TEXAS REGISTER

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

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

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

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

IN THIS ISSUE

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-0026-KP

Requestor:

The Honorable Barbara Cargill

Chair, State Board of Education

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Authority of the State Board of Education to promulgate rules governing the process used by school districts and charter schools in selecting instructional materials (RQ-0026-KP)

Briefs requested by July 9, 2015

RQ-0027-KP

Requestor:

The Honorable Troy Fraser

Chair, Committee on Natural Resources and Economic Development

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Applicability of competitive bidding provisions in chapter 252 of the Local Government Code to a municipality's purchase of land and anticipated improvements (RQ-0027-KP)

Briefs requested by July 10, 2015

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

TRD-201502185
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 10, 2015

♦ ♦ ♦

Opinions

Opinion No. KP-0022

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)

S U M M A R Y

The Public Funds Investment Act does not prohibit an investment pool from creating and investing in a subsidiary, provided that (1) the investment pool's governing body determines that doing so is reasonably necessary to fulfill the investment pool's statutory functions and duties; and (2) the governing bodies of the investing entities, the investment pool, and the subsidiary otherwise comply with the Act's regulations and standards. A court could conclude that a subsidiary that is wholly-owned and controlled by an investment pool is itself an investment pool with the authority to invest public funds if ultimately it acts on behalf of two or more local governments, state agencies, or a combination of those entities.

Subsection 2256.016(g)(2) of the Act requires the board of an investment pool subject to its terms to be composed of both pool participants and independent qualified advisors, although the board is not required to be composed of an equal number of such persons. The Act does not prohibit the members of a board of an investment pool from serving as the board of a wholly-owned subsidiary.

The Act does not prohibit an investment pool from being formed under the laws of another state provided that state's laws are consistent with the Act and other Texas law applicable to an entity doing business in Texas.

Opinion No. KP-0023

The Honorable René M. Peña

81st Judicial District Attorney

1327 Third Street

Floresville, Texas 78114

Re: Whether a member of a board of trustees of an independent school district may also serve as a trustee of a county hospital board with overlapping jurisdiction (RQ-1234-GA)

S U M M A R Y

A person may not serve as a member of the board of trustees of the La Vernia Independent School District while simultaneously serving as a member of the board of the Wilson County Memorial Hospital District.

Opinion No. KP-0024

The Honorable Kevin P. Eltife

Chair, Committee on Business and Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Construction of section 1304.1581 of the Occupations Code, governing cancellations and refunds of service contracts (RQ-0001-KP)

S U M M A R Y

A court would likely conclude that section 1304.1581 of the Occupations Code does not authorize a service provider to issue a service contract refund that does not deduct the amount of any claims previously paid under the contract.

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

TRD-201502174
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 9, 2015

♦ ♦ ♦

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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.51

The Texas State Library and Archives Commission proposes to amend 13 TAC §2.51, regarding public records fees. The proposed amendment updates and clarifies existing language, removes the requirements that copies of materials be provided at no charge to identified entities, and establishes the structure for charges associated with the reproduction of large format archival materials.

Jelain Chubb, Director, Archives and Information Services Division, has determined there are the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Chubb has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of the amended section will be the opportunity to acquire copies of large format archival materials. There will not be an effect on small businesses. The only economic cost to individuals is the purchase of the requested copies.

Comments on the proposal may be submitted in writing to Diana Houston, Archives and Information Services Division, 1201 Brazos Street, Austin, Texas 78701 or *dhouston@tsl.texas.gov.* Comments may also be faxed to (512) 463-5430.

The amendment is proposed under the Texas Government Code, §552.262, and in accordance with 1 TAC §§70.1 - 70.12, which addresses the established cost of copies of public information, as well as the assessment of fees at actual cost.

The proposed amendment implements the Texas Government Code, §552.262.

§2.51. Public Record Fees.

(a) Charges for Public Records and Library Resource Materials. The Texas State Library will charge for reproductions of materials from its collections of library and archival materials that are maintained for public reference, for copies of public records of other agencies stored in the State Records Center, and for records of the commission in accordance with the Office of the Attorney General's [~~Texas Building and Procurement Commission's~~] rules concerning Cost of Copies of Public Information (1 TAC §§70.1 - 70.12) [~~(1 TAC §§111.61 - 111.71)~~] and as follows:

[~~(1) Local and toll-free fax is $.10 per page.~~]

[~~(2) Long distance fax, same area code, is $.50 per page.~~]

[~~(3) Long distance fax, different area code, is $1.00 per page.~~]

(1) [~~(4)~~] Certification of copies is $1.00 per instrument, which may include several pages with certification required only once.

(2) [~~(5)~~] If a customer requests items [~~reports~~] printed from digital information resources, the items [~~reports~~] will be billed at the page rate for paper copies.

(3) If a customer requests printing of large format materials held in the Texas State Archives, the charge will be assessed at an established per inch rate. The rate will be reviewed on an annual basis. If material must first be digitized, an additional fee of $5.50 will be charged.

[~~(6) The library will rent 4 x 5 inch transparencies for a 90 day period for the purpose of publication or color reproduction. The library will charge $30.00 per transparency.~~]

(4) [~~(7)~~] Supplies, postage, shipping, and other expenses are billed at actual costs.

(5) [~~(8)~~] The library will arrange for the duplication of photographic images in its archival collections for $10.00 per image plus commercial photo reproduction costs and postage.

(6) [~~(9)~~] A customer will be billed for third party access or use charges. Examples of services where use charges might occur include:

(A) Digital information resources available through online services; [~~services, bulletin boards, or databases, etc.;~~]

(B) Document delivery or interlibrary loan services for providing materials or copies.

(7) [~~(10)~~] The minimum charge for any service requiring preparation of an invoice is $1.00.

(b) Reproduction of Copyrighted Materials. Reproduction of copyrighted materials will be carried out in conformance with the copyright law of the United States (Title 17, United States Code).

(c) Labor Charges. The library will not charge for labor or overhead to retrieve materials or records or research questions. If computer programming is necessary, the library will charge for labor to retrieve digital information in response to an information request.

[~~(d) Copies for Official Business. There will be no charge for one copy of any document or public record requested by officers or employees of the state in the performance of their duties. There will be no charge for officers or employees of local governments or public~~

~~or private libraries or schools of library and information science in the performance of their duties.]~~

~~[(e) Charges to Blind and Physically Disabled Persons. There will be no charge for copying and mailing materials to registered customers of the Talking Book Program.]~~

(d) [~~(f)~~] Records of Third Parties. The library will not provide copies of or access to the records of other agencies housed in the State Records Center without written permission of the agency.

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 June 2, 2015.

TRD-201502033
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 463-5459

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §1.16, concerning Contracts, Including Grants, for Materials and/or Services. The proposed amendments add subsections (j) and (k) concerning certain contracts that exceed $1,000,000. Such proposed section is consistent with Texas Government Code Chapter 2261, State Contracting Standards and Oversight, Subchapter A, General Provisions.

Mr. William Franz, General Counsel, 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 government as a result of enforcing or administering the rule.

Mr. Franz has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be compliance with the provisions of the aforementioned Chapter 2261. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to William Franz, General Counsel, P.O. Box 12788, Austin, Texas 78711, (512) 427-6166, *william.franz@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, Chapter 2261, Subchapter A, General Provisions.

The amendments affect Texas Government Code, Chapter 2261.

§1.16. Contracts, Including Grants, for Materials and/or Services.

(a) - (i) (No change.)

(j) For each contract for the purchase of goods or services that has a value exceeding $1 million:

(1) there must be contract reporting requirements that provide information on the following:

(A) compliance with financial provisions and delivery schedules under the contract;

(B) corrective action plans required under the contract and the status of any active corrective action plan; and

(C) any liquidated damages assessed or collected under the contract.

(2) Verification is required of:

(A) the accuracy of any information reported under paragraph (1) of this subsection that is based on information provided by a contractor; and

(B) the delivery time of goods or services scheduled for delivery under the contract.

(3) Any such contract for the purchase of goods or services that has a value exceeding $1 million may be entered into only if the contract is approved and signed by the Commissioner, to whom the Board hereby delegates such approval and signature authority. In exercising such approval authority, the Commissioner shall use the approval process established in subsection (a) of this section.

(4) For purposes of this subsection, "contract" includes a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

(k) For each contract for the purchase of goods or services that has a value exceeding $5 million, the contract management office or procurement director must:

(1) verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and

(2) submit to the Board information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

(3) For purposes of this subsection, "contract" includes a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

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 June 5, 2015.

TRD-201502117
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1058

(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 Education Agency or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Education Agency proposes the repeal of §102.1058, concerning the Technology-Based Supplemental Instruction Pilot Program. The section establishes a pilot program to provide technology-based supplemental instruction to students in certain school districts. The proposed repeal is necessary because of the expiration of the rule's authorizing statute, the Texas Education Code (TEC), §29.919.

The TEC, §29.919, authorized the commissioner of education to adopt rules to implement the technology-based supplemental instruction pilot program to provide grant funding for rural school districts. The commissioner exercised rulemaking authority to adopt 19 TAC §102.1058, Technology-Based Supplemental Instruction Pilot Program, effective May 5, 2010.

The TEC, §29.919, specified an expiration date of September 1, 2011, for the authorization of the pilot program.

The proposed repeal of 19 TAC §102.1058 would repeal a section for which statutory authority has expired.

The proposed repeal would have no procedural or reporting implications. The proposed repeal would have no locally maintained paperwork requirements.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the repeal is in effect there will be no additional costs for state or local government as a result of enforcing or administering the repeal.

Ms. Martinez has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to reflect statutory changes and remove obsolete provisions from rule. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

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 begins June 19, 2015, and ends July 20, 2015. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 19, 2015.

The repeal is proposed under the Texas Education Code (TEC), §29.919, which required the commissioner to adopt rules necessary to implement the Technology-Based Supplemental Instruction Pilot Program. The statute expired effective September 1, 2011.

The repeal implements the TEC, §29.919.

§102.1058. Technology-Based Supplemental Instruction Pilot Program.

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 June 19, 2015.

TRD-201502052
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes amendments to §102.1, concerning the Board's fee schedule. Some of the amendments are proposed in order to comply with Senate Bill 195 that is being considered during this 84th Legislative Session. Other amendments conform the fee schedule to existing statutory fee requirements or reflect fee reductions that the agency is able to absorb.

Nycia Deal, Interim Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for local government as a result of enforcing or administering the amendments to the rule. Ms. Deal has determined that the fiscal implications for state government are no more than the changes to the relevant fees listed in the rule.

Ms. Deal has also determined that for the first five-year period the proposed rule is in effect, the public benefits anticipated as a result of administering this section will be to ensure that the Board is compliant with its statutory fee-related obligations and to provide funding for the administrative functions of the Board. Ms. Deal has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses who are required to comply with the rule is no more than the relevant fees listed in the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed rule may be submitted to Simone Salloum, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

These amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. These amendments are also proposed under Texas Occupations Code §§101.307, 254.004(b) and (c), 257.002(d-1), Texas Government Code §2054.252(e), and Texas Health and Safety Code §467.0041, which give the Board authority to establish and charge fees. No other statutes, articles, or codes are affected by the rule.

§102.1. Fee Schedule.

The Board has established the following reasonable and necessary fees for the administration of its functions.
Figure: 22 TAC §102.1

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

Filed with the Office of the Secretary of State on June 3, 2015.

TRD-201502044
Nycia Deal
Interim Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 475-0977

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.22

The Texas State Board of Examiners of Psychologists proposes new §461.22, Agency Contracts and Purchasing. The proposed new rule will ensure compliance with Texas Government Code Ann. §2155.076,which requires the Board to adopt rules consistent with the Comptroller of Public Accounts relating to protest procedures for resolving vendor protests; §2156.005, which requires the Board to adopt rules consistent with the Comptroller of Public Accounts relating to bid opening and tabulation; §2260.052, which requires the Board to adopt rules relating to the negotiation and mediation of certain contract disputes; and §2261.202, which requires the Board to adopt rules relating to the assignment of contract monitoring responsibilities.

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, Texas 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.

§461.22. Agency Contracts and Purchasing

(a) In accordance with Tex. Gov't Code Ann. §2155.076, the Board adopts by reference the rules of the Comptroller of Public Accounts regarding purchasing protest procedures set forth in 34 Tex. Admin. Code §20.384. All vendor protests under this rule must be submitted to the Board's Chief Financial Officer, who shall initiate a review of the protest. Any appeal to a determination of a protest by the Chief Financial Officer shall be to the Executive Director, who may elect to submit the appeal to the Board for final determination. The Board shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the Board's retention schedule.

(b) In accordance with Tex. Gov't Code Ann. §2156.005, the Board adopts by reference the rules of the Comptroller of Public Accounts regarding bid opening and tabulation set forth in 34 Tex. Admin. Code §20.35.

(c) In accordance with Tex. Gov't Code Ann. §2260.052, the Board adopts by reference the rules of the Office of the Attorney General in 1 Tex. Admin. Code Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

(d) In accordance with Tex. Gov't Code Ann. §2261.202, the Executive Director shall be responsible for monitoring agency contracts and for monitoring agency compliance with all applicable laws governing agency contracting. The Executive Director may delegate those duties necessary to carry out this responsibility to other agency staff who report directly to 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 June 4, 2015.

TRD-201502055
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.8

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.8, Licensed Psychological Associate. The proposed amendment will expand licensure opportunities

by allowing applicants who possess a doctoral degree that is primarily psychological in nature, but who do not also have a master's degree, the ability to apply for licensure as a psychological associate. The current rule does not permit an individual with a doctoral degree that is primarily psychological in nature, to apply for LPA licensure unless that individual also holds a master's degree.

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, Texas 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.

§463.8. Licensed Psychological Associate.

(a) Application Requirements. A completed application for licensure as a psychological associate includes, in addition to the requirements set forth in §463.5 of this title (relating to Application File Requirements), documentation of 450 hours of practicum internship, or experience in psychology, in not more than two placements, supervised by a licensed psychologist.

(b) Qualifications. A [~~subdoctoral~~] candidate for licensure as a psychological associate shall meet the qualifications and requirements of candidates at the doctoral level as stated in §501.255(a)(2) - (9) of the Act.

(c) Educational Requirements. The Board requires a doctoral degree or master's degree which is primarily psychological in nature. A degree under this subsection must consist of at least 42 semester credit hours for subdoctoral licensure. Of these 42 hours, at least 27 graduate level semester credit hours (exclusive of practicum) must have been in psychology. Six semester credit hours of thesis credit in a department of psychology may be counted toward these 27 semester credit hours. Four hundred and fifty clock hours of practicum, internship, or experience in psychology, in not more than two placements, supervised by a licensed psychologist, must be completed before the written exam may be taken. No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered for psychological associate licensure. Applicants who have a master's degree in psychology conferred from a psychology program in a regionally accredited educational institution, and who have not satisfied the Board's requirements, will be given an opportunity to satisfy the current requirements of the Board. Requirements include:

(1) enrollment in a regionally accredited college or university in a formal master's or doctoral degree program in psychology;

(2) completion of a maximum of an additional 12 semester hours of course work to satisfy the Board's requirement of 42;

(3) submission of a letter from the official in charge of the psychology program offering the additional course work stating that the applicant's graduate degree in psychology, with this additional prescribed course work, is equivalent to a 42 hour master's degree in psychology from that program; and

(4) submission of a transcript from the educational institution.

(d) Coursework. The application for licensure as a psychological associate shall include course titles and the names of instructors. If questions exist as to the content of course work, the Board may require the applicant to furnish a catalogue of the university or college where the courses were taken and the addresses of instructors.

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 June 4, 2015.

TRD-201502056
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 305-7700

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22 TAC §463.17

The Texas State Board of Examiners of Psychologists proposes new §463.17, Rescheduling of Examination Due to Religious Holy Day. The proposed new rule will ensure compliance with Texas Occupations Code Ann. §54.002, which requires the Board to adopt rules relating to the provision of alternate examination dates for applicants wishing to observe a religious holy day.

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, Texas 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.

§463.17. Rescheduling of Examination Due to Religious Holy Day.

(a) Applicants wishing to observe a religious holy day on which their religious beliefs prevent them from taking an examination scheduled by the Board on that religious holy day will be allowed to take the examination on an alternate date.

(b) Applicants wishing to take an examination scheduled on a religious holy day on an alternate date must submit a written request to take the examination on an alternate date and state the religious holy day they wish to observe. Applicants must submit their written request prior to being scheduled for an examination.

(c) The Board may extend the time period for completing Board examinations set forth in Board rule §463.19 of this title (relating to Time Limit on Examination Failures and Passing Scores), as needed when scheduling an alternate examination date.

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

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TRD-201502057
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.6

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.6, Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles. The proposed amendment is being offered to recognize expanded criteria for use of specialty titles and to permit qualified licensees to inform the public of their specialization. With the advent of two-year formal postdoctoral fellowships, psychologists are now able to obtain specialty training after obtaining their doctoral degree.

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, Texas 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.

§465.6. Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles.

(a) Listings.

(1) Licensees providing supervision and any individuals practicing under that supervision are responsible for ensuring that all materials relating to the practice of psychology upon which the supervisee's name or signature appears must indicate the supervisory capacity of the supervisee and the name of the licensee providing the supervision.

(2) Supervisory capacity must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(3) Only licensed psychologists may be listed in telephone directories under the title of "Psychologists."

(b) Public Statements and Advertisements.

(1) Licensees shall not authorize, use or make any public statements and advertisements that are false, deceptive, misleading or fraudulent, either because of what they state, convey or suggest or because of what they omit concerning the practice of psychology or their own training, experience or competence; their academic degrees; their credentials; their institutional or association affiliations; publications or research.

(2) Licensees who learn of false or deceptive statements about their practice of psychology or their status as providers of psychological services make reasonable efforts to correct such statements.

(c) Solicitation of Testimonials and/or Patients.

(1) Licensees do not solicit testimonials from current therapy clients or patients or from other persons who are vulnerable to undue influence.

(2) Licensees do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential therapy patients or clients.

(d) Specialty Titles. A psychologist may use a specialty title only when one of the following criteria have been met:

(1) Doctorate in the area of specialization;

(2) Retraining under the American Psychological Association retraining guidelines of 1977 in the area of specialization;

(3) Full-time supervised two-year postdoctoral fellowship in the area of specialization;

(4) [~~(3)~~] Documentation that the title has been used for five years and documentation of academic coursework and relevant applied experience, if an individual was matriculated in a doctoral program in psychology in 1977 or before;

(5) [~~(4)~~] Certification or approval or specialist status has been granted by a professional, refereed board, provided that the li-

censee indicates the name of the board which granted the title and that the individual's status with the specialty board is current and in good standing. Use of the term "Board Certified" or "Board Approved" or any similar words or phrases calculated to convey the same meaning shall constitute misleading or deceptive advertising, unless the licensee discloses the complete name of the specialty board that conferred the aforementioned specialty title, certification, approval, or specialist 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.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §465.7

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.7, Display of License/Renewal Permit. The proposed amendment is necessary to decrease the potential for misuse of renewal permits by non-licensees.

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, Texas 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.

§465.7. Display of License/Renewal Permit.

Licensees must display the original license or an official duplicate issued by the Board and the current renewal permit in a conspicuous place in the principal office where the licensee practices. No unauthorized reproduction may be substituted or displayed. Licensees who provide psychological services through the internet or other remote or electronic means, must provide written notification of their license number and instructions on how to verify the status of a license when obtaining informed consent [~~shall display an image of their current license/renewal permit in a prominent and easily accessible location on their website~~].

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

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Darrel D. Spinks
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts proposes an amendment to §3.334, concerning local sales and use taxes. This section is being amended to make nonsubstantive changes to definitions and to clarify longstanding comptroller practice regarding a seller's tax collection responsibilities when the seller is not engaged in business in a local jurisdiction.

The definition of the term "Comptroller's website" in subsection (a)(4) is amended to update the agency web address which was changed based on the Internet and Email Domain Name Management Policy from the Texas Department of Information Resources.

The definition of "place of business" in subsection (a)(14) is amended to clarify that the term "contractors" within that definition refers to a natural person who is contracted to perform work or services for another. As used in this subsection, the term does not have the meaning assigned by §3.291 of this title (relating to Contractors). The definition is also amended to change the term "individual persons" to "natural persons" in order to clarify that the term refers to single persons and does not refer to entities recognized as having legal rights as persons.

Subsection (e) is amended to correct the subsection cited in a cross-reference to the term "place of business." The citation is changed from subsection (a)(13) to subsection (a)(14).

Subsection (g) is amended to clarify a seller's local sales tax collection responsibilities. New paragraph (3) is added to specify that a seller is only required to collect local sales or use taxes imposed by a local taxing jurisdiction in which the seller is engaged in business. Existing paragraphs (3) and (4) are renumbered as paragraphs (4) and (5) respectively.

Subsection (h)(1) is also amended to clarify that a seller must only collect local sales taxes for those local taxing jurisdictions in which the seller is engaged in business.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has 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 by clarifying comptroller policy regarding sellers' tax collection responsibilities for local sales and use taxes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, Chapters 321 (Municipal Sales and Use Tax Act), 322 (Sales and Use tax for Special Purpose Taxing Authorities), and 323 (County Sales and Use Tax Act).

§3.334. Local Sales and Use Taxes.

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

(1) Cable system--The system through which a cable service provider delivers cable television or bundled cable service, as those terms are defined in §3.313 of this title (relating to Cable Television Service and Bundled Cable Service).

(2) City--An incorporated city, municipality, town, or village.

