrail.com.

Submit comments to Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701 or salvador.deocampo@dot.gov.

For further information, please contact Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701, telephone (512) 536-5950, or salvador.deocampo@dot.gov; or Melissa Neeley, Director of Project Delivery Management, Texas Department of Transportation, Environmental Affairs Division, 118 E. Riverside Drive, Austin, TX, 78704, telephone (512) 416-3014, or Melissa.neeley@txdot.gov.

A notice of intent was published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8305). The current notice corrects a reference to the web site and provides additional information concerning the upcoming scoping meetings.

TRD-201406146
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 17, 2014

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Notice of Public Hearing on Proposed Amendments to 43 TAC §§21.602 - 21.604 and 21.606

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation (department) will conduct a public hearing to receive comments on proposed amendments to 43 TAC §§21.602 - 21.604 and 21.606, concerning Leasing of Highway Assets. The proposed amendments to §§21.602 - 21.604 and 21.606 were posted in the November 14, 2014, issue of the *Texas Register* (39 TexReg 8952).

The public hearing will be held at 10:00 a.m. on January 7, 2015, at the Austin District Headquarters, 7901 N. I-35, Building 7, District Hearing Room, Austin, Texas 78753 and will be conducted in accordance with the procedures specified in 43 TAC §1.5.

Any interested persons may appear and offer comments, either orally or in writing. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. The department will not respond to comments nor enter into any debate during the hearing. Questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record.

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 Office of General Counsel, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

The deadline for receipt of written comments was December 15, 2014. However, the department will accept written comments during the public hearing. The department will not accept written comments after December 15, 2014, by any means other than delivery during the public hearing. The comment period will close for all comments at the conclusion of the hearing.

In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-201406145
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 17, 2014

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Texas Water Development Board

Notice of Public Hearing

The Texas Water Development Board (TWDB) will conduct a public hearing in accordance with Texas Water Code §16.053(r) and 31 Texas Administrative Code §357.51(f) and §358.4(a) on Wednesday, January 28, 2015, to receive public comment on proposed amendments to the 2012 State Water Plan, Water for Texas 2012. The public hearing will begin at 9:30 a.m. in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

The Board seeks to receive public comment related to the incorporation of changes adopted by the Region H regional water planning group to

its adopted regional water plan on November 5, 2014. Specifically, Region H proposed to add new, recommended water management strategies to its adopted 2011 plan for brackish groundwater desalination and surface water treatment. On November 20, 2014, TWDB received the 2011 Region H regional water plan amendment materials and request for approval. These materials were reviewed by Board staff and the amendment to the regional water plan was approved by the Board on December 11, 2014.

Additionally, the Board seeks to receive public comment related to the incorporation of changes adopted by the Region L regional water planning group to its adopted regional water plan on November 6, 2014. Specifically, Region L proposed to add a new, recommended water management strategy to its adopted 2011 plan for seawater desalination. On November 24, 2014, TWDB received the 2011 Region L regional water plan amendment materials and request for approval. These materials were reviewed by Board staff and the amendment to the regional water plan was approved by the Board on December 11, 2014.

Interested persons are encouraged to attend the hearing to present comments concerning the proposed amendment. Those who cannot attend the hearing may provide written comments on or before January 28, 2015, to Mr. Les Trobman, General Counsel, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or by email to *rulescomments@twdb.texas.gov.* The TWDB will receive public comment on the proposed amendments until close of business at 5:00 p.m. on January 28, 2015. Copies of the proposed amendment are available for inspection during regular business hours at the Stephen F. Austin Building from the Water Use, Projections, and Planning Division, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701. If you want to view these documents, please call (512) 475-2057 for arrangements to view them. A copy of the proposed amendments will also be available on the Board's web site at *http://www.twdb.texas.gov/waterplanning/swp/2012/index.asp.*

TRD-201405965
Les Trobman
General Counsel
Texas Water Development Board
Filed: December 11, 2014

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Request for Applications for Agricultural Water Conservation Grants, Fiscal Year 2015

The Texas Water Development Board (TWDB) solicits a request for applications for the state Fiscal Year 2015 Agricultural Water Conservation Grants. The total amount of the grants to be awarded under this request for applications by the TWDB shall not exceed $1,490,000 from the Agricultural Water Conservation Fund. The rules governing the Agricultural Water Conservation Fund (31 Texas Administrative Code, Chapter 367) and application instructions are available upon request from TWDB.