(3) City sales and use tax--The tax authorized under Tax Code, §321.101(a), including the additional municipal sales and use tax authorized under Tax Code, §321.101(b), the municipal sales and use tax for street maintenance authorized under Tax Code, §327.003, the Type A Development Corporation sales and use tax authorized under Local Government Code, §504.251, the Type B Development Corporation sales and use tax authorized under Local Government Code, §505.251, a sports and community venue project sales and use tax adopted by a city under Local Government Code, §334.081, and a municipal development corporation sales and use tax adopted by a city under Local Government Code, §379A.081. The term does not include the fire control, prevention, and emergency medical services district sales and use tax authorized under Tax Code, §321.106, or the municipal crime control and prevention district sales and use tax authorized under Tax Code, §321.108.

(4) Comptroller's website--The agency's website concerning local taxes located at: http://comptroller.texas.gov/taxinfo/local/ [~~http://www.window.state.tx.us/taxinfo/local/index.html~~].

(5) County sales and use tax--The tax authorized under Tax Code, §323.101, including a sports and community venue project sales and use tax adopted by a county under Local Government Code, §334.081. The term does not include the county health services sales and use tax authorized under Tax Code, §324.021, the county landfill and criminal detention center sales and use tax authorized under Tax Code, §325.021, or the crime control and prevention district sales and use tax authorized under Tax Code, §323.105.

(6) Drop shipment--A transaction in which an order is received by a seller at one location, but the item purchased is shipped by the seller from another location, or is shipped by the seller's third-party supplier, directly to a location designated by the purchaser.

(7) Engaged in business--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

(8) Extraterritorial jurisdiction--An unincorporated area that is contiguous to the corporate boundaries of a city as defined in Local Government Code, §42.021

(9) Fulfill--To complete an order by transferring a taxable item directly to a purchaser at a Texas location, or to ship or deliver a taxable item to a location in Texas designated by the purchaser.

(10) Itinerant vendor--A person who travels to various locations for the purpose of receiving orders and making sales of taxable items and who does not operate a place of business. For example, a person who sells rugs from the back of a truck that the person drives to a different location each day is an itinerant vendor. A person who sells items through vending machines is also an itinerant vendor. A salesperson that operates out of an office, place of business, or other location that provides administrative support to the salesperson is not an itinerant vendor.

(11) Kiosk--A small stand-alone area or structure:

(A) that is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) that is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(12) Local taxes--Sales and use taxes imposed by any local taxing jurisdiction.

(13) Local taxing jurisdiction--Any of the following:

(A) a city that imposes sales and use tax as provided under paragraph (3) of this subsection;

(B) a county that imposes sales and use tax as provided under paragraph (5) of this subsection;

(C) a special purpose district created under the Special District Local Laws Code or other provisions of Texas law that is authorized to impose sales and use tax by the Tax Code or other provisions of Texas law and as governed by the provisions of Tax Code, Chapters 321 or 323 and other provisions of Texas law; or

(D) a transit authority that imposes sales and use tax as authorized by Transportation Code, Chapters, 451, 452, 453, 457, or 460 and governed by the provisions of Tax Code, Chapter, 322.

(14) Place of business - general definition--An established outlet, office, or location operated by a seller for the purpose of selling taxable items to those other than employees, independent contractors, and natural [~~individual~~] persons affiliated with the seller. Places of business include, but are not limited to, call centers, showrooms, and clearance centers. The term also includes any location operated by a seller at which the seller receives three or more orders for taxable items during a calendar year. For example, a home office at which

three or more items are sold through an online auction website is a place of business. Additional criteria for determining when a location is a place of business are provided in subsection (e) of this section for administrative offices; distribution centers, manufacturing plants, storage yards, warehouses and similar facilities; kiosks; and purchasing offices.

(15) Purchasing office--An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business.

(16) Seller--This term has the meaning given in §3.286 of this title and also refers to any agent or employee of the seller.

(17) Special purpose district--A local governmental entity authorized by the Texas legislature for a specific purpose, such as crime control, a local library, emergency services, county health services, or a county landfill and criminal detention center.

(18) Storage--This term has the meaning given in §3.346 of this title (relating to Use Tax).

(19) Temporary place of business--A location operated by a seller for a limited period of time for the purpose of selling and receiving orders for taxable items and where the seller has inventory available for immediate delivery to a purchaser. For example, a person who rents a booth at a weekend craft fair or art show to sell and take orders for jewelry, or a person who maintains a facility at a job site to rent tools and equipment to a contractor during the construction of real property, has established a temporary place of business.

(20) Transit authority--A metropolitan rapid transit authority (MTA), advanced transportation district (ATD), regional or subregional transportation authority (RTA), city transit department (CTD), county transit authority (CTA), regional mobility authority (RMA) or coordinated county transportation authority created under Transportation Code, Chapters 370, 451, 452, 453, 457, or 460.

(21) Traveling salesperson--A seller, or an agent or employee of a seller, who visits potential purchasers in person to solicit sales, and who does not carry inventory ready for immediate sale, but who may carry samples or perform demonstrations of items for sale.

(22) Two percent cap--A reference to the general rule that, except as otherwise provided by Texas law and as explained in this section, a seller cannot collect, and a purchaser is not obligated to pay, more than 2.0% of the sales price of a taxable item in total local sales and use taxes for all local taxing jurisdictions

(23) Use--This term has the meaning given in §3.346 of this title.

(24) Use tax--A tax imposed on the storage, use or other consumption of a taxable item in this state.

(b) Effect of other law.

(1) Tax Code, Title 2, Subtitles A (General Provisions) and B (Enforcement and Collection), Tax Code, Chapter 141 (Multistate Tax Compact) and Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) apply to transactions involving local taxes. Related sections of this title and comptroller rulings shall also apply with respect to local taxes. This includes authorities such as court cases and federal law that affect whether an item is taxable or is excluded or exempt from taxation.

(2) Permits, exemption certificates, and resale certificates required by Tax Code, Chapter 151, shall also satisfy the requirements for collecting and remitting local taxes, unless otherwise indicated by this section or other sections of this title. For example, see subsection (n) of this section concerning prior contract exemptions.

(3) Any provisions in this section or other sections of this title related to a seller's responsibilities for collecting and remitting local taxes to the comptroller shall also apply to a purchaser if the seller does not collect local taxes that are due. The comptroller may proceed against the seller or purchaser for the local tax owed by either.

(c) Tax rates. Except as otherwise provided by law, no local governmental entity may adopt or increase a sales and use tax if, as a result of the adoption or increase of the tax, the combined rate of all sales and use taxes imposed by local taxing jurisdictions having territory in the local governmental entity would exceed 2.0% at any location within the boundaries of the local governmental entity's jurisdiction. The following are the local tax rates that may be adopted.

(1) Cities. Cities may impose sales and use tax at a rate of up to 2.0%.

(2) Counties. Counties may impose sales and use tax at rates ranging from 0.5% to 1.5%.

(3) Special purpose districts. Special purpose districts may impose sales and use tax at rates ranging from 0.125% to 2.0%.

(4) Transit authorities. Transit authorities may impose sales and use tax at rates ranging from 0.25% to 1.0%.

(d) Jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements.

(1) Jurisdictional boundaries.

(A) City boundaries. City taxing jurisdictional boundaries cannot overlap one another and a city cannot impose a sales and use tax in an area that is already within the jurisdiction of another city.

(B) County boundaries. County tax applies to all locations within that county.

(C) Special purpose district and transit authority boundaries. Special purpose districts and transit authorities may cross or share boundaries with other local taxing jurisdictions and may encompass, in whole or in part, other local taxing jurisdictions, including cities and counties. A geographic location or address in this state may lie within the boundaries of more than one special purpose district or more than one transit authority.

(D) Extraterritorial jurisdictions. Except as otherwise provided by paragraph (3) of this subsection concerning strategic partnership agreements and subsection (l)(5) of this section concerning the City of El Paso and Fort Bliss, city sales and use tax does not apply to taxable sales that are consummated outside the boundaries of the city, including sales made in a city's extraterritorial jurisdiction. However, an extraterritorial jurisdiction may lie within the boundaries of a special purpose district, transit authority, county, or any combination of the three, and the sales and use taxes for those jurisdictions would apply to those sales.

(2) Combined areas. A combined area is an area where the boundaries of a city overlap the boundaries of one or more other local taxing jurisdictions as a result of an annexation of additional territory by the city, and where, as the result of the imposition of the city tax in the area in addition to the local taxes imposed by the existing taxing jurisdictions, the combined local tax rate would exceed 2.0%. The comptroller shall make accommodations to maintain a 2.0% rate in any combined area. Sellers engaged in transactions on which local sales or use taxes are due in a combined area, or persons who must self-accrue and remit tax directly to the comptroller, must use the combined area

local code when reporting the tax rather than the codes for the individual city, county, special purpose districts, or transit authorities that make up the combined area. The comptroller shall distribute the tax revenue generated in these combined areas to the local taxing jurisdictions located in the combined areas as provided in Tax Code, §321.102 or Health and Safety Code, §775.0754. Combined areas are identified on the comptroller's website.

(3) City tax imposed through strategic partnership agreements.

(A) The governing bodies of a district, as defined in Local Government Code, §43.0751, and a city may enter into a limited-purpose annexation agreement known as a strategic partnership agreement. Under this agreement, the city may impose sales and use tax within all or part of the boundaries of a district. Areas within a district that are annexed for this limited purpose are treated as though they are within the boundaries of the city for purposes of city sales and use tax.

(B) Counties, transit authorities, and special purpose districts may not enter into strategic partnership agreements. Sales and use taxes imposed by those taxing jurisdictions do not apply in the limited-purpose annexed area as part of a strategic partnership agreement between a city and an authorized district. However, a county, special purpose district, or transit authority sales and use tax, or any combination of these three types of taxes, may apply at locations included in a strategic partnership agreement between a city and an authorized district if the tax is imposed in that area by the applicable jurisdiction as allowed under its own controlling authorities.

(C) Prior to September 1, 2011, the term "district" was defined in Local Government Code, §43.0751 as a municipal utility district or a water control and improvement district. The definition was amended effective September 1, 2011, to mean a conservation and reclamation district operating under Water Code, Chapter 49.

(e) Place of business - special definitions. In addition to the general definition of the term "place of business" in subsection (a)(14)[~~(13)~~] of this section, the following rules apply.

(1) Administrative offices supporting traveling salespersons. Any outlet, office, or location operated by a seller that serves as a base of operations for a traveling salesperson or that provides administrative support to a traveling salesperson is a place of business.

(2) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller at which the seller receives three or more orders for taxable items during the calendar year is a place of business.

(B) If a salesperson who receives three or more orders for taxable items within a calendar year is assigned to work from, or to work at, a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the facility is a place of business.

(C) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller.

(3) Kiosks. A kiosk is not a place of business for the purpose of determining where a sale is consummated for local tax purposes. A seller who owns or operates a kiosk in Texas is, however, engaged in business in this state as provided in §3.286 of this title.

(4) Purchasing offices

(A) A purchasing office is not a place of business if the purchasing office exists solely to rebate a portion of the local sales and use tax imposed by Tax Code, Chapter 321 or 323 to a business with which it contracts; or if the purchasing office functions or exists to avoid the tax legally due under Tax Code, Chapter 321 or 323. A purchasing office does not exist solely to rebate a portion of the local sales and use tax or to avoid the tax legally due under Tax Code, Chapter 321 or 323 if the purchasing office provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services.

(B) When the comptroller determines that a purchasing office is not a place of business, the sale of any taxable item is deemed to be consummated at the place of business of the seller from whom the purchasing office purchased the taxable item for resale and local sales and use taxes are due according to the following rules.

(i) When taxable items are purchased from a Texas seller, local sales taxes are due based on the location of the seller's place of business where the sale is deemed to be consummated, as determined in accordance with subsection (h) of this section.

(ii) When the sale of a taxable item is deemed to be consummated at a location outside of this state, local use tax is due based on the location where the items are first stored, used or consumed by the entity that contracted with the purchasing office in accordance with subsection (i) of this section.

(C) In making a determination under subparagraph (A) of this paragraph, as to whether a purchasing office provides significant business services to the contracting business, the comptroller will look to the books and records of the purchasing office to determine whether the total value of the business services provided to the contracting business equals or exceeds the total value of processing invoices. If the total value of the business services provided, including logistics management, purchasing, inventory control, or other vital business services, is less than the total value of the service to process invoices, then the purchasing office will be presumed not to be a place of business of the seller.

(D) Dickinson Management District; purchasing office exclusion invalid. Special District Local Laws Code, §3853.202(d) is invalid to the extent that it attempts to exclude the Dickinson Management District from the application of Tax Code, §321.203(m), formerly Tax Code, §321.203(l). Any purchasing office operated within the Dickinson Management District is subject to this paragraph.

(f) Places of business and job sites crossed by local taxing jurisdiction boundaries.

(1) Places of business crossed by local taxing jurisdiction boundaries. If a place of business is crossed by one or more local taxing jurisdiction boundaries so that a portion of the place of business is located within a taxing jurisdiction and the remainder of the place of business lies outside of the taxing jurisdiction, tax is due to the local taxing jurisdictions in which the sales office is located. If there is no sales office, sales tax is due to the local taxing jurisdictions in which any cash registers are located.

(2) Job sites.

(A) Residential repair and remodeling; new construction of an improvement to realty. When a contractor is improving real property under a separated contract, and the job site is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on any separately stated charges for taxable items incorporated into the

real property must be allocated to the local taxing jurisdictions based on the total square footage of the real property improvement located within each jurisdiction, including the square footage of any standalone structures that are part of the construction, repair, or remodeling project. For more information about tax due on materials used at residential and new construction job sites, refer to §3.291 of this title (relating to Contractors).

(B) Nonresidential real property repair and improvement. When taxable services are performed to repair, remodel, or restore nonresidential real property, including a pipeline, transmission line, or parking lot, that is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on the taxable services, including materials and any other charges connected to the services performed, must be allocated among the local taxing jurisdictions based upon the total mileage or square footage, as appropriate, of the repair, remodeling, or restoration project located in each jurisdiction. For more information about tax due on materials used at nonresidential real property repair and remodeling job sites, refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(g) Sellers' and purchasers' responsibilities for collecting or accruing local taxes.

(1) Sale consummated in Texas; seller responsible for collecting local sales taxes and applicable local use taxes. When a sale of a taxable item is consummated at a location in Texas as provided by subsection (h) of this section, the seller must collect each local sales tax in effect at the location except as provided in paragraph (3) of this subsection. If the total rate of local sales tax due on the sale does not reach the two percent cap, and the seller ships or delivers the item into another local taxing jurisdiction in which the seller is engaged in business, then the seller is required to collect additional local use taxes due, if any, based on the location to which the item is shipped or delivered. For more information regarding local use taxes, refer to subsection (i) of this section.

(2) Out-of-state sale; seller engaged in business in Texas. A seller who is engaged in business in this state is required to collect and remit local use taxes due, if any, on orders of taxable items shipped or delivered at the direction of the purchaser into a local taxing jurisdiction in this state in which the seller is engaged in business.

(3) A seller is only required to collect local sales or use taxes for a local taxing jurisdiction in which the seller is engaged in business.

(4) [~~(3)~~] Purchaser responsible for accruing and remitting local taxes if seller fails to collect.

(A) If a seller does not collect the state sales tax, any applicable local sales taxes, or both on a sale of a taxable item that is consummated in Texas, then the purchaser is responsible for filing a return and paying the tax. The local sales taxes due are based on the location in this state where the sale is consummated as provided in subsection (h) of this section.

(B) A purchaser who buys an item for use in Texas from a seller who does not collect the state use tax, any applicable local use taxes, or both, is responsible for filing a return and paying the tax. The local use taxes due are based on the location where the item is first stored, used, or consumed by the purchaser.

(C) For more information about how to report and pay use tax directly to the comptroller, see §3.286 of this title.

(5) [~~(4)~~] Local tax is due on the sales price of a taxable item, as defined in Tax Code, §151.007, in the report period in which the taxable item is purchased or the period in which the taxable item is first stored, used, or otherwise consumed in a local taxing jurisdiction.

(h) Local sales tax. Determining the local taxing jurisdictions to which sales tax is due; consummation of sale.

(1) General rule. Except for the special rules applicable to direct payment permit purchases and certain taxable items as provided in subsections (j) and (k) of this section, each sale of a taxable item is consummated at the location indicated by the provisions of this subsection. Local sales taxes are due to each [~~must be collected for all~~] local taxing jurisdiction [~~jurisdictions~~] in effect at the location where the sale is consummated. A seller must collect local sales tax for each local taxing jurisdiction in which the seller is engaged in business. Local use tax may also be due if the total amount of local sales taxes due does not reach the two percent cap, and the item purchased is shipped or delivered to a location in one or more different local taxing jurisdictions, as provided in subsection (i) of this section.

(2) Multiple special purpose district taxes, multiple transit authority sales taxes, or a combination of the two may apply to a single transaction. If the sale of a taxable item is consummated at a location within the boundaries of multiple special purpose districts or transit authorities, local sales tax is owed to each of the jurisdictions in effect at that location. For example, a place of business located in the city of San Antonio is within the boundaries of both the San Antonio Advanced Transportation District and the San Antonio Metropolitan Transit Authority, and the seller is required to collect sales tax for both transit authorities. Similarly, a place of business in Flower Mound is located within the boundaries of two special purpose districts, the Flower Mound Crime Control District and the Flower Mound Fire Control District, and the seller is responsible for collecting sales tax for both special purpose districts.

(3) Consummation of sale. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have a place of business in Texas or multiple places of business in the state.

(A) Order placed in person at a seller's place of business in Texas. When a purchaser places an order for a taxable item in person at a seller's place of business in Texas, the sale of that item is consummated at that place of business, regardless of the location where the order is fulfilled, except in the limited circumstances described in subparagraph (F) of this paragraph, concerning qualifying economic development agreements.

(B) Order received at a place of business in Texas, fulfilled at a location that is not a place of business. When an order that is placed over the telephone, through the Internet, or by any means other than in person is received by the seller at a place of business in Texas, and the seller fulfills the order at a location that is not a place of business of the seller in Texas, such as a warehouse or distribution center, the sale is consummated at the place of business at which the order for the taxable item is received.

(C) Order fulfilled at a place of business in Texas. When an order is placed in person at a location that is not a place of business of the seller in this state, such as a kiosk, or when an order is placed over the telephone, through the Internet, or by any means other than in person, and the seller fulfills the order at a location that is a place of business in Texas, the sale is consummated at the place of business where the order is fulfilled.

(D) Order fulfilled within the state at a location that is not a place of business. When an order is received by a seller at any location other than a place of business of the seller in this state, and the seller fulfills the order at a location in Texas that is not a place of

business of the seller, then the sale is consummated at the location in Texas to which the order is shipped or delivered, or the location where it is transferred to the purchaser.

(E) Order received outside of the state, fulfilled outside of the state. When an order is received by a seller at a location outside of Texas, and the order is shipped or delivered into a local taxing jurisdiction from a location outside of the state, the sale is not consummated at a location in Texas. However, local use tax is due based upon the location in this state to which the item is shipped or delivered or at which possession of the item is taken by the purchaser as provided in subsection (i) of this section.

(F) Exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(c-4) - (c-5) or §323.203(c-4) - (c-5). This subparagraph is effective until September 1, 2024. If applicable, the local sales tax due on the sale of a taxable item is based on the location of the qualifying warehouse, which is a place of business of the seller, from which the item is shipped or delivered or at which the purchaser takes possession of the item.

(4) Orders received by traveling salespersons. Orders taken by traveling salespersons are received by the seller at the administrative office or other place of business from which the traveling salesperson operates, and such sales are consummated at the location indicated in paragraph (3) of this subsection. For example, if a traveling salesperson who operates out of a place of business of a seller in Texas takes an order for a taxable item, and the order is fulfilled at a location that is not a place of business of the seller in this state, the sale is consummated at the place of business from which the salesperson operates, in accordance with paragraph (3)(B) of this subsection. Similarly, if a traveling salesperson takes an order for a taxable item, and the order is fulfilled at a place of business of the seller in this state, the sale is consummated at the location of the place of business where the order is fulfilled, in accordance with paragraph (3)(C) of this subsection.

(5) Drop shipments.

(A) When an order for a taxable item is received at a seller's place of business in Texas, or by a traveling salesperson operating out of a place of business in this state, and the item is drop-shipped directly to the purchaser from a third-party supplier, the sale is consummated at, and local sales tax is due based upon, the location of the place of business where the order is received. When an order for a taxable item is received by a seller at one location, but shipped by the seller to the purchaser from a different location, the sale is consummated at, and local sales tax is due based upon, the location designated in paragraph (3) of this subsection. If the local sales taxes due based on the location of the seller's place of business at which the sale is consummated equal less than 2.0%, additional local use tax may be due based upon the location in this state to which the purchased item is shipped or delivered or at which possession of the item is taken by the purchaser as provided in subsection (i) of this section.

(B) When an order for a taxable item is received by the seller at a location outside of Texas, or by a traveling salesperson operating from a location outside of this state, and the item is drop-shipped directly to the purchaser from a third-party supplier, the item is subject to use tax. See subsection (i) of this section concerning use tax.

(6) Itinerant vendors; vending machines; temporary places of business.

(A) Itinerant vendors. Sales made by itinerant vendors are consummated at, and itinerant vendors must collect sales tax based upon, the location where the item is delivered or where the purchaser takes possession of the item. Itinerant vendors do not have any responsibility to collect use tax.

(B) Vending machines. Sales of taxable items made from a vending machine are consummated at the location of the vending machine. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service) for more information about vending machine sales.

(C) Temporary places of business.

(i) Item transferred to purchaser at time of sale. When a seller operates a temporary place of business, and items purchased are transferred to the purchasers at the time of sale, the sales are consummated at, and local sales tax is due based upon, the location of the temporary place of business.

(ii) Order accepted at temporary place of business prior to June 19, 2009. If a seller received an order at a temporary place of business prior to June 19, 2009, and the order was fulfilled at another place of business of the seller in this state, the sale was consummated at, and local sales taxes are due based upon, the location of the place of business where the order was fulfilled and not the temporary location where the order was received.

(iii) Order accepted at temporary place of business on or after June 19, 2009. When a seller receives an order at a temporary place of business and the order is fulfilled at another location, the sale is consummated at, and local sales taxes are due based upon, the location of the temporary place of business where the order was received.

(i) Use tax. The provisions addressing the imposition of state use tax in §3.346 of this title also apply to the imposition of local use tax. For example, consistent with §3.346(e) of this title, all taxable items that are shipped or delivered to a location in this state that is within the boundaries of a local taxing jurisdiction are presumed to have been purchased for use in that local taxing jurisdiction as well as presumed to have been purchased for use in the state.

(1) General rules.

(A) When local use taxes are due in addition to local sales taxes as provided by subsection (h) of this section, all applicable use taxes must be collected or accrued in the following order until the two percent cap is reached: city, county, special purpose district, and transit authority. If more than one special purpose district use tax is due, all such taxes are to be collected or accrued before any transit authority use tax is collected or accrued. See subparagraphs (D) and (E) of this paragraph.

(B) If a local use tax cannot be collected or accrued at its full rate without exceeding the two percent cap, the seller cannot collect it, or any portion of it, and the purchaser is not responsible for accruing it.

(C) If a seller collects a local sales tax on an item, or a purchaser accrues a local sales tax on an item, a use tax for the same type of jurisdiction is not due on the same item. For example, once a city sales tax has been collected or accrued for an item, no use tax is due to that same or a different city on that item, but use tax may be due to a county, special purpose district, or transit authority. Similarly, if one or more special purpose district sales taxes have been collected or accrued for an item, no special purpose district use tax is due on that item, and if one or more transit authority sales taxes have been collected or accrued for an item, no transit authority use tax is due on that item.

(D) Collection or accrual of use tax for multiple special purpose districts. If more than one special purpose district use tax is in effect at the location where use of an item occurs, the special purpose

district taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all special purpose district taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the district with the earliest effective date would exceed the two percent cap, the tax for that district is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (C) of this paragraph, whether use tax is due for the district that next became effective.

(i) If the competing special purpose districts became effective on the same date, the special purpose district taxes are due in the order of the earliest date for which the election in which the district residents authorized the imposition of sales and use tax by the district was held.

(ii) If the elections to impose the local taxes were held on the same date, the special purpose district taxes are due in the order of the earliest date for which the enabling legislation under which each district was created became effective.

(E) Collection or accrual of use tax for multiple transit authorities. If more than one transit authority use tax is in effect at the location where use of an item occurs, and the two percent cap has not been met, the transit authority taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all transit authority taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the authority with the earliest effective date would exceed the two percent cap, the tax for that authority is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (D) of this paragraph, whether use tax is due for the authority that next became effective.

(i) If the competing transit authorities became effective on the same date, the transit authority taxes are due in the order of the earliest date for which the election in which the authority residents authorized the imposition of sales and use tax by the authority was held.

(ii) If the elections to impose local taxes were held on the same date, the transit authority use taxes are due in the order of the earliest date for which the enabling legislation under which each authority was created became effective.

(2) General use tax rules applied to specific situations. The following fact patterns explain how local use tax is to be collected or accrued and remitted to the comptroller based on, and subject to, the general rules in paragraph (1) of this subsection.

(A) Sale consummated outside the state, item delivered from outside the state or from a location in Texas that is not operated by the seller - local use tax due. If a sale is consummated outside of this state according to the provisions of subsection (h) of this section, and the item purchased is either shipped or delivered to a location in this state as designated by the purchaser from a location outside of the state, or if the order is drop shipped directly to the purchaser from a third-party supplier, local use tax is owed based upon the location in this state to which the order is shipped or delivered. If the seller is engaged in business in the local taxing jurisdiction into which the order is shipped or delivered, the seller is responsible for collecting the local use tax due on the sale. If the seller does not collect the local use taxes due on the sale, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller according to the provisions in paragraph (1) of this subsection. For example, if an order for a taxable item is received by a seller at a location outside of Texas, and the order is shipped to the purchaser from a location outside of the state, local use tax is due based upon the location to which the order is shipped or delivered.

(B) Sale consummated in Texas outside a local taxing jurisdiction, item delivered into one or more local taxing jurisdictions - local use tax due. If a sale is consummated at a location in Texas that is outside of the boundaries of any local taxing jurisdiction according to the provisions of subsection (h) of this section, and the order is shipped or delivered to the purchaser at a location in this state that is within the boundaries of one or more local taxing jurisdictions, local use tax is due based on the location to which the items are shipped or delivered. If the seller is engaged in business in the local taxing jurisdiction where the items are shipped or delivered, the seller is responsible for collecting the local use taxes due. If the seller fails to collect any local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller. For example, if a seller uses its own delivery vehicle to transport a taxable item from a place of business that is outside the boundaries of a local taxing jurisdiction to a delivery location designated by a purchaser that is inside the boundaries of a local taxing jurisdiction, the seller is responsible for collecting the local use taxes due based on the location to which the items are delivered.

(C) Sale consummated in any local taxing jurisdictions imposing less than 2.0% in total local taxes - local sales taxes, and possibly use taxes, due. If a sale is consummated at a location in Texas where the total local sales tax rate imposed by the taxing jurisdictions in effect at that location does not equal or exceed 2.0% according to the provisions of subsection (h) of this section, and the item is shipped or delivered to the purchaser at a location in this state that is inside the boundaries of a different local taxing jurisdiction, additional local use tax may be due based on the location to which the order is shipped or delivered, subject to the two percent cap. If the seller is engaged in business in the local taxing jurisdiction into which the order is shipped or delivered, the seller is responsible for collecting any additional local use taxes due. See subsection (g) of this section. If the seller fails to collect the additional local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller. For example, if an order is received in person at a place of business of the seller, such that the sale is consummated at the location where the order is received as provided under subsection (h)(3)(A) of this section, and the local sales tax due on the sale does not meet the two percent cap, additional local use taxes may be due based on the location to which the order is shipped or delivered, subject to the provisions in paragraph (1) of this subsection. Or, if a purchaser places an order for a taxable item at a seller's place of business in Texas, and the seller ships or delivers the item from an out-of-state location to a location in this state as designated by the purchaser, local sales tax is due based upon the location of the place of business where the order is received. If the local sales tax due on the item does not meet the two percent cap, use tax, subject to the provisions in paragraph (1) of this subsection, is due based upon the location where the items are shipped or delivered.

(j) Items purchased under a direct payment permit.

(1) When taxable items are purchased under a direct payment permit, local use tax is due based upon the location where the permit holder first stores the taxable items, except that if the taxable items are not stored, then local use tax is due based upon the location where the taxable items are first used or otherwise consumed by the permit holder.

(2) If, in a local taxing jurisdiction, storage facilities contain taxable items purchased under a direct payment exemption certificate and at the time of storage it is not known whether the taxable items will be used in Texas, then the taxpayer may elect to report the use tax either when the taxable items are first stored in Texas or are first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. See also §3.288(i) of this title (relating to Direct Payment Procedures and Qualifications) and §3.346(g) of this title.

(3) If local use tax is paid on stored items that are subsequently removed from Texas before they are used, the tax may be recovered in accordance with the refund and credit provisions of §3.325 of this title (relating to Refunds and Payments Under Protest) and §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(k) Special rules for certain taxable goods and services. Sales of the following taxable goods and services are consummated at, and local tax is due based upon, the location indicated in this subsection.

(1) Amusement services. Local tax is due based upon the location where the performance or event occurs. For more information on amusement services, refer to §3.298 of this title (relating to Amusement Services).

(2) Cable services. When a service provider uses a cable system to provide cable television or bundled cable services to customers, local tax is due as provided for in §3.313 of this title. When a service provider uses a satellite system to provide cable services to customers, no local tax is due on the service in accordance with the Telecommunications Act of 1996, §602.

(3) Florists. Local sales tax is due on all taxable items sold by a florist based upon the location where the order is received, regardless of where or by whom delivery is made. Local use tax is not due on deliveries of taxable items sold by florists. For example, if the place of business of the florist where an order is taken is not within the boundaries of any local taxing jurisdiction, no local sales tax is due on the item and no local use tax is due regardless of the location of delivery. If a Texas florist delivers an order in a local taxing jurisdiction at the instruction of an unrelated florist, and if the unrelated florist did not take the order within the boundaries of a local taxing jurisdiction, local use tax is not due on the delivery. For more information about florists' sales and use tax obligations, refer to §3.307 of this title (relating to Florists).

(4) Landline telecommunications services. Local taxes due on landline telecommunications services are based upon the location of the device from which the call or other transmission originates. If the seller cannot determine where the call or transmission originates, local taxes due are based on the address to which the service is billed. For more information, refer to §3.344 of this title (relating to Telecommunications Services).

(5) Mobile telecommunications services. Local taxes due on mobile telecommunications services are based upon the location of the customer's place of primary use as defined in §3.344(a)(8) of this title, and local taxes are to be collected as indicated in §3.344(h) of this title.

(6) Motor vehicle parking and storage. Local taxes are due based on the location of the space or facility where the vehicle is parked. For more information, refer to §3.315 of this title (relating to Motor Vehicle Parking and Storage).

(7) Natural gas and electricity. Any local city and special purpose taxes due are based upon the location where the natural gas or electricity is delivered to the purchaser. As explained in subsection (l)(1) of this section, residential use of natural gas and electricity is exempt from all county sales and use taxes and all transit authority sales and use taxes, most special purpose district sales and use taxes, and many city sales and use taxes. A list of the cities and special purpose districts that do impose, and those that are eligible to impose, local sales and use tax on residential use of natural gas and electricity is available on the comptroller's website. For more information, also refer to §3.295 of this title (relating to Natural Gas and Electricity).

(8) Nonresidential real property repair and remodeling services. Local taxes are due on services to remodel, repair, or restore nonresidential real property based on the location of the job site where the remodeling, repair, or restoration is performed. See also subsection (f)(2)(B) of this section and §3.357 of this title.

(9) Residential real property repair and remodeling and new construction of a real property improvement performed under a separated contract. When a contractor constructs a new improvement to realty pursuant to a separated contract or improves residential real property pursuant to a separated contract, the sale is consummated at the job site at which the contractor incorporates taxable items into the customer's real property. See also subsection (f)(2)(A) of this section and §3.291 of this title.

(10) Waste collection services. Local taxes are due on garbage or other solid waste collection or removal services based on the location at which the waste is collected or from which the waste is removed. For more information, refer to §3.356 of this title (relating to Real Property Service).

(l) Special exemptions and provisions applicable to individual jurisdictions.

(1) Residential use of natural gas and electricity.

(A) Mandatory exemptions from local sales and use tax. Residential use of natural gas and electricity is exempt from most local sales and use taxes. Counties, transit authorities, and most special purpose districts are not authorized to impose sales and use tax on the residential use of natural gas and electricity. Pursuant to Tax Code, §321.105, any city that adopted a local sales and use tax effective October 1, 1979, or later is prohibited from imposing tax on the residential use of natural gas and electricity. See §3.295 of this title.

(B) Imposition of tax allowed in certain cities. Cities that adopted local sales tax prior to October 1, 1979, may, in accordance with the provisions in Tax Code, §321.105, choose to repeal the exemption for residential use of natural gas and electricity. The comptroller's website provides a list of cities that impose tax on the residential use of natural gas and electricity, as well as a list of those cities that do not currently impose the tax, but are eligible to do so.

(C) Effective January 1, 2010, a fire control, prevention, and emergency medical services district organized under Local Government Code, Chapter 344 that imposes sales tax under Tax Code, §321.106, or a crime control and prevention district organized under Local Government Code, Chapter 363 that imposes sales tax under Tax Code, §321.108, that is located in all or part of a municipality that imposes a tax on the residential use of natural gas and electricity as provided under Tax Code, §321.105 may impose tax on residential use of natural gas and electricity at locations within the district. A list of the special purpose districts that impose tax on residential use of natural gas and electricity and those districts eligible to impose the tax that do not currently do so is available on the comptroller's website.

(2) Telecommunication services. Telecommunications services are exempt from all local sales taxes unless the governing body of a city, county, transit authority, or special purpose district votes to impose sales tax on these services. However, since 1999, under Tax Code, §322.109(d), transit authorities created under Transportation Code, Chapter 451 cannot repeal the exemption unless the repeal is first approved by the governing body of each city that created the local taxing jurisdiction. The local sales tax is limited to telecommunications services occurring between locations within Texas. See §3.344 of this title. The comptroller's website provides a list of local taxing jurisdictions that impose tax on telecommunications services.

(3) Emergency services districts.

(A) Authority to exclude territory from imposition of emergency services district sales and use tax. Pursuant to the provisions of Health and Safety Code, §775.0751(c-1), an emergency services district wishing to enact a sales and use tax may exclude from the election called to authorize the tax any territory in the district where the sales and use tax is then at 2.0%. The tax, if authorized by the voters eligible to vote on the enactment of the tax, then applies only in the portions of the district included in the election. The tax does not apply to sales made in the excluded territories in the district and sellers in the excluded territories should continue to collect local sales and use taxes for the local taxing jurisdictions in effect at the time of the election under which the district sales and use tax was authorized as applicable.

(B) Consolidation of districts resulting in sales tax sub-districts. Pursuant to the provisions of Health and Safety Code, §775.018(f), if the territory of a district proposed under Health and Safety Code, Chapter 775 overlaps with the boundaries of another district created under that chapter, the commissioners court of each county and boards of the counties in which the districts are located may choose to create a consolidated district in the overlapping territory. If two districts that want to consolidate under Health and Safety Code, §775.024 have different sales and use tax rates, the territory of the former districts located within the consolidated area will be designated as sub-districts and the sales tax rate within each sub-district will continue to be imposed at the rate the tax was imposed by the former district that each sub-district was part of prior to the consolidation.

(4) East Aldine Management District.

(A) Special sales and use tax zones within district; separate sales and use tax rate. As set out in Special District Local Laws Code, §3817.154(e) and (f), the East Aldine Management District board may create special sales and use tax zones within the boundaries of the District and, with voter approval, enact a special sales and use tax rate in each zone that is different from the sales and use tax rate imposed in the rest of the district.

(B) Exemptions from special zone sales and use tax. The sale, production, distribution, lease, or rental of; and the use, storage, or other consumption within a special sales and use tax zone of; a taxable item sold, leased, or rented by the entities identified in clauses (i) - (vi) of this subparagraph are exempt from the special zone sales and use tax. State and all other applicable local taxes apply unless otherwise exempted by law. The special zone sales and use tax exemption applies to:

(i) a retail electric provider as defined by Utilities Code, §31.002;

(ii) an electric utility or a power generation company as defined by Utilities Code, §31.002;

(iii) a gas utility as defined by Utilities Code, §101.003 or §121.001, or a person who owns pipelines used for transportation or sale of oil or gas or a product or constituent of oil or gas;

(iv) a person who owns pipelines used for the transportation or sale of carbon dioxide;

(v) a telecommunications provider as defined by Utilities Code, §51.002; or

(vi) a cable service provider or video service provider as defined by Utilities Code, §66.002.

(5) Imposition of city sales tax and transit tax on certain military installations; El Paso and Fort Bliss. Pursuant to Tax Code, §321.1045 (Imposition of Sales and Use Tax in Certain Federal Military Installations), for purposes of the local sales and use tax imposed under Tax Code, Chapter 321, the city of El Paso includes the area within the boundaries of Fort Bliss to the extent it is in the city's extraterritorial jurisdiction. However, the El Paso transit authority does not include Fort Bliss. See Transportation Code, §453.051 concerning the Creation of Transit Departments.

(m) Restrictions on local sales tax rebates and other economic incentives. Pursuant to Local Government Code, §501.161, Section 4A and 4B development corporations may not offer to provide economic incentives, such as local sales tax rebates authorized under Local Government Code, Chapters 380 or 381, to persons whose business consists primarily of purchasing taxable items using resale certificates and then reselling those same items to a related party. A related party means a person or entity which owns at least 80% of the business enterprise to which sales and use taxes would be rebated as part of an economic incentive.

(n) Prior contract exemptions. The provisions of §3.319 of this title (relating to Prior Contracts) concerning definitions and exclusions apply to prior contract exemptions.

(1) Certain contracts and bids exempt. No local taxes are due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of any local tax if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of any local tax if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(2) Annexations. Any annexation of territory into an existing local taxing jurisdiction is also a basis for claiming the exemption provided by this subsection.

(3) Local taxing jurisdiction rate increase; partial exemption for certain contracts and bids. When an existing local taxing jurisdiction raises its sales and use tax rate, the additional amount of tax that would be due as a result of the rate increase is not due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of the tax rate increase if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of the tax rate increase if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(4) Three-year statute of limitations.

(A) The exemption in paragraph (1) of this subsection and the partial exemption in paragraph (3) of this subsection have no effect after three years from the date the adoption or increase of the tax takes effect in the local taxing jurisdiction.

(B) The provisions of §3.319 of this title apply to this subsection to the extent they are consistent.

(C) Leases. Any renewal or exercise of an option to extend the time of a lease or rental contract under the exemptions provided by this subsection shall be deemed to be a new contract and no exemption will apply.

(5) Records. Persons claiming the exemption provided by this subsection must maintain records which can be verified by the comptroller or the exemption will be lost.

(6) Exemption certificate. An identification number is required on the prior contract exemption certificates furnished to sellers. The identification number should be the person's 11-digit Texas taxpayer number or federal employer's identification (FEI) 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 June 8, 2015.

TRD-201502149
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 13. CONTROLLED SUBSTANCES SUBCHAPTER G. FORFEITURE AND DESTRUCTION

37 TAC §13.165

The Texas Department of Public Safety (the department) proposes amendments to §13.165, concerning Communication with Director (Crime Lab Service). This amendment updates the address for notification to the director.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be publication of the address for notification under this section.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Brady Mills, Crime Laboratory Service, 5800 Guadalupe, Austin, Texas 78752; *brady.mills@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Health and Safety Code, §481.003, which authorized the director to adopt rules to administer and enforce Chapter 481.

Texas Health and Safety Code, Chapter 481, is affected by this proposal.

§13.165. Communication with Director (Crime Lab Service).

If a person is required or allowed by this subchapter to make a notification, report, or other written, telephonic, or personal communication to the director, the person must make the communication to the director through the Crime Laboratory Service at the address indicated in §28.7 of this title (relating to Communications) [~~§13.11 of this title (relating to Telephone Number and Address - Crime Laboratory Service)~~].

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

Filed with the Office of the Secretary of State on June 3, 2015.

TRD-201502051
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 215, Motor Vehicle Distribution, Subchapter A, General Provisions, §215.1 and §215.2; Subchapter B, Adjudicative Practice and Procedure, §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, and 215.58; Subchapter C, Licenses, Generally, §§215.81 - 215.85 and 215.87 - 215.89; Subchapter D, Franchised Dealers, Manufacturers, Distributors, and Converters, §§215.101 - 215.106 and 215.108 - 215.119; Subchapter E, General Distinguishing Numbers, §§215.131, 215.132, 215.135, 215.137 - 215.141, and 215.144 - 215.159; Subchapter F, Lessors and Lease Facilitators, §§215.171 and 215.173 - 215.181; Subchapter G, Warranty Performance Obligations, §§215.201 - 215.210; Subchapter H, Advertising, §§215.241 - 215.261 and 215.263 - 215.271; Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings, §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, and 215.314 - 215.317; and Subchapter

J, Administrative Sanctions, §§215.500 - 215.503. The department also proposes the repeals of Subchapter A, §§215.3 - 215.6; Subchapter B, §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54, and 215.57; Subchapter C, §215.86; Subchapter D, §215.107; Subchapter E, §§215.133, 215.136, 215.142, and 215.143; Subchapter F, §215.172; Subchapter H, §215.262; and Subchapter I, §§215.309, 215.312, and 215.313.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEALS

The department conducted a review of its rules under Chapter 215 in compliance with Government Code, §2001.039. Notice of the department's plan to review was published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3261).

As a result of the review, the department has determined that the reasons for initially adopting Subchapters A - J continue to exist but that certain amendments and repeals, as detailed in the following paragraphs, are necessary.

Amendments to Subchapter A, §215.1 and §215.2 are proposed to replace terminology with defined terms, delete definitions already defined by statute, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language that duplicates statute. Additional amendments to §215.1 are proposed to add and define the term "GDN," to clarify the statutory authority of a "final order authority" and "motion for rehearing authority," and to rename the title of that section for consistency with other department rules. The department has determined that the reasons for initially adopting §§215.3 - 215.6 no longer exist and that they should be repealed. Section 215.3 should be repealed because it duplicates language already in statute. Sections 215.4 - 215.6, relating to opinions, should be repealed because those sections are contrary to Government Code, §2001.003(6) which defines a rule as "a state agency statement of general applicability that (i) implements, interprets, or prescribes law or policy, or (ii) describes the procedure or practice requirements of a state agency."