Summary of the RFA

Solicitation Date (Opening): Date published in the *Texas Register*

Due Date (Closing): 12:00 p.m., Wednesday, March 11, 2015

Anticipated Award Date: June 2015

Estimated Total Funding: $1,490,000

Eligible applicants: Groundwater Conservation Districts

Contact: Cameron Turner, Agricultural Water Conservation Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, Phone: (512) 936-6090, E-mail: cameron.turner@twdb.texas.gov

Agricultural Water Conservation Grant Categories

Applications must be in response to the following category. Applications must be consistent with the format provided in the Agricultural Water Conservation Grant Application Instructions document. Please contact TWDB staff if you do not have a copy of this document or if you have any questions about the application process.

Agricultural Water Conservation Monitoring

Funding in this category is available *only* to confirmed groundwater conservation districts that have promulgated rules requiring metering of groundwater withdrawals. Funding shall only be used to offset not more than half the cost of each metering device (as set forth in Senate Bill 1 - General Appropriations Act, Rider 25, passed during the regular session of the 83rd Texas Legislature in 2013).

Applications must identify an irrigation conservation strategy from the most recent applicable regional and/or state water plan. Applicants must justify the funding amount requested by providing proof of the need for the number of meters. TWDB may prioritize funding based upon projects with the greatest needs (e.g. districts with the largest number of justifiable meters, recent increases in groundwater well drilling activities) or highest local cost-share match. Eligible expenses include up to 50 percent of the metering equipment costs. Following installation, the applicant must report water use data to TWDB annually for each piece of equipment installed for a minimum of five irrigation seasons. Applicants will be responsible for all other costs including, but not limited to, installation, maintenance, data collection, reporting services, and all other expenses for the duration of the contract. The annual data reports should include irrigated acreage, crop type, irrigation rate (inches per acre), total water use, county name, latitude/longitude coordinates (or state well grid location), and annual or effective rainfall totals (if available). Water savings estimates and an explanation of the water savings calculation methodology resulting from use of the equipment must be reported along with the annual water use data.

All TWDB contracts related to this item will include a provision stating that the district(s) shall maintain rules consistent with the legislative intent of Senate Bill 1, Rider 25 for the duration of the contract.

Grant Amount

Up to $1,490,000 authorized for Fiscal Year 2015 assistance for agricultural water conservation grants from the Agricultural Water Conservation Fund. TWDB will award funds through a statewide competitive grants process. Overhead is *not* an allowable expense category eligible for reimbursement through TWDB Agricultural Water Conservation Grant funding. TWDB staff evaluates all proposals based upon the specific criteria set forth in this solicitation and application instructions.

Description of Applicant Criteria

The applicable scope of work, schedule, and contract amounts will be negotiated after the TWDB selects the most qualified applicant(s) and/or the desired project(s) for funding. Failure to arrive at mutually agreeable terms of a contract with the most qualified applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with the next most qualified applicant. The TWDB reserves the right to reject parts of, any, or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding.

Application instructions available upon request from Cameron Turner, (512) 936-6090, cameron.turner@twdb.texas.gov, or online at http://www.twdb.texas.gov.

Deadline for Submission of Applications

Applicants must submit six double-sided, double-spaced copies on recycled paper and one digital copy of completed applications with the TWDB on or before 12:00 p.m. on Wednesday, March 11, 2015. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 610D, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

TRD-201406128
Les Trobman
General Counsel
Texas Water Development Board
Filed: December 11, 2014

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Texas Windstorm Insurance Association

Request for Qualifications

Purpose of Request for Qualifications

On or after December 26, 2014, the Texas Windstorm Insurance Association (TWIA) and Texas FAIR Plan Association will issue its Amended Request For Qualifications (the "RFQ") for a First Notice of Loss Call Center to evaluate vendors to provide FNOL services to the Association. As described in the RFQ, an Approved Call Center will provide staff to handle the reporting of claims, 24/7/52, on an around-the-clock basis to TWIA and TFPA from their policyholders, agents, as well as the customer care of those policyholders.

Application Form

The RFQ and application forms will be published on the TWIA website on or about December 26, 2014, at: http://www.twia.org. Further information regarding the RFQ will be available on TWIA's website at this address.

Approval Process

Applications will be reviewed and evaluated by the Association on the basis of the criteria in the RFQ.

Rights and Obligations

TWIA is not responsible for any costs incurred in responding to this RFQ, and reserves the right to accept or reject any or all applications. TWIA is under no obligation to award a contract on the basis of the RFQ. TWIA reserves the right to issue other RFQs for a First Notice of Loss Call Center vendor, or for any other services in connection with claims handling, at the Association's discretion.