Amendments to Subchapter B, §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, and 215.58 are proposed to clarify the purpose of that subchapter, replace terminology with defined terms, correct referenced citations, revise existing terminology for consistency with other department rules, and to delete language contained in statute. An amendment to §215.22 is proposed to add that a violation of that section will be reported to the general counsel of the department in addition to the hearing officer. An additional amendment to §215.34 establishes the last known address of a license holder for purposes of giving notice as the mailing address provided to the department when the license holder applies or renews its license." The department further proposes to amend §215.37 to clarify that the costs of transcribing and preparing a record in a contested case hearing will be assessed to the party requesting the record. An additional amendment to §215.58 is proposed to authorize the director of the division to issue final orders in contested cases that are resolved by summary judgment or summary disposition. Additional amendments are proposed throughout Subchapter B to simplify and clarify language by removing any unnecessary statutory repetition. In addition, amendments are proposed to rename the titles of certain sections for consistency and accuracy. The department has further determined that §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54, and 215.57 duplicate language already contained in statute and are no longer necessary. Therefore, the department proposes to repeal those sections.

Amendments to Subchapter C, §§215.81 - 215.85 and 215.87 - 215.89 are proposed to replace terminology with defined terms, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language contained in statute. Additional amendments are proposed throughout Subchapter C to replace "division" with "department" for clarification and consistency with current department practice. In addition, the department proposes to amend §215.83 by including the procedures for processing license applications that are currently set out under existing §215.86 because those procedures are more appropriately located under §215.83. Additional amendments to §215.83 are proposed to subdivide the rule to improve formatting and readability. Because the department proposes to incorporate, with amendments, the rule language under §215.86 with §215.83, the department proposes to repeal §215.86. Additional amendments are proposed throughout Subchapter C to rename certain section titles for consistency and accuracy with the language contained in those rules.

Amendments to Subchapter D, §§215.101 - 215.106 and 215.108 - 215.119 are proposed to delete language contained in statute, correct referenced citations, replace terminology with defined terms, revise existing terminology for consistency with other department rules and current department practice. An amendment to §215.105 clarifies that the provisions of that section apply only to purchases and transfers involving physical relocation. Amendments to §215.112 are proposed to clarify that the provisions of that section are limited only to motor home shows that require department approval. Additional amendments are proposed throughout Subchapter D to replace "division" with "department" for clarification and consistency with current department practice. The department also proposes amendments throughout Subchapter D to subdivide and restructure the rules for formatting and improved readability. The department has further determined that §215.107 duplicates language contained in statute and therefore, proposes to repeal that section.

Amendments to Subchapter E, §§215.131, 215.132, 215.135, 215.137 - 215.141, and 215.144 - 215.159 are proposed to replace terminology with defined terms, delete definitions already defined by statute or to add clarifying language to existing definitions, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language contained in statute. An additional amendment to §215.132 is proposed to add and define the term "VIN." An amendment to §215.135 specifies that a dealer may not commence business at any location until the department issues a license authorizing that location. Additional amendments to §215.139 subdivide the rule for improved readability and replace existing textual language with graphics under amended subsections (c), (e), and (F)(1). Additional amendments are proposed throughout §215.140 to clarify that different requirements apply to retail dealers and wholesale motor vehicle dealers. An additional amendment to §215.144 is proposed to clarify that license holders are not required to maintain copies of motor vehicle titles submitted electronically. Additional amendments are proposed to renumber the appendices under §215.153, consistent with the proposed amendments renumbering that section. The department further proposes to repeal §§215.133, 215.136, 215.142, and 215.143 because those sections are adequately addressed by statute and therefore, are no longer necessary.

An amendment to Subchapter F is proposed to rename the title of that subchapter for consistency with statutorily defined terms. Additional amendments are proposed throughout §§215.171 and 215.173 - 215.181 to delete definitions already defined by statute or to add clarifying language to existing definitions, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language contained in statute. Additional amendments are proposed throughout Subchapter F to renumber and subdivide certain sections for improved readability. Because the department proposes to delete the definitions under §215.172, the reasons for adopting that section no longer exist. Therefore, the department proposes to repeal §215.172.

Amendments to Subchapter G, §§215.201 - 215.210 are proposed to replace terminology with defined terms, revise existing terminology for consistency with other department rules, correct the referenced citations, and to delete language that is already contained in statute. In addition, the department proposes an amendment to §215.201 to rename the title of that section for consistency with other department rules.

Amendments to Subchapter H, §§215.241 - 215.261 and §§215.263 - 215.271 are proposed to revise existing terminology for consistency with other department rules. Additional amendments are proposed to replace terminology with defined terms and to correct referenced citations. The department also proposes to amend §215.241 to replace "Board" with "department" for consistency with current department practice, and to replace "code" with "Occupations Code, Chapter 2301" for clarification. Amendments to §215.244 are proposed to add and define the terms "new motor vehicle" and "savings claim or discount." An amendment to §215.249 provides that a manufacturer's suggested retail price (MSRP) must be the actual MSRP set by the manufacturer when the MSRP is advertised by a dealer. Additional amendments are proposed to incorporate the provisions under existing §215.262 relating to savings claims and discount offers with §215.250 because those provisions are more appropriately located under that section. The department further proposes to replace certain textual language under subsections (h) - (j) of §215.250 with graphics for ease of reference. Because the department determined that the savings claims and discount offer provisions under §215.262 are more appropriately located under §215.250, the department proposes to repeal §215.262. In addition, amendments to §215.253 are proposed to add additional clarifying language regarding allowable use of trade-in amounts in advertisements.

Amendments to Subchapter I, §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, and 215.314 - 215.317 are proposed to replace terminology with defined terms and to correct referenced citations for consistency. Additional amendments are proposed throughout that subchapter to replace "matter" with "contested case" and "Board" with "department." An amendment to §215.307 is proposed to establish a license holder's last known address for purposes of giving notice as the "mailing address provided to the department when the license holder applies or renews its license." An additional amendment to §215.314 is proposed to authorize the director of the division to issue a cease and desist order prior to the commencement of a proceeding by the State Office of Administrative Hearings (SOAH). The cease and desist order may be issued without notice and opportunity for hearing if the provisions under Occupations Code, §2301.802(b) are met. An Administrative Law Judge shall hold a hearing to determine whether the interlocutory cease and desist order should remain in effect during the pendency of the proceeding. Additional amendments to §215.317 are proposed to clarify that a motion for rehearing and a reply to a motion for rehearing of an order issued by the board delegate must be decided by the board delegate. The department has also determined that §§215.309, 215.312, and 215.313 duplicate language contained in statute and that those sections should be repealed.

Amendments to Subchapter J, §§215.500 - 215.503 are proposed to replace terminology with statutorily defined terms and to correct referenced citations. Additional amendments to subdivide certain sections of that subchapter are proposed for improved formatting. An amendment to §215.500 is proposed to clarify that an administrative sanction may include denial of an application for a license. An additional amendment to that section establishes the last known address of a license holder for purposes of giving notice as the "mailing address provided to the department when the license holder applies or renews its license." An amendment to §215.503 provides that the department will not refund a fee to a person that is subject to an unpaid civil penalty imposed by a final order.

Additional nonsubstantive amendments are proposed throughout Chapter 215 to correct punctuation, grammar, and capitalization.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments and repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and repeals.

David D. Duncan, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and repeals.

PUBLIC BENEFIT AND COST

Mr. Duncan has also determined that for each year of the first five years the amendments and repeals are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and repeals will be simplification, clarification and streamlining of the agency's rules. There are no anticipated economic costs for persons required to comply with the amendments and repeals as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and repeals may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on July 20, 2015.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §215.1, §215.2

STATUTORY AUTHORITY The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.1. Purpose and Scope [~~Scope and Purpose~~].

Occupations Code, Chapter 2301[~~,~~] and Transportation Code, Chapters 503 and 1000 - 1005 [~~1000 through 1005,~~] require the Texas Department of Motor Vehicles to license and regulate motor vehicle dealers, manufacturers, distributors, converters, representatives, vehicle lessors and vehicle lease facilitators, in order to ensure a sound system of distributing and selling motor vehicles;[~~,~~] provide for compliance with manufacturers' warranties; and to [~~manufacturer's warranties,~~] prevent fraud, unfair practices, discrimination, impositions, and other abuses of the people of this state in connection with the distribution and sale of motor vehicles. The rules in [~~sections under~~] this chapter prescribe the policies and procedures for the motor vehicle industry in Texas. [~~regulating motor vehicle dealers, manufacturers, distributors, converters, representatives, lessors and lease facilitators, by regulating licensing, warranty performance obligations, advertising, enforcement, and providing for adjudicative proceedings.~~]

§215.2. Definitions; Conformity with Statutory Requirements.

(a) The definitions contained in Occupations Code, Chapter 2301[~~,~~] and Transportation Code, Chapters 503 and 1000 - 1005 [~~1000 through 1005~~] govern this chapter. [~~All matters of practice and procedure set forth in the Codes shall govern and these rules shall be construed to conform with the Codes in every relevant particular, it being the intent of these rules only to supplement the Codes and to provide procedures to be followed in instances not specifically governed by the Codes.~~] In the event of a conflict, the definition or procedure referenced in Occupations Code, Chapter 2301 controls [~~shall control~~].

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

(1) ALJ--An Administrative Law Judge of the State Office of Administrative Hearings.

[~~(2) Appropriate department office--The office of the department that is designated by notice or publication for receipt of a specific filing.~~]

(2) [~~(3)~~] Board--The Board of the Texas Department of Motor Vehicles, including any personnel to whom the board [~~Board~~] delegates any duty assigned.

[~~(4) Chapter 503--Transportation Code, Chapter 503.~~]

[~~(5) Chapter 1000 through 1005--Transportation Code, Chapter 1000 through 1005.~~]

[~~(6) Code--Occupations Code, Chapter 2301.~~]

[~~(7) Codes--Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005.~~]

[~~(8) Department--The Texas Department of Motor Vehicles.~~]

(3) [~~(9)~~] Director--The director of the division that regulates the distribution and sale of motor vehicles, including[~~. For purposes of this chapter, the definition of "director" also includes~~] any personnel to whom the director delegates any duty assigned under this chapter.

[~~(10) Division--The division that regulates the distribution and sale of motor vehicles.~~]

(4) [~~(11)~~] Executive director--The executive director of the Texas Department of Motor Vehicles.

(5) [~~(12)~~] Final order authority--The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; or board [~~the Codes or Board~~] rules to issue a final order.

(6) GDN--General distinguishing number.

(7) [~~(13)~~] Governmental agency--All other state and local governmental agencies and all agencies of the United States government, whether executive, legislative, or judicial.

[~~(14) Hearings examiner--A person employed by the department to preside over hearings under Occupations Code, Chapter 2301.~~]

(8) [~~(15)~~] Hearing officer--An ALJ, [~~or~~] a hearings examiner [~~under this chapter~~], or any other person designated, employed, or appointed by the department[~~, or employed or appointed,~~] to hold hearings, administer oaths, receive pleadings and evidence, issue subpoenas to compel the attendance of witnesses, compel the production of papers and documents, issue interlocutory orders and temporary injunctions, make findings of fact and conclusions of law, issue proposals for decision, and recommend or issue final orders.

[~~(16) License purveyor--Any person who for a fee, commission, or other valuable consideration, other than a certified public accountant or a duly licensed attorney at law, assists an applicant in the preparation of a license application or represents an applicant during the review of the license application.~~]

(9) [~~(17)~~] Motion for rehearing authority--The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; or board [~~the Codes or Board~~] rules to decide a motion for rehearing.

[~~(18) Party in interest--A party against whom a binding determination cannot be had in a proceeding before the department without having been afforded notice and opportunity for hearing.~~]

(10) [~~(19)~~] SOAH--The State Office of Administrative Hearings.

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 June 5, 2015.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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43 TAC §§215.3 - 215.6

(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 Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.3. Duties and Powers of Board.

§215.4. Formal Opinions.

§215.5. Informal Opinions.

§215.6. Exempted Actions.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.21. Purpose and Scope [~~Objective~~].

(a) The purpose [~~objective~~] of these rules is to ensure [~~fair, just, and impartial~~] adjudication of the rights of parties in [~~all~~] matters within the jurisdiction of Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000-1005; and to ensure effective administration of Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000-1005 by the department, in accordance with Government Code, Chapter 2001 and Occupations Code, §2301.001 and §2301.152 [~~the Codes, and to ensure fair, just, and effective administration of the Codes in accordance with the intent of the legislature as declared in Occupations Code, §2301.001, and Occupations Code, §2301.152~~].

(b) Practice and procedure in contested cases [~~filed on or after September 1, 2007, and~~] heard by SOAH are addressed in:

(1) 1 TAC Chapter 155;

(2) [~~(1)~~] Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings); and

(3) [~~(2)~~] this subchapter, where not in conflict with SOAH rules.

(c) This subchapter applies to contested cases filed under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503; and [~~shall apply~~] to complaints filed on or after January 1, 2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613, to the extent they do not conflict with state law, rule, or court order [~~Subchapter M, §§2301.601-2301.613 (the Lemon Law) or Occupations Code, §2301.204 (warranty performance)~~].

§215.22. Prohibited [~~Disclosures and~~] Communications.

(a) No party [~~in interest~~], attorney of record, or authorized representative in any contested case [~~proceeding~~] shall make [~~submit~~], directly or indirectly, any ex parte communication, in violation of Government Code, §2001.061, concerning the merits of the contested case [~~such proceeding~~] to the board or hearing officer [~~Board, or any department employee who is~~] assigned to render a decision or make findings of fact and conclusions of law in a contested case.

(b) Violations of this section shall be promptly reported to the hearing officer and the general counsel of the department. The general counsel shall ensure that a copy or summary of the ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives. The general counsel may take any other appropriate action otherwise provided by law [~~and a copy or summary thereof shall be filed with the record of such proceeding and a copy forwarded to all parties of record, and/or any other appropriate action otherwise provided by law~~].

§215.23. Appearances.

(a) General. Any party to a contested case may appear in person or by an authorized representative. An authorized representative may be required to show authority to represent a party [~~proceeding before the Board may appear to represent, prosecute, or defend any rights or interests, either in person, by an attorney, or by any other authorized representative. Any individual may appear pro se; and any member of a partnership which is a party to a proceeding or any bona fide officer of a corporation or association may appear for the partnership, corporation, or association. An authorized full time employee may enter an appearance for his employer~~].

[~~(b) Agreements of representation. The Board may require agreements between a party in interest and an attorney or other authorized representative concerning any pending proceeding to be in writing, signed by the party in interest, and filed as a part of the record of the proceeding.~~]

[~~(c) Lead counsel. The attorney or other authorized representative of a party in interest shall be considered that party's lead counsel in any proceeding and, if present, shall have control in the management of the cause pending before the Board.~~]

(b) [~~(d)~~] Intervention. Any public official or other person having an interest in a contested case [~~proceeding~~] may, upon request to the hearing officer [~~Board~~], be permitted to intervene [~~and present any relevant and proper evidence, data, or argument bearing upon the issues involved in the particular proceeding~~]. Any person desiring to intervene in a contested case [~~proceeding~~] may be required to disclose that person's [~~his~~] interest in the contested case [~~proceeding~~] before permission to appear will be granted.

[~~(e) Limitation on appearances. The Board may limit or exclude entirely an attempt by persons to appear in a proceeding when such appearance would be irrelevant or would unduly broaden the scope of the proceeding.~~]

§215.24. Petitions.

(a) Petitions [~~for relief under the Codes or complaints filed alleging violations of the Codes other than those specifically provided for in these rules~~] shall be in writing and shall:[~~, shall~~]

(1) state [~~clearly and concisely~~] the petitioner's [~~grounds of~~] interest in the subject matter, the facts relied upon, and the relief sought; and[~~, and shall~~]

(2) cite the appropriate law [~~by appropriate reference the article of the Codes or other law relied upon for relief and, where applicable, the proceeding to which the petition refers~~].

(b) The original of every petition, pleading, motion, brief, or other document permitted or required to be filed with the department in a contested case shall be signed by the party or the party's authorized representative.

(c) All pleadings filed in a contested case shall be printed or typed on 8-1/2 inch by 11 inch paper in no smaller than 11 point type with margins of at least one inch at the top, bottom, and each side. Each page shall be numbered at the bottom. All text, except block quotations and footnotes, shall be double spaced.

§215.27. Complaints.

(a) Complaints [~~All complaints~~] alleging violations of Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000 - 1005 [~~the Codes~~] shall be in writing, addressed to the department, [~~appropriate department office~~] and signed by the complainant. Complaint forms will be supplied [~~and assistance may be afforded~~] by the department for the purpose of filing complaints.

(b) A complaint shall contain the name and address of the complainant, the name and address of the party against whom the complaint is made, and a brief statement of the facts forming the basis of the complaint.

(c) If requested by the department, complaints shall be under oath. Before[~~, and before~~] initiating an investigation or other proceeding to determine the merits of the complaint, the department may require from the complainant [~~such~~] additional information [~~as may be~~] necessary to evaluate the merits of the complaint.

§215.29. Computing Time.

Any [~~In computing any~~] period of time prescribed or allowed by this chapter, by order of the board [~~Board~~], or by any applicable statute is computed in accordance with Government Code, §311.014[~~, the date of the act or event after which the designated period of time begins to run is not to be included, but the last day of the period so computed is to be included unless it be a Saturday, Sunday, or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday~~].

§215.30. Filing of Documents.

(a) Every document required or permitted to be filed with the department under [~~related to~~] this chapter shall be delivered:

(1) [~~filed~~] in person; [~~,~~]

(2) by first-class mail to the address of the [~~appropriate~~] department [~~office~~]; [~~,~~] or

(3) by electronic document transfer at a destination designated by the department. [~~for receipt of those documents~~].

[~~(b) Except as provided in subsection (c) of this section, delivery by mail shall be complete upon deposit of the document, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.~~]

[~~(c) Except as provided in subsection (e) of this section, delivery by mail as specified in subsection (b) of this section shall be timely if the document is deposited on or before the specified date and received by the appropriate department office not later than the fifth business day after the date of deposit.~~]

(b) Delivery by electronic document transfer is [~~shall be~~] timely if the document is received by 5:00 p.m. Central Standard Time (CST) [~~5 p.m. (Central Standard Time)~~]. Delivery by electronic document transfer after 5:00 p.m. CST [~~5 p.m. (Central Standard Time)~~] shall be deemed received on the following day.

(c) [(d)] [Such document may be delivered by a party to a matter, an attorney of record, or by any other person competent to testify.] A certificate by the party or party's authorized representative [an attorney of record or the affidavit of any person competent to testify,] showing timely delivery of a document in a manner described in this section shall be prima facie evidence [of the fact] of timely delivery. Nothing[, although nothing] herein shall preclude the department or any party from offering proof that the [subject] document was not timely delivered.

(d) [(e)] To be timely filed, a [the] document must be received by the department within [in the appropriate department office by] the time specified by statute, rule, or department order. A document [filing] received after the specified time, notwithstanding the date of mailing or other means of delivery, shall be deemed untimely [not timely filed].

§215.32. Extension [Enlargement] of Time.

(a) Except as provided by subsection (b) of this section, when [When by these rules or by a notice given thereunder or by order of the Board or the hearing officer having jurisdiction, as the case may be,] an act is required or allowed to be done at or within a specified time in accordance with this chapter, the board[, except as provided in subsection (b) of this section, the Board] or the hearing officer, with good cause shown, may: [for cause shown may, at any time in the Board's or the hearing officer's discretion:]

(1) [with or without motion or notice,] order the specific period extended if the extension is requested [period enlarged if application therefore is made] before the expiration of the period previously specified [originally prescribed or as extended by a previous order]; or

(2) [upon motion] permit the act to be done after the expiration of the specified period, with good cause [where good cause is] shown for the failure to act.

(b) Notwithstanding [anything contained in] subsection (a) of this section, the board or [neither the Board nor a] hearing officer may not extend [enlarge] the time for filing a document when a [where, by] statute or rule specifies the time period by which a document[, the document, to be timely filed,] must be received by the department. [in the appropriate department office by a specified time. The requirements of such statute or rule shall govern the filing of that document. Any such document received after the specified time, notwithstanding the date of mailing or other means of delivery, shall be deemed not timely filed.]

§215.34. Notice of Hearing in Contested Cases [Adjudicative Proceedings].

(a) In a contested case, each party is entitled to a hearing, in accordance with Government Code, §2001.051.

[(a) In any adjudicative proceeding under the Codes, the notice of hearing shall state:]

[(1) the name of the party or parties in interest;]

[(2) the time and place of the hearing;]

[(3) the docket number assigned to the hearing;]

[(4) any special rules deemed appropriate for such hearing; and]

[(5) a clear and concise factual statement sufficient to identify with reasonable definiteness the matters at issue. This can be satisfied by attaching and incorporating by reference the complaint or amended complaint.]

(b) A notice of hearing in a contested case shall comply with the requirements of Government Code, §2001.052(a) and [Notice of hearing] shall be served upon the parties [in interest either] in person or by certified mail, return receipt requested to the last known addresses of the parties or their authorized representatives, in accordance with Occupations Code, §2301.705[, addressed to the parties in interest or their agents for service of process].

(c) The last known address of a license holder is the mailing address provided to the department when the license holder applies or renews its license. [Notice of hearing shall be presumed to have been received by a person if notice of the hearing was mailed by certified mail, return receipt requested, to the last known address of any person known to have legal rights, duties, or privileges that could be determined at the hearing.]

(d) A notice of hearing in a contested case may be amended in accordance with Government Code, §2001.052(b).

[(d) Notice of hearing may be amended at the hearing or at any time prior thereto.]

§215.35. Reply.

(a) Within 20 days after service of a notice of hearing in a contested case[,] or within 10 days after service of an amended notice of hearing, a [responding] party may file a reply [in which the matters at issue are specifically admitted, denied, or otherwise explained].

(b) [(1)] A reply shall include [Form and filing of replies. All replies shall include a reference to] the docket number of the contested case [hearing] and shall be filed [sworn to] by the party or party's authorized representative. The original [responding party or the attorney of record. The original of the] reply shall be filed with the department and a [appropriate department office, and one] copy shall be served on any [upon] other parties to the contested case. [proceeding, if any.]

(c) [(2)] A party may file an amended reply [Amendment. A responding party may amend his reply at any time] prior to the contested case hearing. In any contested case when [hearing, and in any case where] the notice of hearing has been amended at the contested case hearing, a party, at the discretion of the hearing officer, shall have [hearing, a responding party shall be given] an opportunity to file an amended reply [amend his reply].

(d) [(3)] [Extension of time.] Upon the motion of a party [responding party], with good cause shown, the department may extend the time to file a reply [within which the reply may be filed].

(e) [(4)] [Default.] All allegations shall be deemed admitted by any party not appearing [who does not appear] at the contested case hearing on the merits.

§215.36. Hearings To Be Public.

Hearings in contested cases [adjudicative proceedings] shall be open to the public.

§215.37. Recording and Transcriptions of Hearing Cost.

(a) Except as provided by [in] Subchapter G of this chapter (relating to Warranty Performance Obligations), hearings in contested cases will be transcribed by a court reporter or recorded by the hearing officer. [at the discretion of the hearing officer. Any request regarding recording or transcription must be made to the hearing officer at least two days prior to the hearing.]

(b) In a contested case [those contested cases] in which the hearing is transcribed by a court reporter, the costs of transcribing the hearing and for [the] preparation of an original transcript of the record for the department shall be assessed to the requesting party in the contested case [equally among all parties to the proceeding], unless otherwise directed.

(c) Copies of recordings or transcriptions of a hearing in a contested case will be provided to any party upon written request and upon payment for the cost of the recordings or transcriptions.

(d) In the event a final decision in a contested case is appealed and the department is required to transmit to the court the original or a certified copy of the record, or any part thereof, the appealing party shall, unless waived by the department, pay the costs of preparation of the record that is required to be transmitted to the court.

§215.38. Consolidation of Proceedings [Joint Record].

No contested case proceedings including [No adjudicative proceedings embracing] two or more complaints or petitions shall be jointly heard [on a joint record] without the consent of all parties, [in interest] unless the hearing officer finds [shall find, prior to the consolidation of the proceedings,] that justice and efficiency are better served by the consolidation.

§215.39. Waiver of Hearing.

After [Subsequent to the] issuance of a notice of hearing in a contested case, and in accordance with the deadlines prescribed by [as provided in] §215.35 of this title [subchapter] (relating to Reply), a party may waive [responding party may waive such] hearing and consent to the entry of an agreed order. Agreed orders proposed by the parties remain subject to the approval of the final order authority.

§215.40. Continuance [Postponement] of Hearing.

After a contested case has been called on the date assigned for hearing [in a proceeding,] pursuant to notice, a continuance of the contested case hearing [postponement of the case] will be granted only upon a showing of good cause. A motion for continuance of a contested case [in exceptional circumstances. All motions for postponement of a] hearing shall be filed and served on all parties at least five days before the hearing date, except when good cause is shown to consider a motion for continuance filed after the deadline [sufficiently in advance of the date of hearing to permit notice to all parties if postponement should be granted].

§215.41. Presiding Officials.

[A hearing officer of a contested case shall be assigned in accordance with applicable law, including Occupations Code, §2301.704.] The term "hearing officer" as used in this section includes the board [Board] when presiding over a hearing.

(1) Powers and duties. A hearing officer shall conduct fair hearings and shall [Hearing officers shall have the duty to conduct fair and impartial hearings, and the power to] take all necessary action to administer [avoid delay in] the disposition of contested cases. A hearing officer's powers include, but are not limited to the authority to: [proceedings and to maintain order. Hearing officers shall have all powers necessary to these ends, including the authority to]

(A) administer oaths; [to]

(B) examine witnesses; [to]

(C) rule upon the admissibility of evidence; [to]

(D) rule upon motions; and [to]

(E) regulate the course of the contested case hearing and the conduct of the parties and their authorized representatives [counsel].

(2) Recusal. [Disqualification.]

(A) If the [a] hearing officer determines that he or she [the hearing officer] should be recused from a particular contested case hearing, the hearing officer shall withdraw from the contested case [proceeding] by giving notice on the record and by notifying the chief hearing officer. [appropriate department office of the withdrawal.]

(B) A [Whenever a party deems the hearing officer to be disqualified to preside in a particular hearing, the] party may file a motion to recuse [disqualify and remove] the hearing officer. The motion to recuse [disqualify and remove] shall be supported by an affidavit [affidavits] setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the hearing officer who shall have 10 days [within which] to reply, and a copy shall be served on all parties or their authorized representatives.

(C) If the hearing officer contests the alleged grounds for disqualification, the chief hearing officer [department] shall promptly determine the validity of the grounds alleged and render a decision[, such decision being determinative of the issue].

(3) Substitution of hearing officer. If the hearing officer is disqualified, dies, becomes disabled, or withdraws during any contested case proceeding, the chief hearing officer [department] may appoint another hearing officer to preside over the remainder of the contested case proceeding [who may perform any function remaining to be performed without the necessity of repeating any proceedings in the case].

§215.42. Conduct of Hearing.

Each party in a contested case [in interest] shall have the right to [in an adjudicative hearing to due] notice, cross examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair contested case hearing. Except as provided by this chapter [Procedures in such hearings, except where otherwise provided by these rules] or in the notice of hearing, [shall be insofar as reasonably practicable in accordance with] the Texas Rules of Civil Procedure, as applied to non-jury civil cases, shall be applicable to hearings in contested cases, as far as reasonably practical. [applicable in district and county courts in civil actions heard before the court without a jury.]

§215.43. Conduct and Decorum.

(a) All parties, witnesses, counsel, and authorized representatives shall conduct themselves in all contested case hearings with proper dignity, courtesy, and respect for the board, the hearing officer, and other parties.

[(a) Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the Board, the hearing officer, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas Disciplinary Rules of Professional Conduct and the Texas Lawyer's Creed. No party to a pending case, and no representative or witness of such a party, shall discuss the merits of such case with the hearing officer outside of the presence of all other parties, or their representatives.]

(b) Upon violation of this section, any party, witness, attorney, or authorized [other] representative may be:

(1) excluded from the contested case [any] hearing for such period and upon such conditions as are just; or [may be]

(2) subject to [such] other just, reasonable, and lawful disciplinary action as the board, hearing officer, or department may order [prescribe].

§215.44. Evidence.

(a) General. The Texas Rules of Evidence shall apply in all contested cases, in accordance with Government Code, Chapter 2001 [be applied in all adjudicative hearings to the end that needful and

proper evidence shall be conveniently, inexpensively, and speedily adduced while preserving the rights of the parties to the proceeding].

[(b) Admissibility. All relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious or cumulative evidence shall be excluded. Immaterial or irrelevant parts of an otherwise admissible document shall be segregated and excluded so far as practicable.]

[(c) Official records. An official document or record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by the officer's deputy, and accompanied by a certificate to such effect. This section does not prevent and is not intended to prevent proof of any official record, the absence thereof or official notice thereof by any method authorized by any applicable statute or any rules of evidence in district and county courts.]

[(d) Entries in the regular course of business. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it appears that it was made in the regular course of business. This section does not prevent and is not intended to prevent proof of any business writing or record by any method authorized by any applicable statute or any rules of evidence in district and county courts.]

(b) [(e)] Documents in department files. The hearing officer may take judicial notice of documents [Documents] or information in the department's files, in accordance with [licensing files may be officially noticed and may be admitted and considered by the hearing officer, as described in] Government Code, Chapter 2001.

[(f) Abstracts of documents. When documents are numerous, the hearing officer may refuse to receive in evidence more than a limited number of said documents which are typical and representative, but may require the abstraction of the relevant information from the documents and the presentation of the abstract in the form of an exhibit; provided, however, that before admitting such abstract the hearing officer shall afford all parties in interest the right to examine the documents from which the abstract was made.]

(c) [(g)] Exhibits. Exhibits shall be limited to facts with respect to the relevant and material issues involved in a particular contested case. Documentary exhibits [proceeding. Exhibits of documentary character] shall not unduly encumber the record. Where practical, [of the proceeding. Where practicable,] the sheets of each exhibit shall not be more than 8-1/2 [8 1/2] inches by 11 inches in size, and shall be numbered and labeled. The original and one copy of each exhibit offered shall be tendered to the reporter or hearing officer for identification, and a copy shall be furnished to each party [in interest]. In the event an offered exhibit has been excluded after objection and [identified, objected to, and excluded, the hearing officer shall determine whether] the party offering the exhibit withdraws the offer, the hearing officer shall [and if so,] return the exhibit. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification and be included in the record only for the purpose of preserving the exception together with the hearing officer's ruling.

§215.45. Stipulation of Evidence.

Evidence may be stipulated by agreement of all parties [in interest].

§215.46. Objections and Exceptions.

Formal exception to the ruling of the hearing officer is not necessary. [It is sufficient that the party in interest at the time the ruling is made, or sought, make known to the hearing officer the action desired.]

§215.47. Motions.

(a) Every motion in a contested case [relating to a pending proceeding shall], unless made during a contested case hearing, shall be in writing and shall state: [hearing, be written, and shall set forth]

(1) the relief sought; and

(2) the specific reasons and grounds.

(b) If the motion is based upon matters which do not appear of record, the motion [it] must be supported by affidavit.

(c) Any motion not made during a contested case hearing shall be filed with the hearing officer and a copy shall be served on all parties or their authorized representatives.

§215.48. Briefs.

The hearing officer may direct that the parties file briefs [Briefs may be filed] in any pending contested case [adjudicative proceeding at such time as may be specified by the hearing officer].

§215.49. Service of Pleading, Petitions, Briefs, and Other Documents [the Like].

(a) A copy of every document filed in any contested case [adjudicative proceeding, after appearances have been entered,] shall be served upon all parties or their authorized representatives [upon all other parties in interest or their lead counsel,] and upon the [appropriate] department [office] by sending a copy properly addressed to each party by: [first class United States mail, postage prepaid, by actual delivery, or by electronic document transfer to a facsimile number, e-mail address, or website designated for the receipt of those filings. A certificate of such fact shall accompany the document.]

(1) first-class mail;

(2) hand delivery;

(3) facsimile; or

(4) email.

(b) A copy of every document may be served upon the department by electronic document transfer at a destination designated by the department.

(c) A certificate of service shall accompany each document.

§215.55. Final Decision.

(a) The board [Board] has final order authority in a contested case initiated by a complaint filed before January 1, 2014, under Occupations Code, §§2301.204 or 2301.601 - 2301.613 [under Occupations Code, §2301.204 or §§2301.601-2301.613, initiated by a complaint filed before January 1, 2014].

(b) The hearings examiner has final order authority in a contested case filed on or after January 1, 2014, under Occupations Code, §§2301.204 or 2301.601 - 2301.613. [under Occupations Code, §2301.204 or §§2301.601-2301.613, filed on or after January 1, 2014.]

(c) Except as provided by subsections (a) and (b) of this section, the board [Board] has final order authority in a contested case filed under Occupations Code, Chapter 2301 or under Transportation Code, Chapter 503.

(d) An order shall be deemed final and binding on all parties and all administrative remedies are deemed to be exhausted as of the effective date, unless a motion for rehearing is filed with the appropriate [motion for rehearing] authority as provided by law.

§215.56. Submission of Amicus Briefs.

(a) Any interested person may submit [wishing to file] an amicus brief for consideration in a contested case [should file the brief no later than the deadline for exceptions].

(b) A party may submit [file] one written response to the amicus brief [brief filed by the amicus curiae] no later than the deadline for replies to exceptions.

(c) Any amicus brief, or response to that brief, not filed within the deadlines prescribed by subsection (b) of this section [such time] will not be considered, unless good cause is [may be] shown why the [this] deadline should be waived or extended.

§215.58. Delegation of Final Order Authority.

(a) In accordance with [Pursuant to] Occupations Code, §2301.154(c), except as provided by [in] subsection (b) of this section, the director [of the department division that regulates the distribution and sale of motor vehicles] is authorized to issue, without a decision on the merits, a final order in a contested case, including, but not limited to a contested case resolved: [final orders in cases without a decision on the merits resolved in the following ways:]

(1) by settlement;

(2) by agreed order;

(3) by withdrawal of the complaint;

(4) by withdrawal of a protest;

(5) by dismissal for want of prosecution;

(6) by dismissal for want of jurisdiction;

(7) by summary judgment or summary disposition;

(8) [(7)] by default judgment; or

(9) [(8)] when a party waives opportunity for a contested case hearing.

(b) In accordance with [Pursuant to] Occupations Code, §2301.154(c), the director [of the department division that regulates the distribution and sale of motor vehicles] is authorized to issue a final order in a contested case filed prior to January 1, 2014, under Occupations Code, §§2301.204 or 2301.601 - 2301.613 [final orders in cases, under Occupations Code, §2301.204 or §§2301.601-2301.613, filed prior to January 1, 2014].

(c) In a contested case in which [contested cases where] the board has delegated final order authority under subsections [subsection] (a) or (b) of this section, a motion [motions] for rehearing shall be filed with and decided by the final order authority delegate.

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 June 5, 2015.

TRD-201502122
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 465-5665

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43 TAC §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54, 215.57

(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 Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §§503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.25. Affidavits.
§215.26. Form of Petitions, Pleadings, and the Like.
§215.28. Docket.
§215.31. Cease and Desist Orders.
§215.33. Expenses of Witness or Deponent.
§215.50. Submission.
§215.51. Findings and Recommendations of Hearing Officer.
§215.52. Filing of Exceptions.
§215.53. Form of Exceptions.
§215.54. Replies to Exceptions.
§215.57. Format for Documents Filed with the Board Subsequent to the Issuance of a Proposal for Decision.

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 June 5, 2015.

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David D. Duncan
General Counsel
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SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §§215.81 - 215.85, 215.87 - 215.89

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are

necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.81. Purpose and Scope [~~Objective~~].

This subchapter implements [~~The objective of this subchapter is to implement the intent of the legislature as declared in~~] Occupations Code, Chapter 2301[~~,~~] and Transportation Code, Chapter 503, regarding licenses required [~~by prescribing rules to regulate businesses requiring licenses~~] under those chapters.

§215.82. Duplicate Licenses and Plates [~~Administration of Licensing Fees~~].

(a) A request for a duplicate license must:

(1) be made on a department-approved form; [~~division-approved form,~~]

(2) state [~~stating~~] the reason for the duplicate license; and

(3) be accompanied by the required duplicate license fee.

(b) A license holder may receive [~~The licensee may request~~] one duplicate license at no charge if the license holder: [~~licensee~~]

(1) did not receive the original license; and

(2) makes the request within 45 days of the date [~~time~~] the license was mailed to the license holder. [~~licensee.~~]

[~~(b) A licensee that fails to renew the license in a timely manner because the person was on active duty in the United States armed forces and serving outside Texas shall be exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.~~]

(c) A license holder may receive a replacement metal dealer's license plate, if applicable, at no charge if the license holder:

(1) did not receive the metal dealer's license plate; and

(2) makes the request within 45 days of the date the metal dealer's license plate was mailed to the license holder.

§215.83. License Applications, Amendments, or Renewals [~~Renewal of Licenses~~].

(a) An application for a new license, license amendment, or license renewal filed with the department must be:

(1) on a form approved by the department;

(2) completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant;

(3) accompanied by the required fee, paid by check, credit or debit card, or by electronic funds transfer, drawn from an account held by the applicant or license holder, or drawn from a trust account of the applicant's attorney or certified public accountant; and

(4) accompanied by proof of a surety bond, if required.

(b) An authorized representative of the applicant or license holder who files an application with the department may be required to provide written proof of authority to act on behalf of the applicant or license holder.

(c) The department will not provide information regarding the status of an application, application deficiencies, or new license numbers to a person other than a person listed in subsection (a)(2) of this section, unless that person files a written request under Government Code, Chapter 552.

(d) [~~(a)~~] Prior to the expiration of a [~~its existing~~] license, a license holder or authorized representative [~~licensee~~] must file with the department a complete [~~sufficient~~] license renewal application [~~on a form approved by the department~~]. Failure to receive notice of license expiration from the department does not relieve the license holder [~~licensee~~] from the responsibility to timely file a complete license renewal application. A license renewal application is timely filed if: [~~renew.~~]

(1) the department receives the complete license renewal application on or before the date the license expires; or

(2) a legible postmark on the envelope transmitting the complete license renewal application clearly indicates that the license holder or authorized representative mailed the license renewal application on or before the date the license expires.

(e) An application for a new license, license amendment, or license renewal filed with the department must be complete. An application is complete if the application:

(1) includes all information and documentation required by the department; and

(2) is filed in accordance with subsection (a) of this section.

(f) If an applicant, license holder, or authorized representative does not provide the information or documentation required by the department, the department will issue a written notice of deficiency. The information or documentation requested in the written notice of deficiency must be received by the department within 20 calendar days of the date of the notice of deficiency, unless the department issues a written extension of time. If an applicant, license holder, or authorized representative fails to respond or fully comply with all deficiencies listed in the written notice of deficiency within the time prescribed by this subsection, the application will be deemed withdrawn and will be administratively closed.

(g) The department will evaluate a complete application for a new license, license amendment, or license renewal in accordance with applicable rules and statutes to determine whether to approve or deny the application. If the department determines that there are grounds for denial of the application, the department may pursue denial of the application in accordance with Subchapter J of this chapter (relating to Administrative Sanctions).

(h) The department will process an application for a new license, license amendment, or license renewal filed by a military service member, military spouse, or military veteran in accordance with

Occupations Code, Chapter 55. A license holder who fails to timely file a complete application for a license renewal because that license holder was on active duty in the United States armed forces and was serving outside the State of Texas is exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.

[(b) A license renewal application received by the department is sufficient if:]

[(1) the renewal application form is completed by the licensee or authorized representative of the licensee who is an employee, an unpaid agent, a licensed attorney, or certified public accountant;]

[(2) accompanied by the required license renewal application fee payment; and]

[(3) accompanied by proof of a surety bond, if required.]

[(c) A license renewal application is timely filed if:]

[(1) the sufficient license renewal application is received by the department on or before the license expiration date; or]

[(2) a legible postmark on the envelope transmitting the license renewal application clearly indicates that the renewal application was mailed on or before the license expiration date.]

[(d) A timely and sufficient application shall be accepted for processing. The department will review the application and make a final determination whether to approve or deny the application.]

(i) [(e)] A license holder who timely files a complete license renewal application in accordance with subsection (d) of this section [A licensee that submits a timely and sufficient license renewal application] may continue to operate under the expired license until the license renewal application is [finally] determined.

(j) [(f)] A license holder who fails to timely file a complete license renewal application in accordance with subsection (d) of this section [A licensee that fails to file a timely and sufficient license renewal application] is not authorized to continue licensed activities after the date the license expires. A license holder may rebut a determination that a license renewal application was not timely or complete by submitting evidence to the department demonstrating that the license renewal application was timely and complete. Such evidence must be received by the department within 10 calendar days of the date the department issues notice that a timely or complete license renewal application was not received by the department.

[(g) License plates issued pursuant to Transportation Code, Chapter 503, Subchapter C expire upon the date the associated license expires or when a timely and sufficient license renewal application is finally determined, whichever is later.]

[(h) A licensee may rebut a determination that a renewal application was not timely or sufficient by submitting evidence to the department demonstrating the renewal application was timely and sufficient. Such evidence must be received by the department within ten (10) calendar days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.]

(k) [(i)] The department shall accept a [A] late license renewal application [may be filed] up to 90 days after the date the license expires. In accordance with subsection (j) of this section, the license holder [license expiration date; however, the applicant] is not authorized to continue licensed activities after the date the license expires [license expiration date] until the department approves the late license renewal application. If the department grants a license renewal under this section [renewal license is granted under this subsection], the licensing period begins on the date the department issues the renewed license. The license holder [license is issued and the licensee] may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license. [the license.]

(l) [(j)] If the department has not received a late license renewal application within 90 days after the date the license expires [expiration date], the department will close the license. A person [The entity] must apply for and receive a new license before that person [the entity] is authorized to resume activities requiring a license.

(m) A metal dealer's license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires or when a license renewal application is determined, whichever is later.

§215.84. Brokering, New Motor Vehicles.

(a) For purposes of this subchapter, the phrase "arranges or offers to arrange a transaction," as used in Occupations Code, §2301.002, includes the practice of arranging or offering to arrange a transaction involving the sale of a new motor vehicle for a fee, commission, or other valuable consideration. Advertising is not brokering, provided [Under Occupations Code, §§2301.002, 2301.006, 2301.251 and 2301.252, the definition of "arranges or offers to arrange a transaction" is construed as soliciting or referring buyers for new motor vehicles for a fee, commission, or other valuable consideration. Advertising would not be included in this definition as long as] the person's business primarily includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee [fees] for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a fee to such [an] entity is aiding and abetting brokering. However, a [any] referral service, program, plan, club, or other entity that forwards a referral to a dealership [referrals to dealerships] may lawfully operate in a manner that includes all of the following conditions.[:]

(1) There is [are] no exclusive market area [areas] offered to a dealer [dealers] by the program. All dealers are allowed to participate in the program on equal terms.