Contact Information

Any requests for information should be directed to:

Texas Windstorm Insurance Association

Attention: Ryan Layne

P.O. Box 99090

Austin, Texas 78709-9090

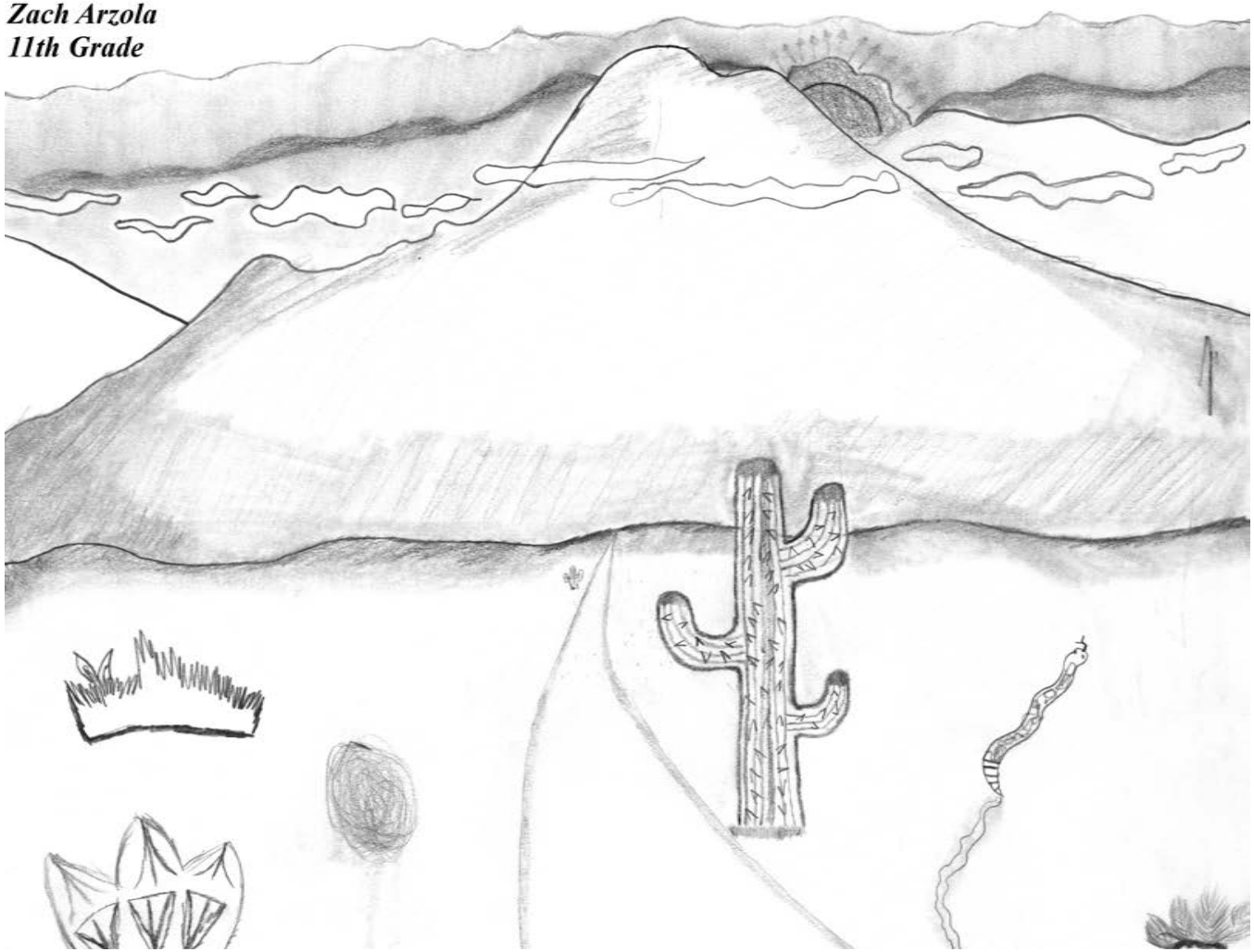
(512) 101-4011

rfp@twia.org

TRD-201406148
Amy Berg-Ferguson
Executive Assistant
Texas Windstorm Insurance Association
Filed: December 17, 2014

♦ ♦ ♦

Zach Arzola
11th Grade



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 39 (2014) is cited as follows: 39 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 "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 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)***

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Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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