(2) Participation by a dealer [dealers] in the program is not restricted by conditions, such as limiting the number of line-makes [franchise lines] or discrimination by size of dealership or location. The total [Total] number of participants in the program may be restricted if the program is offered to all dealers at the same time, with no regard to the line-make. [franchise line.]

(3) All participants pay the same fee for participation in the program. The program fee [that] shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer. [line-make of the dealership.]

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in. [vehicles or trade-ins.]

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(c) Subsections [The provisions of subsections] (a) and (b) of this section do not apply to any person or entity [which is] exempt from the broker definition in Occupations Code, §2301.002. [§2301.002(3).]

(d) All programs must comply with Subchapter H of this chapter (relating to Advertising).

§215.85. Brokering, Used Motor Vehicles.

(a) Transportation Code, §503.021 prohibits a person[, ~~prohibits persons~~] from engaging in [~~the~~] business as a dealer, directly or indirectly, including by consignment without a GDN. The phrase "directly or indirectly" [~~general distinguishing number. "Directly or Indirectly"~~] includes the practice of arranging or offering to arrange a transaction involving the sale of a used motor vehicle for a fee, commission, or other valuable consideration. A person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a broker for the purposes of this section.

(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee [~~fees~~] for arranging a transaction involving the sale of a used motor vehicle is required to meet the requirements for and obtain a GDN, [~~general distinguishing number~~] unless the referral service, program, plan, or club is operated in the following manner.[:]

(1) There is [~~are~~] no exclusive market area [~~areas~~] offered to a dealer [~~dealers~~] by the program. All dealers are allowed to participate in the program on equal terms.

(2) Participation by a dealer [~~dealers~~] in the program is not restricted by conditions, such as limiting the number of line-makes [~~franchise lines~~] or discrimination by size of dealership or location. The total [~~Total~~] number of participants in the program may be restricted if the program is offered to all dealers at the same time, with no regard to the line-make. [~~franchise line.~~]

(3) All participants pay the same fee for participation in the program. The program fee [~~that~~] shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer. [~~line-make of the dealership.~~]

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in. [~~vehicles or trade-ins.~~]

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(c) All programs must comply with Subchapter H of this chapter (relating to Advertising).

§215.87. License and Metal Dealer's License Plate Terms and Fees.

(a) Except as provided by other law, the term of a license or metal dealer's license plate issued by the department [~~division~~] under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two years.

(b) A metal dealer's license plate [~~Metal plates~~] issued by the department expires on the date the associated license expires. [~~division in connection with a license expire on the same date as the license.~~]

(c) The fee for a license or metal dealer's license plate is computed by multiplying the applicable annual fee by the number of years of the license term. The entire amount of the fee is due at the time of application for the license or license renewal.

§215.88. Criminal Offense and Action on License.

(a) This section describes board [~~Board~~] or department action on a license application or an existing license issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, including denial, revocation, and suspension, and identifies the types of criminal offenses that directly relate to the duties and responsibilities of the occupations licensed under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301.

(b) Except as provided by subsection (e) of this section, the board [~~Board~~] or department will consider denial of an application for a license or revocation or suspension of a license in accordance with the requirements of:

(1) Occupations Code, Chapter 53;

(2) Occupations Code, Chapter 2301, Subchapter N;

(3) Government Code, Chapter 2001 [~~(Administrative Procedure Act)~~]; and

(4) board [~~Board~~] rules.

(c) The terms [~~term~~] "applicant" or "person" as used in this section includes:

(1) an applicant for a license or other authorization issued by the department;

(2) the holder of a license or other authorization issued by the department;

(3) a person's spouse with a community property interest in the entity licensed or to be licensed by the department;

(4) a controlling shareholder of a business entity licensed by the department;

(5) a person holding 50% or more ownership interest in a business entity licensed by the department;

(6) a person acting in a representative capacity for the applicant or license holder, including an owner, president, vice-president, member of the board of directors, chief executive officer, chief financial officer, chief information officer, chief managing officer, treasurer, controller, director, principal, manager of business affairs, or similar position of a business entity; or

(7) any person who becomes a person described in this subsection.

(d) An action taken by the board [~~Board~~] or department under this section may be based on an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder.

(e) Upon receipt of an order or notice regarding an applicant or license holder issued under Family Code, Chapter 232, the board [~~Board~~] or department will deny [~~refuse to approve~~] an application for issuance of a license, will not renew an existing license, or will suspend a license or other authorization issued by the department. The board's [~~Board~~] or department's action, based upon receipt of an order or notice issued under Family Code, Chapter 232, on the application for a license or existing license is not subject to the provisions of Government Code, Chapter 2001, including notice, hearing, or opportunity for hearing. Upon [~~On~~] receipt of an order vacating or staying an order suspending a license issued under Family Code, Chapter 232, the board [~~vacating or staying an order suspending a license, the Board~~] or department will issue the affected license to the applicant or license holder if the applicant or license holder is otherwise qualified for the license.

(f) No person currently imprisoned for conviction of a felony under any state or federal law is eligible for or to retain a license or authorization issued by the department.

(g) The board [~~Board~~] or department will revoke a license issued by the department upon the license holder's [~~licensee's~~] impris-

onment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(h) The board [~~Board~~] or department may revoke a license issued by the department upon the license holder's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, of a person defined by [~~in~~] subsection (c) of this section or identified in subsection (d) of this section.

(i) The board [~~Board~~] or department may suspend a license, revoke a license, or disqualify a person from receiving a license issued by the department if:

(1) a person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Any such action shall be made after consideration of the factors listed in Occupations Code, §53.022 and[~~,~~] §53.023, and the guidelines issued by the department pursuant to Occupations Code, §53.025;

(2) a person has been convicted of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;

(3) a person has been convicted of an offense listed in Code of Criminal Procedure, Article 42.12, Section 3g [~~Section 3g, Article 42.12, Code of Criminal Procedure~~]; or

(4) a person has been convicted of a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001 [~~Article 62.001, Code of Criminal Procedure~~].

(j) For purposes of Occupations Code, §53.021, the following criminal offenses directly relate to the duties and responsibilities of the occupations licensed by the department:

(1) Penal Code, Chapter 15, Preparatory Offenses;

(2) Penal Code, Chapter 16, Criminal Instruments, Interception of Wire or Oral Communication, and Installation of Tracking Device;

(3) Penal Code, Chapter 19, Criminal Homicide;

(4) Penal Code, Chapter 20, Kidnapping, Unlawful Restraint, and Smuggling of Persons;

(5) Penal Code, Chapter 20A, Trafficking of Persons;

(6) Penal Code, Chapter 21, Sexual Offenses;

(7) Penal Code, Chapter 22, Assaultive Offenses;

(8) Penal Code, Chapter 25, Offenses Against [~~against~~] the Family;

(9) Penal Code, Chapter 28, Arson, Criminal Mischief, and Other Property Damage or Destruction;

(10) Penal Code, Chapter 29, Robbery;

(11) Penal Code, Chapter 30, Burglary and Criminal Trespass;

(12) Penal Code, Chapter 31, Theft;

(13) Penal Code, Chapter 32, Fraud;

(14) Penal Code, Chapter 33, Computer Crimes;

(15) Penal Code, Chapter 33A, Telecommunications Crimes;

(16) Penal Code, Chapter 34, Money Laundering;

(17) Penal Code, Chapter 35, Insurance Fraud;

(18) Penal Code, Chapter 36, Bribery and Corrupt Influence;

(19) Penal Code, Chapter 37, Perjury and Other Falsification;

(20) Penal Code, Chapter 38, Obstructing Governmental Operation;

(21) Penal Code, Chapter 71, Organized Crime;

(22) Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, involving an offense for which the person has been required to register as a sex offender;

(23) Transportation Code, Chapter 501, Certificate of Title Act;

(24) Transportation Code, Chapter 502, Registration of Vehicles;

(25) Transportation Code, Chapter 503, Dealer's and Manufacturer's Vehicle License Plates;

(26) Transportation Code, Chapter 504, License Plates;

(27) Transportation Code, Chapter 520, Miscellaneous Provisions;

(28) Transportation Code, Chapter 547, Vehicle Equipment;

(29) Transportation Code, Chapter 548, Compulsory Inspection of Vehicles;

(30) Transportation Code, Chapter 727, Modification of, Tampering with, and Equipment of Motor Vehicles;

(31) Transportation Code, Chapter 728, Subchapter B, Sale of Master Key for Motor Vehicle Ignitions;

(32) Occupations Code, Chapter 2301, Subchapter R, Regulation of Certain Commercial Uses of Motor Vehicles;

(33) Tax Code, Chapter 23, Appraisal Methods and Procedures;

(34) Tax Code, Chapter 152, Taxes on Sale, Rental, and Use of Motor Vehicles;

(35) Business and Commerce Code, Chapter 17, Deceptive Trade Practices;

(36) Health and Safety Code, Chapter 365, Litter;

(37) Health and Safety Code, Chapter 481, Texas Controlled Substances Act;

(38) Health and Safety Code, Chapter 482, Simulated Controlled Substances;

(39) Health and Safety Code, Chapter 483, Dangerous Drugs;

(40) Water Code, Chapter 7, Enforcement;

(41) United States Code, Title 15, Chapter 28, Disclosure of Automobile Information, especially 15 U.S.C. §1233, Violations and Penalties;

(42) United States Code, Title 18, Chapter 63, Mail Fraud and Other Fraud Offenses;

(43) United States Code, Title 49, Chapter 301, Motor Vehicle Safety, especially 49 U.S.C. §30170, Criminal Penalties; or

(44) United States Code, Title 49, Chapter 327, Odometers, especially 49 U.S.C. §32709, Penalties and Enforcement.

§215.89. Fitness.

(a) In determining a person's fitness for a license issued or to be issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board [~~Board~~] or department will consider:

(1) the requirements of Occupations Code, Chapter 53;

(2) the provisions of Occupations Code, §2301.651;

(3) any specific statutory licensing criteria or requirements;

(4) mitigating factors; and

(5) other evidence of a person's fitness, as allowed by law, including the standards identified in subsection (b) of this section.

(b) The board [~~Board~~] or department may determine that a person is unfit to perform the duties and discharge the responsibilities of a license holder and may, following notice and an opportunity for hearing, deny a person's license application or revoke or suspend a license if the person:

(1) fails to meet or maintain the qualifications and requirements of licensure;

(2) is convicted by any local, state, or federal authority of an offense listed in §215.88(j) of this title (relating to Criminal Offense and Action on License) or is convicted in any jurisdiction of an offense containing elements that are substantially similar to the elements in the offenses in §215.88(j) [~~of this title~~];

(3) omits information or provides false, misleading, or incomplete information regarding a criminal conviction on an initial application, renewal application, or application attachment for a license or other authorization issued by the department or by any local, state, or federal regulatory authority;

(4) is found to have violated an administrative or regulatory requirement based on action taken on a license, permit, or other authorization, including disciplinary action, revocation, suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board [~~Board~~], department, or any local, state, or federal regulatory authority;

(5) is insolvent or fails to obtain or maintain financial resources sufficient to meet the financial obligations of the licensee;

(6) is a corporation that fails to maintain its charter, certificate, registration, or other authority to conduct business in Texas;

(7) is assessed a civil penalty, administrative fine, fee, or similar assessment by the board [~~Board~~], department, or a local, state, or federal regulatory authority for violation of a requirement governing or impacting the distribution or sale of a vehicle or a motor vehicle and fails to comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

(8) was or is a person defined by §215.88(c) [~~in §215.88(c) of this title~~] or identified in §215.88(d) [~~of this title~~], or a manager or affiliate of a sole proprietorship, partnership, corporation, association, trust, estate, or other legal entity whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership interest with a person whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board [~~Board~~], department, or any local, state, or federal regulatory authority;

(10) is a business entity that is operated, managed, or otherwise controlled by a relative or family member and that person could be considered unfit, is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment; or

(11) is found in an order issued through a contested case hearing [~~an administrative proceeding~~] to be unfit or acting in a manner detrimental to the system of distribution or sale of motor vehicles in Texas, the economy of the state, the public interest, or the welfare of Texas citizens.

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 June 5, 2015.

TRD-201502124
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 465-5665

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43 TAC §215.86

(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 Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which

require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.86. Processing of License Applications, Amendments, or Renewals.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §§215.101 - 215.106, 215.108 - 215.119

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.101. Purpose and Scope [~~Objective~~].

This subchapter implements [~~The objective of these rules is to implement the intent of the legislature as declared in~~] Occupations Code, Chapter 2301[~~,~~] and Transportation Code, Chapters 503 and 1000 - 1005. [~~1000 through 1005, by prescribing rules to regulate businesses requiring licenses under the Code.~~]

§215.102. Representatives.

[~~(a) To effectuate Occupations Code, §2301.002(29), the definition of the term "representative" is construed to be sufficiently broad to include regional, zone, or district executive personnel whose area of responsibility includes Texas, and whose duties include contacting motor vehicle dealers or dealership personnel, and every other person employed by a motor vehicle manufacturer, distributor or converter, directly or indirectly, to call upon or contact motor vehicle dealers or dealership employees concerning new motor vehicle sales, advertising, service, parts, business management, used motor vehicle sales, and for any other purpose.~~]

(a) [~~(b)~~] The term "representative" as used in this subchapter does not include a person [~~The statutory definition is construed to not include office or clerical personnel, production personnel, etc.,~~] whose duties do not include contacting motor vehicle dealers or dealership employees.

(b) Except as provided by subsection (c) of this section, an employee of a licensed representative entity is required to obtain a representative's license in that employee's individual capacity.

(c) The president or chief executive officer of an entity that holds a representative's license is not required to obtain a separate representative license in the president's or chief executive officer's individual capacity.

(d) A representative is required to hold a separate license for each manufacturer, distributor, or converter for which the representative performs representative functions.

[~~(c) A "person" who meets the definition of representative can also be other than a natural person such as a corporation. Employees of an entity licensed as a representative that perform representative functions in the scope of their employment for the licensed representative are required to obtain a representative's license in their individual capacity, except for the president/chief executive officer of the corporation. A licensed representative may identify and perform representative functions for more than one manufacturer, distributor, or converter.~~]

§215.103. Service-only [~~Service-Only~~] Facility.

(a) A service-only facility is a location occupied and operated by a franchised dealer that is a completely separate, noncontiguous [~~non-contiguous~~] site, from the franchised dealer's new motor vehicle sales and service or sales only location, where the franchised dealer will only perform warranty and nonwarranty [~~non-warranty~~] repair services. Except as allowed in subsection (d) of this section, warranty repair services may only be performed at either a licensed dealership or a licensed service-only facility.

(b) A franchised dealer must obtain a license to operate a service-only facility. A [~~The~~] dealer may not obtain a service-only facility license to service a particular line of new motor vehicles, unless that [~~the~~] dealer is franchised and licensed to sell that line.

(c) A service-only facility is [~~considered~~] a dealership [~~under Occupations Code, §2301.002(8), and is therefore~~] subject to protest under Occupations Code, §2301.652.

(d) Upon the manufacturer's or distributor's prior written approval, which cannot be unreasonably withheld, only a franchised dealer of the manufacturer or distributor may contract with another person as a subcontractor [~~sub-contractor~~] to perform warranty repair services that the dealer is authorized to perform under a franchise agreement with a manufacturer or distributor. Payment shall be made by the franchised dealer to the subcontractor [~~sub-contractor~~] and not by the manufacturer or distributor to the subcontractor. [~~sub-contractor.~~]

(e) A person with whom a franchised dealer contracts, as described in subsection (d) of this section, to perform warranty repair services is not eligible to obtain a service-only facility license and may not advertise [~~to the public~~] the performance of warranty repair services in any manner to the public.

§215.104. Changes to Franchised Dealer's [~~Dealer~~] License.

(a) In accordance with [~~To effectuate~~] Occupations Code, §2301.356, a franchised dealer must file an application to amend the franchised dealer's license in order to request inclusion of an additional line-make at the dealer's currently licensed showroom. [~~every licensed dealer who proposes to conduct business at a currently licensed showroom under a franchise that is additional to or that differs from the franchise or franchises on which the license is then based shall file an application to amend the license on the form prescribed by the division, attaching a copy of the franchise agreement. The amended application will be considered as if it were an original application to operate under the additional franchise as to all matters except those reflected by the license as issued.~~]

(1) In accordance with §215.110 of this title (relating to Evidence of Franchise), the franchised dealer must attach to the amendment application a copy of:

(A) the executed franchise agreement;

(B) the required excerpt from the executed franchise agreement; or

(C) an evidence of franchise form completed by the manufacturer, distributor, or representative.

(2) The amendment application for an additional franchise at the showroom is considered an original application and is subject to protest, in accordance with Occupations Code, Chapter 2301.

(b) A franchised dealer may propose to sell or [~~licensed dealer who proposes to sell and/or~~] assign to another any interest in the licensed entity, whether a corporation or otherwise, provided [~~so long as~~] the physical location of the licensed entity remains the same.[~~,~~]

(1) The franchised dealer shall notify the department [~~division~~] in writing within 10 [~~ten~~] days of the sale or assignment of interest [~~change~~] by filing an application to amend the franchised dealer's license.

(2) If the sale or assignment of any portion of the business results in a change of business entity, then the purchasing entity or assignee [~~purchasing/assignee entity~~] must apply for and obtain a new license in the name of the new business entity.

(3) A publicly-held corporation needs only to [~~Publicly-held corporations need only~~] inform the department [~~division~~] of a change in ownership if one person or entity acquires 10% or greater interest in the licensed entity. [~~licensee.~~]

(c) A franchised dealer is required to file an amendment application within 10 days of a license change, including: [~~In the event of a change in management reflected by a change of the general manager, dealer principal, or other person who is in charge of a licensee's business activities, whether a managing partner, officer, or director of a corporation, or otherwise, the division shall be advised by means of an application for an amended license.~~]

(1) deletion of a line-make from the dealer's license;

(2) a change of assumed name on file with the Office of the Secretary of State or county clerk;

(3) a change of mailing address;

(4) a change of telephone number;

(5) a change of facsimile number; or

(6) a change of email address.

(d) A franchised dealer is required to file a business entity amendment application within 10 days of an entity change, including:

(1) a change in management, dealer principal, or change of other person who is in charge of a franchised dealer's business activities, including a managing partner, officer, director of a corporation, or similar person; or

(2) a change of legal entity name on file with the Office of the Secretary of State.

(e) [~~(d)~~] If a licensed new motor vehicle dealer changes or converts from one type of business entity to another type of business entity without changing ownership of the dealership, the submission of a franchise agreement in the name of the new entity is not required in conjunction with an application. The franchise agreement on file with the department [~~division~~] prior to the change or conversion of the dealer's business entity type applies to the successor entity until the parties agree to replace the franchise agreement. This subsection does not apply to a sole proprietorship or general partnership.

(f) [~~(e)~~] If a dealer adopts a plan of conversion under a state or federal law that allows one legal entity to be converted into another legal entity, only an application to amend the license is necessary to be filed with the department [~~division~~]. The franchise agreement on file with the department [~~division~~] continues to apply to the converted entity. If a license holder becomes another legal entity [~~the entity change is accomplished~~] by any means other than by conversion, a new application is required, subject to subsection (e) [~~(d)~~] of this section.

(g) [~~(f)~~] In addition to obtaining permission from the manufacturer or distributor, a franchised dealer [~~A licensee~~] shall obtain department [~~division~~] approval prior to [~~the~~] opening [~~of~~] a supplemental location or relocating[~~, or the relocation of~~] an existing location. A franchised dealer [~~licensee~~] must notify the department [~~division~~] when closing an existing location.

§215.105. Notification of License Application; Protest Requirements.

(a) The provisions of this section are not applicable to an application filed with the department for a dealer license as a result of the purchase or transfer of an existing entity holding a current franchised dealer's license that does not involve a physical relocation of the purchased or transferred line-makes.

(b) [~~(a)~~] Upon receipt of an application for a new motor vehicle dealer's license, including an application filed with the department [~~division~~] by reason of the relocation of an existing dealership, the department [~~division~~] shall give notice of the filing of the application to each franchised dealer [~~all dealer licensees~~] that may have standing to protest the application.

(c) [~~(b)~~] The department will not give notice if there is no franchised dealer [~~If it appears to the department that there are no dealers~~] with standing to protest[~~, then no notice shall be given~~].

(d) [~~(c)~~] A person holding a franchised dealer's license for the sale of the same line-make of new motor vehicle [~~any dealer licensee holding a franchise of a new motor vehicle as~~] proposed for sale in the subject application and that has [~~with~~] standing to protest the application may file with the department [~~division~~] a notice of protest opposing [~~in opposition to the application and~~] the granting of a license.

(e) [~~(d)~~] A franchised [~~The~~] dealer that wishes to protest the application shall give notice in accordance with Occupations Code, Chapter 2301. [~~its notice of protest in the following manner.~~]

(1) The notice of protest shall be in writing and shall be signed by an authorized officer or other official authorized to sign on behalf of the protesting dealer [~~licensee~~] filing the notice.

(2) The notice of protest shall state the statutory basis upon which the protest is made and assert how the protesting dealer meets the standing requirements under §215.119 of this title (relating to Standing to Protest) to protest the application.

(3) The notice of protest shall state that the protest is not made for purposes of delay or for any other purpose except for justifiable cause.

(4) If a protest is filed against an application for the establishment of a dealership or for addition of a line-make at an existing dealership, the notice of protest shall state under which [~~the~~] provision of Occupations Code, Chapter 2301[~~, under which~~] the protest is made.

(f) [~~(e)~~] This section does not apply to an application for a franchised dealer's license filed with the department [~~The provisions of this section shall not be applicable to any application filed with the division for a dealer license~~] as a result of the purchase or transfer of an existing entity holding a current franchised dealer's license that [~~franchise license which~~] does not involve any physical relocation of the purchased or transferred line-makes.

§215.106. Time for Filing Protest.

(a) A notice of protest must be:

(1) received by the department [~~in the division offices in Austin~~] not later than 5:00 p.m. Central Standard Time (CST) on the date 15 days from the date of mailing of the department's [~~division's~~] notification to the license holder [~~licensees~~] of the filing of the application;

(2) filed with the department by United States mail, facsimile, hand delivery, or through the department's designated electronic filing system when available; however, a notice of protest may not be filed by email [~~e-mail~~]; and

(3) accompanied by the [~~statutorily~~] required [~~protest~~] filing fee. If the filing fee does not accompany the notice of protest, the [~~statutorily required protest filing~~] fee must be received by the department [~~in the division offices in Austin~~] not later than 5:00 p.m. CST on the date 20 days from the date of mailing of the department's [~~division's~~] notification to the license holder [~~licensees~~] of the filing of the application.

(b) The department will reject a notice of protest if:

(1) the complete notice of protest is not filed within 15 days from the date of mailing of the department's notification to the license holder of the filing of the application; or

(2) the required filing fee is not remitted within 20 days from the date of mailing of the department's notification to the license holder of the filing of the application.

~~[(b) Failure to file a formal notice of protest within the specified time period shall result in the disallowance of the protest.]~~

~~[(c) Failure to remit the statutorily required protest] filing fee within the specified time period shall result in the disallowance of the protest.]~~

§215.108. Addition or Relocation of Line-make [~~Line Make~~].

An application to amend [~~for the amendment of~~] an existing new motor vehicle dealer's license for [~~by~~] the addition of another line-make at the existing dealership or for the relocation of a line-make to the existing dealership shall be deemed [~~to be~~] an "application to establish a dealership" insofar as the line-make to be added is concerned, and shall be subject to the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements) and §215.106 of this title (relating to Time for Filing Protest). [~~§§215.105-215.107 of this subchapter (relating to Notification of License Application; Protest Requirements; Time for Filing Protest; and Hearing).~~]

§215.109. Replacement Dealership.

An application for a new motor vehicle dealer's license for a dealership intended as a replacement for a previously existing dealership shall be deemed [~~to be~~] an application for a "replacement dealership" required to be established in accordance with [~~pursuant to~~] Occupations Code, §2301.454 [~~§2301.453,~~] and shall not be subject to protest under the provisions of §215.105 of this title [~~subchapter~~] (relating to Notification of License Application; Protest Requirements), provided that:

(1) the application states that the applicant is intended as a replacement dealership and identifies the prior dealership to be replaced;

(2) the manufacturer or distributor of the line-make gives notice to the department and to other dealers franchised for the same line-make that meet the provisions of [~~division and to its other like-line dealers pursuant to~~] Occupations Code, §2301.652(b);

(3) the notice under paragraph (2) of this subsection is given within 60 days following the closing of the prior dealership;

(4) [~~(3)~~] the application is filed with the department [~~division~~] not later than one year following the closing of the prior dealership; and

(5) [~~(4)~~] the location of the applicant's proposed dealership is not more than two miles [~~not greater than two miles~~] from the location of the prior dealership.

§215.110. Evidence of Franchise.

(a) Upon application for a new motor vehicle dealer's license or an amendment of an [~~dealer license, or application for amendment of~~] existing new motor vehicle dealer's [~~dealer~~] license to add a line-make, [~~in addition to other attachments required to be submitted with the application,~~] the applicant must submit a photocopy of the [~~those~~] pages of the franchise agreement(s) that reflect [~~which reflect~~] the parties to the agreement(s), [~~and~~] the authorized signatures of the parties to the agreement(s), and each line-make [~~for each line of motor vehicle~~] listed in the application. To meet this requirement temporarily for the purpose of application processing, a [~~A~~] form prescribed by the department [~~division~~] and completed by the manufacturer or distributor [~~manufacturer/distributor~~] may be submitted with the application in lieu of the information described in this subsection [~~to meet this requirement temporarily, for purposes of application processing~~]. The applicant must submit the required photocopies of the franchise agreement(s)[~~, as~~] described in this subsection[~~,~~] immediately upon the applicant's receipt of the franchise agreement(s). [~~receipt.~~]

(b) Upon application to relocate a new motor vehicle dealership, [~~in addition to other attachments required to be submitted with the application,~~] the applicant must submit a form prescribed by the department [~~division~~] and completed by the manufacturer or distributor [~~manufacturer/distributor~~] that identifies the license holder [~~licensee~~] and the new location.

§215.111. Notice of Termination or Discontinuance [~~Noncontinuance~~] of Franchise and Time for Filing Protest.

A notice of termination or discontinuance [~~noncontinuance~~] of a dealer's franchise shall be given by a manufacturer or distributor in accordance with [~~the requirements of~~] Occupations Code, §2301.453[~~,~~] not less than 60 days prior to the effective date of the franchise termination or discontinuance [~~thereof~~]. A notice of protest of the franchise

termination or discontinuance [~~noncontinuance~~] by a dealer pursuant to Occupations Code, §2301.453[~~,~~] shall be in writing and shall be filed with the department [~~in the Board's office in Austin,~~] prior to the effective date of the franchise termination or discontinuance [~~noncontinuance as~~] stated in the notice from the manufacturer or distributor.

§215.112. Motor Home Show Limitations and Restrictions.

(a) Applicability. This rule implements Occupations Code, §2301.358 and is expressly limited to a motor home show that requires department approval in accordance with subsection (b) of this section.

(b) Show approval required. Without written approval by the department, a person may not promote or conduct a show involving a new motor home that will be sold or offered for sale.

(c) Show requirements. The department may approve a motor home show in accordance with this section if the show:

(1) does not exceed six consecutive days;

(2) is not conducted within 90 days of a previous show in the same county; and

(3) complies with Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; and board rules.

(d) The department may authorize additional motor home shows in any county upon a showing of good cause by the promoter for waiver from the show requirements of subsection (c) of this section.

(e) Show approval requirements. For purposes of this section, the promoter or coordinator of a motor home show must submit an application to the department. The application must:

(1) be completed and submitted on a form in the manner prescribed by the department;

(2) be accompanied by all required attachments;

(3) be submitted no less than 30 days and no more than 90 days before the proposed show date;

(4) be accompanied by a $25,000 surety bond if the promoter or coordinator of the show is not a license holder, an association of license holders, or an organization of license holders;

(5) affirm that at least three franchised dealers of new motor homes, each representing at least one different line-make, will participate in the show;

(6) affirm that each franchised dealer that participates in the show holds a valid franchised dealer's license issued by the department for each motor home line-make that the franchised dealer will represent in the show; and

(7) designate either Saturday or Sunday for suspension of the sale of any motor home, in accordance with Transportation Code, Chapter 728, Subchapter A, when the show is conducted over a consecutive Saturday and Sunday.

(f) Dealer participation approval required. Without written approval by the department, a motor home dealer may not participate in a show of new motor homes, where a motor home will be sold or offered for sale.

(g) Dealer participation requirements. A dealer of new motor homes requesting approval to participate in a show must submit a complete application to the department. To be complete, the application must be on a form prescribed by the department and accompanied by all required attachments.

(h) Located within 70 miles of show site. For the purpose of this section, a franchised dealer located within 70 miles of the site of the proposed show has a right equal to any other franchised dealer that is also located within 70 miles of the show site to participate in the show with a like-line motor home.

(i) Located more than 70 miles from show site. For the purpose of this section, a franchised dealer that is located more than 70 miles from the proposed show site does not have a right to participate in the show; however, the department may approve that franchised dealer to participate in the motor home show, if:

(1) there is no franchised dealer of a like-line motor home located within 70 miles of the proposed show site; or

(2) the franchised dealer obtains a written waiver from each like-line franchised motor home dealer located within 70 miles of the proposed show site.

(j) Suspension of sales. For the purpose of this section and pursuant to Transportation Code, Chapter 728, Subchapter A, when a show is conducted over a consecutive Saturday and Sunday, all franchised dealers of motor homes will suspend sales on the same Saturday or Sunday, as designated by the show promoter or coordinator. On the day sales are suspended, a motor home dealer:

(1) may quote a price and discuss finance options;

(2) may open and attend to the motor home product;

(3) may not sell, offer to sell, negotiate a price, or enter into a contract or letter of intention to contract for the sale of the product; and

(4) is not required to remove or cover the suggested retail price the manufacturer may have affixed to the motor home.

[~~(a) A dealer licensed by the division who is authorized to sell new motor homes may attend and sell at any motor home show that has been approved by the division.~~]

[~~(b) The scope of this rule is expressly limited to new motor home shows and exhibitions. It does not apply to other types of motor vehicle distribution activities, static displays, or any other provision of Occupations Code, Chapter 2301 other than §2301.355 and §2301.358. Other motor vehicle shows, exhibitions, or static displays will be reviewed by division staff on a case by case basis.~~]

[~~(c) Approval must be sought by the show promoter or coordinator no less than 30 days and no more than 90 days prior to the proposed show date. All applications for motor home shows must be submitted on the forms and in the manner prescribed by the division, and must be accompanied by all required attachments. If the promoter or coordinator is not a licensee, an association of licensees, or organization of licensees, the application must be accompanied by a $25,000 surety bond to assure compliance with Occupations Code, Chapter 2301 and department rules, as well as other regulations pertaining to the sale of new motor vehicles.~~]

[~~(d) There must be at least three dealers participating in the show, representing at least three different line-makes at the show, for the show to qualify for approval. Each participating new motor vehicle dealer must have a current, valid, Texas new motor vehicle dealer's license to sell the particular line of motor home to be shown.~~]

[~~(e) The duration of any motor home show shall not exceed six consecutive days. If a show is conducted over a consecutive Saturday and a Sunday, sales will be suspended by all motor vehicle dealers on the same Saturday or Sunday to achieve uniform compliance with the Blue Law under Transportation Code, Chapter 728, Subchapter A. On the day sales are suspended, a motor home dealer:~~]

[(1) may quote a price and discuss finance options;]

[(2) may not sell, offer to sell, negotiate a price, or enter into a contract or letter of intention to contract for the sale of the product;]

[(3) may open and attend to the motor home product;]

[(4) is not required to remove or cover the suggested retail price the manufacturer may have affixed to the motor home.]

[(f) No motor home show shall occur in a county within 90 days of a previous motor home show within that county. Upon a showing of good cause, the division may authorize additional motor home shows in any county. Any motor home dealer may attend a motor home show so long as no like line dealership is located within 70 miles of the show site, unless a written waiver is obtained from the like line dealer or dealers located within 70 miles of the show site. Any like line dealer within 70 miles of the show site has a superior and exclusive right to represent that line at the proposed show. If there are two or more like line dealers located within 70 miles of the show site, each has equal right to participate in the proposed show.]

§215.113. Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development.

(a) An application for a new motor vehicle dealer's license of [in] which a manufacturer or distributor[, as those terms are defined in Occupations Code, Chapter 2301,] owns any interest in or has control of the dealership entity must be submitted to the department [division] no later than 30 days before:

(1) the opening of the dealership;[,]

(2) close of the buy-sell agreement;[,] or

(3) the expiration of the current license[, whichever is the case].

(b) If a manufacturer or distributor applies for a new motor vehicle dealer's license of [in] which the manufacturer or distributor holds an ownership interest in or has control of the dealership entity in accordance with [under the terms of] Occupations Code, §2301.476(d) - (f) [§2301.476(d)], the license application must contain a sworn statement from the manufacturer or distributor that the dealership was purchased from a franchised dealer and is for sale at a reasonable price and under reasonable terms and conditions, and that the manufacturer or distributor intends to sell the dealership to a person not controlled or owned by the manufacturer or distributor within 12 months of acquiring the dealership, except as provided by [in] subsection (h) of this section.

(c) A request for an extension of the initial 12 month period for manufacturer or distributor ownership or control of a new motor vehicle dealership, in accordance with Occupations Code, §2301.476(e), must be submitted to the department in accordance with subsection (a) of this section[,] along with a complete application to renew the new motor vehicle dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12 month period. The director will evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor may request a hearing on the denial [to be conducted] in accordance with Occupations Code, §§2301.701 - 2301.713.

(d) Requests for extensions after the first extension is granted, as provided by [in] Occupations Code, §2301.476(e), must be submitted at least 120 days before the expiration of the current license. Upon receipt of a subsequent request, the board [Board] will initiate a hearing in accordance with Occupations Code, §§2301.701-2301.713, at which the manufacturer or distributor will be required to show good cause for the failure to sell the dealership. The manufacturer or distributor has the burden of proof and the burden of going forward on the sole issue of good cause for the failure to sell the dealership.

(e) The department [division] will give notice of the hearing described in subsection (d) of this section to all other franchised dealers [dealer licensees] holding franchises for the sale and service or service only of the same line-make of new motor vehicles that [who] are located in the same county in which the dealership owned or controlled by the manufacturer or distributor is located or in an area within 15 miles of the dealership owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed to intervene and protest the granting of the subsequent extension. Notices of intervention by dealers afforded a right to protest under Occupations Code, §2301.476(e)[,] must be filed with the department [division's Docket Clerk] within 15 days of the date of mailing of the notice of hearing, and a copy must be [with a copy] provided to the manufacturer or distributor. The department will reject a notice of intervention if the notice is not filed at least 30 days before: [Failure to file a formal notice of intervention within the specified time period will result in the disallowance of the intervention.]

(1) the opening of the dealership;

(2) close of the buy-sell agreement; or

(3) the expiration of the current license.

(f) A hearing under subsection (d) [subsections (d) and (e)] of this section will be conducted as expeditiously as possible, but not later than 120 days after receipt of the subsequent request for extension from the manufacturer or distributor. An [A SOAH] ALJ will prepare a written decision and proposed findings of fact and conclusions of law as soon as possible, but not later than 60 calendar days after the hearing is closed. The new motor vehicle dealer's license that is the subject of the hearing will continue in effect until a final decision on the request for a subsequent extension is rendered by the board. [Board on the request for a subsequent extension.]

(g) The procedures [procedure] described in subsections (d) - (f) of this section will be followed for all extensions requested by the manufacturer or distributor after the initial extension.

(h) An application for a new motor vehicle dealer's license of [in] which a manufacturer or distributor owns any interest in the dealership entity in accordance with [under the terms of] Occupations Code, §2301.476(g)[,] must contain sufficient documentation to show that the applicant meets the requirements of Occupations Code, §2301.476(g). [the following:]

[(1) that the dealer development candidate is part of a group of persons who have historically been underrepresented in the manufacturer's or distributor's dealer body or is an otherwise qualified person who lacks the resources to purchase a dealership outright;]

[(2) that the manufacturer or distributor is in a bona fide relationship with the dealer development candidate;]

[(3) that the dealer development candidate has made a significant investment in the dealership, subject to loss;]

[(4) that the dealer development candidate has an ownership interest in the dealership; and]

[(5) that the dealer development candidate operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.]

§215.114. Sale of a Vehicle by a Manufacturer or Distributor at a Wholesale Motor Vehicle [Vehicles by Manufacturer/Distributor at Wholesale] Auction.

A manufacturer or distributor [who is] licensed under Occupations Code, Chapter 2301[,] or a wholly owned [wholly-owned] subsidiary of a manufacturer or distributor, may sell motor vehicles it owns to dealers through a licensed Texas wholesale motor vehicle auction. A GDN issued to a licensed manufacturer, distributor, or wholly owned subsidiary of a manufacturer or distributor shall be canceled, unless otherwise allowed under Occupations Code, Chapter 2301. [General distinguishing numbers currently issued to licensed manufacturers, distributors, or their wholly-owned subsidiaries shall be cancelled on the date this rule becomes effective, except where otherwise allowed under the Code.]

§215.115. Manufacturer, Distributor, and Converter Records.

(a) A manufacturer or distributor must maintain, for a minimum period of 48 months, a record of each vehicle sold to any person in this state. The manufacturer or distributor shall make the record available during business hours for inspection and copying by a representative of the department or a peace officer.

(b) A converter must maintain, for a minimum period of 48 months, a record of each vehicle converted to any person in this state, including to a Texas franchised dealer. The converter shall make the record available during business hours for inspection and copying by a representative of the department or a peace officer.

[(a) Manufacturers and distributors must keep records of all vehicles they sell to any person in this state for a minimum period of 48 months. These records shall be made available for inspection and copying by a representative of the department during business hours.]

[(b) Converters must keep records of all vehicles converted and distributed to Texas franchised dealers for a minimum period of 48 months. These records shall be made available for inspection and copying by a representative of the department during business hours.]

(c) A manufacturer, distributor, or converter is required to maintain at its licensed location a record reflecting each purchase, sale, or conversion for a minimum period of 24 months. [Records reflecting purchases, sales, or conversions for at least the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site.] Records for prior time periods may be kept off-site.

(d) Within 15 days of [Upon] receipt of a request sent by mail or electronic document transfer from a representative of the department, a manufacturer, distributor, or converter must submit a copy [copies] of specified records to the address listed in the request [within 15 days].

(e) Records required to be maintained [Records required to be kept] and made available to the department must include the following: [shall contain the following information:]

(1) the date of sale or conversion of the motor vehicle;

(2) the VIN [vehicle identification number];

(3) the name and address of the purchasing dealer or converter;

(4) a copy of or a record [copies of or records] with the information contained in the manufacturer's certificate of origin [Manufacturer's Certificate of Origin] or title;

(5) information regarding the prior status of the motor vehicle such as the Reacquired Vehicle Disclosure Statement;

(6) the repair history of any motor vehicle subject to a warranty complaint;

(7) technical service bulletin [bulletins] or equivalent advisory; and [advisories; and,]

(8) any audit of a dealership. [audits of dealerships.]

(f) Any record required by the department may be maintained [Electronic records. Any records required to be kept may be kept] in an electronic format, if the electronic record [records] can be printed at the licensed location upon request for the record by a representative of the department or a peace officer.

§215.116. Lease or Sublease Listing.

A dealer that lists its dealership for lease or sublease to mitigate damages in accordance with Occupations Code, §2301.4651(e)[,] is required to list for lease or sublease:

(1) the entire real property if the termination or discontinuance effectively terminates all line-makes and all franchises for the entire dealership; or

(2) only that portion of the real property associated with the terminated line-make or franchise, if the termination or discontinuance does not affect all line-makes and all franchises of the dealership.

§215.117. Market Value Property Appraisal.

(a) A market value property appraisal assessment made in accordance with Occupations Code, §2301.482(c)[,] requires three general certified real estate appraisers [that have been] certified by the State of Texas.

(b) Necessary real estate and necessary construction are each determined by the applicable property use agreement.

(c) To determine market value of property in accordance with Occupations Code, §2301.482(c), an average of the market value property appraisals will be calculated from the independent market value property assessment determinations of the three general certified real estate appraisers.

§215.118. Determination of Affected County for Dealership Relocation.

The most recent population data reported by the federal decennial census is used to identify an affected county defined by [under] Occupations Code, §2301.6521.

§215.119. Standing to Protest.

(a) A protesting dealer [protestant] has the burden to demonstrate standing to protest.

(b) Standing requirements are established by the type of application.

(1) Protest of an application to establish a dealership or to add a new line-make to an existing dealership requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.652;

(2) Protest of an application to relocate a dealership requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.652;

(3) Protest of an application to relocate a dealership within an affected county or from an affected county to an adjacent affected county requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.6521;

(4) Protest of an application to relocate an economically impaired dealership requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.6522; and

(5) Protest of an application filed by a manufacturer, distributor, or representative for an extension of time for ownership or control of a dealership requires the protesting dealer [~~protestant~~] to meet standing requirements under Occupations Code, §2301.476.

(c) A person has standing to protest an application to establish a dealership or to add a franchised line-make at an existing dealership if:

(1) the person is a franchised dealer of the same line-make; and

(2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application was filed.

(d) Except as provided in subsections (e) and (f) of this section, a person has standing to protest an application to relocate a dealership or to relocate a franchised line-make of an existing dealership if:

(1) the person is a franchised dealer of the same line-make;

(2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application for relocation is filed;

(3) the proposed relocation site is more than two miles from the location where the dealership is currently licensed; and

(4) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.

(e) An application may be filed under Occupations Code, §2301.6521 to relocate a dealership from a location in an affected county to a location that is either within the same affected county or in an adjacent affected county.

(1) No dealer has standing to protest an application filed in accordance with this subsection if the proposed relocation site is two miles or less from the relocating dealer's existing licensed location.

(2) No dealer has standing to protest an application filed in accordance with this subsection if the proposed relocation site is farther from the protesting dealer's licensed location than the relocating dealer's existing licensed location.

(3) If a dealership of the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site, then a person has standing to protest an application to relocate[~~,~~] filed in accordance with this subsection, if:

(A) the person is a franchised dealer of the same line-make;

(B) the person's dealership is located within 15 miles of the proposed relocation site;

(C) the proposed relocation site is more than two miles from the location where the dealership is currently licensed; and

(D) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.

(4) If no dealership of the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site, then a person has standing to protest an application to relocate[~~,~~] filed in accordance with this subsection, if:

(A) the person is a franchised dealer of the same line-make;

(B) no other dealership of the same line-make is located nearer to the proposed relocation site;

(C) the person's dealership is located in the same affected county as the relocating dealership is proposed to be located;

(D) the proposed relocation site is more than two miles from the location where the relocating dealership is currently licensed; and

(E) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.

(f) If an economically impaired dealer files an application under Occupations Code, §2301.6522[~~,~~] to relocate its dealership, then a dealer may have [~~has~~] standing to protest the application if:

(1) the dealer is franchised for a line-make that is the same as a line-make proposed to be relocated;

(2) the proposed relocation site is more than two miles closer to the protesting dealer's dealership than the site of the economically impaired dealer's existing licensed location; and

(3) there is no other dealer located nearer to the proposed relocation site that is franchised for a line-make that is proposed to be relocated.

(g) A dealer has standing to protest an application for an extension of time that was filed by a manufacturer, distributor, or representative under Occupations Code, §2301.476[~~,~~] if:

(1) the protesting dealer is franchised for a line-make being sold or serviced from the dealership owned or controlled by a manufacturer, distributor, or representative; and

(2) the protesting dealer is located either in the same county as, or within 15 miles of, the dealership owned or controlled by the manufacturer, distributor, or representative.

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 June 5, 2015.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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43 TAC §215.107

(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 Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations

Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.107. Hearing.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.131, 215.132, 215.135, 215.137 - 215.141, 215.144 - 215.159

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.131. Purpose and Scope [~~Objective~~].

This subchapter implements [~~The objective of this subchapter is to implement the intent of the legislature as declared in~~] Transportation Code, Chapter 503[~~,~~] and Occupations Code, Chapter 2301[~~, by prescribing rules to regulate businesses requiring general distinguishing numbers~~].

§215.132. Definitions.

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

(1) Barrier--A material object or set of objects that separates or demarcates.

(2) Charitable organization--Has the meaning assigned by Transportation Code, §503.062(e). [~~An organization that is established and exists for the purpose of relieving poverty, the advancement of education, religion, or science, the promotion of health, governmental, or municipal purposes, or other purposes beneficial to the community without financial gain.~~]

(3) Consignment sale--The owner-authorized sale of a motor vehicle by a person other than the owner[~~, under the terms of a written authorization from the owner~~].

[~~(4) Dealer--Any person who is regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, motor homes, mobility motor vehicles, house trailers, or trailers or semitrailers as defined in Transportation Code, §501.001 et seq., or Transportation Code, §502.001 et seq., at either wholesale or retail, either directly, indirectly, or by consignment.~~]

[~~(5) Independent mobility motor vehicle dealer--A nonfranchised dealer who:~~]

[~~(A) holds a general distinguishing number issued by the department under Transportation Code, Chapter 503;~~]

[~~(B) holds a converter's license issued under Occupations Code, Chapter 2301;~~]

[~~(C) is engaged in the business of buying, selling, or exchanging mobility motor vehicles and servicing or repairing the devices installed on mobility motor vehicles at an established and permanent place of business in this state; and~~]

[~~(D) is certified by the manufacturer of each mobility device that the dealer installs, if the manufacturer offers that certification.~~]

(4) [~~(6)~~] House trailer--A nonmotorized vehicle designed for human habitation and for carrying persons and property on [~~upon~~] its own structure and for being drawn by a motor vehicle. A house trailer [~~The term~~] does not include manufactured housing. A towable recreational vehicle, [~~Towable recreational vehicles~~] as defined by [~~in~~] Occupations Code, §2301.002, is [~~are~~] included in the terms "house trailer" or "travel trailer."

(5) [~~(7)~~] License--A dealer's GDN [~~general distinguishing number~~] assigned by the department identifying the type of business for a specified [~~division for the~~] location from which the person engages in business.

[~~(8) Mobility motor vehicle--A motor vehicle that is designed and equipped to transport a person with a disability and that:~~]

[~~(A) has a chassis that contains:~~]

[(i) a permanently lowered floor or lowered frame; or]

[(ii) a permanently raised roof and raised door;]

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

[(i) an electronic or mechanical wheelchair, scooter, or platform lift that enables a person to enter or exit the vehicle while occupying a wheelchair or scooter;]

[(ii) an electronic or mechanical wheelchair ramp; or]

[(iii) a system to secure a wheelchair or scooter to allow for a person to be safely transported while occupying the wheelchair or scooter; and]

[(C) is installed as an integral part or permanent attachment to the motor vehicle's chassis.]

(6) [(9)] Person--Has the meaning assigned by Occupations Code, §2301.002. [Any individual, firm, partnership, corporation, or other legal entity.]

(7) [(10)] Sale--With regard to a specific vehicle, the transfer of possession of that vehicle to a purchaser for consideration.

(8) [(11)] Temporary tag--A buyer's temporary tag, converter's temporary tag, or dealer's temporary tag as described under Transportation Code, Chapter 503. [A buyer tag, converter tag, or dealer tag.]

(9) [(12)] Towable recreational vehicle--Has the same meaning as "house trailer" defined by this section. [See definition for House Trailer in this section.]

(10) [(13)] Travel Trailer--Has same meaning as "house trailer" defined by this section. [See definition for House Trailer in this section.]

(11) Vehicle--Has the meaning assigned by Transportation Code, §503.001.

(12) VIN--Vehicle identification number.

[(14) Wholesale dealer--A licensed dealer who only sells or exchanges vehicles with other licensed dealers.]

§215.135. More than One Location.

(a) A dealer that holds a GDN [holding a general distinguishing number] for a particular type of vehicle may operate from more than one location within the limits of a city, provided each [such] location is owned [operated] by the same legal entity and meets the requirements of §215.140 of this title [subchapter] (relating to Established and Permanent Place of Business).

(b) Additional locations [which are] not located within the limits of the same city of the initial dealership are required to:

(1) obtain a new GDN; and [separate license and security]

(2) provide a new surety bond reflecting the additional location, unless the licensed location is exempt by statute from the surety requirement. [from the security requirement by statute.]

(c) A dealer that relocates from a point outside the limits of a city or relocates to a point not within the limits of the same city of the initial location is required to:

(1) obtain a new GDN; and

(2) provide a new surety bond reflecting the new address, unless the licensed location is exempt by statute from the surety requirement.

[(c) Dealerships that are relocated from a point outside the limits of a city, or relocated to a point not within the limits of the same city of the initial location are required to obtain a new license and provide new security reflecting the new address unless the location is exempt from the security requirement by statute.]

(d) A dealer shall notify the department [division] in writing within 10 days of [the] opening, closing, or relocating any licensed [relocation of any dealership] location. Each [new] location must meet and maintain the requirements of §215.140 [of this subchapter].

(e) A dealer may not commence business at any location until the department's issues a license specific to that location.

§215.137. Surety Bond [Security Requirements].

[(a) Unless exempt pursuant to subsection (d) of this section, a dealer shall maintain a $25,000 bond conditioned on the dealer's payment of all valid bank drafts drawn by the dealer for the purchase of motor vehicles and the dealer's transfer of good title to each motor vehicle the dealer offers for sale. The bond must be valid for the same period of time as the dealer's license and is subject to the following:]

[(1) The bond shall be on a form which is prescribed by the division and approved by the attorney general and issued by a company duly authorized to do business in the state of Texas.]

(a) [(2)] The surety bond required by Transportation Code §503.033 [The bond] shall be in the legal business name in which the dealer's license will be issued and shall contain the complete physical address of each dealership location licensed under the GDN [general distinguishing number] that the surety bond is intended to cover.

(b) [(3)] A surety bond executed by an agent representing [who represents] a bonding company or surety must be supported by an original power of attorney from the bonding company or surety.

(c) The identity of the obligee on a surety bond or a rider to a surety bond must be approved by the department. A surety bond or rider to a surety bond may be identified as:

(1) a person who obtains a court judgment assessing damages and attorney's fees for an act or omission on which the bond is conditioned; or

(2) unknown.

(d) A bonding company that pays any judgment against a surety bond or cancels a surety bond shall immediately report the payment or cancellation to the department in writing.

[(b) Recovery against the bond may be made by any person who obtains a court judgment assessing damages and/or attorneys fees for an act or omission on which the bond is conditioned. If the person seeking to obtain such a court judgment is a dealer, that dealer shall notify the division of the claim immediately upon filing suit on the bond.]

[(c) Payment of any judgment by the bonding company shall be immediately reported to the division in writing.]

(e) [(d)] The surety bond required by this section does [The provisions of subsection (a) of this section do] not apply to a:

(1) franchised motor vehicle dealer [who is] licensed by the department; [division;]

(2) franchised motorcycle dealer [who is] licensed by the department; [division;]

(3) franchised house trailer or travel trailer dealer licensed by the department; or

(4) trailer or semitrailer [~~trailer/semitrailer~~] dealer licensed by the department.

§215.138. Use of Metal Dealer's [~~Dealer~~] License Plates.

(a) A metal dealer's license plate [~~Metal dealer license plates~~] shall be attached to the rear license plate holder of a vehicle in accordance with [~~vehicles on which such plates may be displayed pursuant to~~] Transportation Code, §503.061.

(b) A [~~Although not a requirement, a~~] copy of the receipt for the metal dealer's license plate issued by the department [~~division~~] should be carried in the vehicle so that the receipt [~~it~~] can be presented to law enforcement personnel upon request.

(c) [~~(b)~~] A metal dealer's license plate [~~Metal dealer license plates~~] may not be displayed on:

(1) a laden commercial vehicle [~~vehicles~~] being operated or moved on [~~upon~~] the public streets or highways; or

(2) [~~on~~] the dealer's service or work vehicle [~~vehicles~~], except as provided by Transportation Code, §503.068(b-1).

[~~(1) Examples of vehicles considered as service or work vehicles for purposes of this subsection are:~~]

[~~(A) a vehicle used for towing or transporting other vehicles;~~]

[~~(B) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;~~]

[~~(C) a courtesy car on which a courtesy car sign is displayed;~~]

[~~(D) a rental or lease vehicle; and~~]

[~~(E) a boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.~~]

[~~(2) A light truck is not considered to be a laden commercial vehicle when it is:~~]

[~~(A) mounted with a camper unit; or~~]

[~~(B) towing a trailer for recreational purposes.~~]

[~~(3) As used in this subsection, "light truck" has the meaning assigned by Transportation Code, §541.201.~~]

(d) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting another vehicle;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car on which a courtesy car sign is displayed;

(4) a rental or lease vehicle; and

(5) a boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(e) As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.

(f) For purposes of this section, a light truck is not considered a laden commercial vehicle when it is:

(1) mounted with a camper unit; or

(2) towing a trailer for recreational purposes.

(g) [~~(c)~~] A metal dealer's license plate [~~Metal dealer license plates~~] may be displayed only on the type of vehicle for which the GDN [~~general distinguishing number~~] is issued and for which a dealer is licensed to sell. A nonfranchised dealer may not display a metal dealer's license plate on a new motor vehicle. [~~Non-franchised dealers may not display metal dealer plates on new motor vehicles.~~]

(h) A metal dealer's license plate may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

(i) [~~(d)~~] A dealer shall maintain a record of each [~~dealer~~] metal dealer's license plate issued to that dealer. The record must contain: [~~that contains:~~]

(1) the assigned metal dealer's license plate number;

(2) the year and make of the vehicle to which the metal dealer's license plate is affixed;

(3) the VIN [~~vehicle identification number (VIN)~~] of the vehicle; and

(4) the name of the person in control of the vehicle.

(j) If a dealer cannot account for a metal dealer's license plate that the department issued to that dealer, the dealer must:

(1) document the metal dealer's license plate as "void" in the dealer's metal license plate record;

(2) within three days of discovering that the metal dealer's license plate is missing, report to the department in writing that the metal dealer's license plate is lost or stolen; and

(3) cease use of the metal dealer's license plate.

(k) A metal dealer's license plate is no longer valid for use after the dealer reports to the department that the metal dealer's license plate is missing.

[~~(e) Dealer metal plates that cannot be accounted for shall be voided in the dealer's record and reported as missing to the department within three days of the date that the discovery is made. After a plate is reported as missing, it is no longer valid for use.~~]

[~~(f) The dealer's record required under subsections (d) and (e) of this section shall be available at the dealer's location during normal working hours for review by a representative of the department.~~]

§215.139. Metal Dealer's License [~~Dealer~~] Plate Allocation.

(a) The number of metal dealer's license [~~dealer~~] plates a dealer may order for business use is [~~allocated~~] based on the type of license for which the dealer applied [~~for~~] and the number of vehicles the dealer sold during the previous year. [~~New license applicants are allotted a predetermined number of metal dealer plates during the first license term.~~]

(b) A new license applicant is allotted a predetermined number of metal dealer's license plates for the duration of the dealer's first license term.

(c) Unless otherwise qualified under this section, the maximum number of metal dealer's license plates the department will issue to a new license applicant during the applicant's first license term is indicated in the following table.
Figure: 43 TAC §215.139(c)

[~~(b) The maximum number of metal dealer plates issued to a new license applicant during the first license term is, unless otherwise qualified to receive more:~~]

[~~(1) Franchised motor vehicle dealer - 5;~~]

[(2) Franchised motorcycle dealer - 5;]

[(3) Independent motor vehicle dealer - 2;]

[(4) Independent motorcycle dealer - 2;]

[(5) Franchised or independent travel trailer dealer - 2;]

[(6) Utility trailer or semi-trailer dealer - 2;]

[(7) Independent mobility vehicle dealer - 2; and]

[(8) Wholesale dealer - 1.]

(d) [(c)] A dealer that submits an application to the department for a license is not subject to the initial allotment limits described in this section and may rely on that dealer's existing allocation of metal dealer's license plates if that dealer is: [A newly licensed dealership with a previous license status is not subject to the initial allotment limits described in subsection (b) of this section, and may rely on that previous license status to obtain dealer plates, if it is:]

(1) a franchised dealership [that has been] subject to a buy-sell agreement, regardless of a change in the entity or ownership; [or]

(2) any type of dealer that is relocating [relocates] and has been licensed by the department for a period of one year or longer; or[.]

(3) any type of dealer that is changing its business entity type and has been licensed by the department for a period of one year or longer.

(e) The maximum number of metal dealer's license plates the department will issue to a vehicle dealer per license term is indicated in the following table.
Figure: 43 TAC §215.139(e)

[(d) The maximum number of dealer plates issued to a motor vehicle dealer per license term is:]

[(1) Franchised motor vehicle dealer - 30;]

[(2) Franchised motorcycle dealer - 10;]

[(3) Independent motor vehicle dealer - 3;]

[(4) Independent motorcycle dealer - 3;]

[(5) Franchised or independent travel trailer dealer - 3;]

[(6) Utility trailer or semi-trailer dealer - 3;]

[(7) Independent mobility vehicle dealer - 3; and]

[(8) Wholesale dealer - 1.]

(f) [(e)] A dealer may obtain more than the maximum number of metal dealer's license plates provided by [plates set out in subsections (b) or (d) of] this section[,] by submitting to the department proof of sales for the previous 12-month period that justifies additional allocation.

(1) The number of additional metal dealer's license plates the department will issue to a dealer that demonstrates a need through proof of sales is indicated in the following table.
Figure: 43 TAC §215.139(f)(1)

[(1) The dealer may receive the following additional plates:]

[(A) Wholesale dealers - 1;]

[(B) Dealers selling fewer than 50 vehicles - 1;]

[(C) Dealers selling 50 to 99 vehicles - 2;]

[(D) Dealers selling 100 to 200 vehicles - 5; or]

[(E) Dealers selling more than 200 vehicles may receive any number of dealer plates at the dealer's discretion.]

(2) For purposes of this [subsection and subsection (f) of this] section, proof of sales for the previous 12-month period may consist of a copy of the most recent vehicle inventory tax declaration [recently filed Vehicle Inventory Tax Declaration] or monthly statements [duly] filed with the [proper] taxing authority in the county of the dealer's licensed [dealership's] location. Each copy must be stamped as received by the taxing [tax] authority. A [Any] franchised dealer's [renewal] license renewal application that indicates sales of more than 200 units is considered to be proof of sales of more than 200 units and no additional proof is required.

(3) The department may not issue more than two metal dealer's license plates to a wholesale motor vehicle dealer. For purposes of this section, a wholesale motor vehicle dealer's proof of sales may be demonstrated to the department by submitting:

(A) evidence of the wholesale motor vehicle dealer's sales for the previous 12-month period, if the wholesale motor vehicle dealer has been licensed during those 12 months; or

(B) other documentation approved by the department demonstrating the wholesale motor vehicle dealer's transactions between licensed dealers.

(g) [(f)] The director may waive the metal dealer's license plate [dealer plate] issuance restrictions [in accordance with this subsection] if the waiver is essential for the continuation of the business. The director will determine [base the determination of] the number of metal dealer's license [dealer] plates the department will issue based [dealer will receive] on the dealer's past sales, dealer's inventory, and any other factor [factors that] the director determines pertinent.

(1) A request for a waiver must be submitted to the director in writing and specifically state why the additional plate is [plates are] necessary for the continuation of the applicant's business.

(2) A request for a waiver must be accompanied by proof of the dealer's sales for the previous 12-month period, [year] if applicable.

(3) A wholesale motor vehicle dealer may not apply for a waiver of the metal dealer's license [dealer] plate issuance restrictions.

(4) A waiver granted by the director under this section [subsection] for a specific number of metal dealer's license plates is valid for four years.

(h) This section does not apply to a personalized prestige dealer's license plate issued in accordance with Transportation Code, §503.0615.

§215.140. Established and Permanent Place of Business.

A dealer must meet the following requirements at each licensed location and [must] maintain the [following] requirements during the [entire] term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office [facility] shall be open at least four days per week for at least four consecutive hours per day.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes [purpose] of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate

sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.

(2) Business hours for wholesale motor vehicle dealers. A dealer that [~~who~~] holds only a wholesale motor vehicle dealer's license must post its business hours at the main entrance of the wholesale motor vehicle dealer's office. A wholesale motor vehicle dealer shall be at the wholesale motor vehicle dealer's licensed location [~~for~~] at least two weekdays per week for at least two consecutive hours per day. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.

(3) Business sign requirements for retail dealers. A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's license[~~,~~] under which the retail dealer conducts business. The sign must be permanently mounted at the address listed on the application for the retail dealer's [~~dealer~~] license. A retail dealer may use a temporary sign or banner if that retail [~~the~~] dealer can show proof that a sign [~~is on order~~] that meets the requirements of [~~set out in~~] this paragraph has been ordered.

(4) Business sign requirements for wholesale motor vehicle dealers. A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's license[~~,~~] under which the wholesale motor vehicle dealer conducts business. The sign must be permanently mounted on the business property and shall be on the main door to the wholesale motor vehicle dealer's office or on the outside of the building that houses [~~housing~~] the wholesale motor vehicle dealer's office. If the wholesale motor vehicle dealership is located in an office building with one or more other businesses and an outside sign is not permitted by the landlord, a business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. A wholesale motor vehicle dealer may use a temporary sign or banner if the wholesale motor vehicle dealer can show proof that a sign [~~is on order~~] that meets the requirements of [~~set out in~~] this paragraph has been ordered.

(5) Office structure for a retail dealer and a wholesale motor vehicle dealer. [~~retail and wholesale dealers.~~]

(A) A dealer's office [~~The office of a retail or wholesale dealer~~] must be located in a building[~~,~~] with connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable local zoning ordinances and deed restrictions.

(C) A dealer's office may not be located within a residence, apartment [~~house~~], hotel, motel, or rooming house.

(D) The physical address of the dealer's office must be recognized by the U.S. Postal Service or capable of receiving U.S. mail. The department will not mail a license or a metal dealer's license plate to an out of state address. [~~Licenses and metal dealer plates will not be mailed to any out-of-state address.~~]

(E) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer [~~dealers~~]. At a minimum, a dealer's [~~the~~] office must be equipped with:

(A) a desk;

(B) two chairs;

(C) Internet access; and

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts [~~does~~] business.

(7) Number of retail dealers in one office. Not more than four retail dealers may be located in the same business structure.

(8) Number of wholesale motor vehicle dealers in one office. Not more than eight wholesale motor vehicle dealers may be located in the same business structure.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. [~~Wholesale and retail dealers office sharing prohibition.~~] Unless otherwise authorized by the Transportation Code, a retail [~~motor vehicle~~] dealer and a wholesale motor vehicle dealer[~~, either of which is~~] licensed after September 1, 1999, may not be located in the same business structure.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name [~~that~~] of the other business, a separate telephone listing and a separate sign for each business is required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets [~~meeting~~] the requirements of [~~paragraph (13) of~~] this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(11) Display area requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements. [~~in accordance with this subsection.~~]

(i) [~~(A)~~] The display area must be located at the retail dealer's business address or contiguous with the retail dealer's address. A noncontiguous [~~non-contiguous~~] storage lot is permissible only if there is no public access and no sales activity occurs at the storage lot. A sign stating the retail dealer's name, telephone number, and the fact the property is a storage lot is permissible.

(ii) [~~(B)~~] The [~~A dealer's~~] display area must be of sufficient size to display at least five vehicles of the type for which the GDN [~~general distinguishing number~~] is issued. Those spaces must be reserved exclusively for the retail dealer's inventory and may not be shared or intermingled with another business or a public parking area, a driveway to the office, or another dealer's display area.

(iii) [~~(C)~~] The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) [~~(D)~~] If the retail dealer shares a display or parking area with another business, including another dealer, the dealer's motor vehicle inventory [~~If the display area is in conjunction with another dealership or another business that is not related to the sale or operation of motor vehicles, the display area for the dealer's inventory~~] must be separated from the other business's display or [~~any other business's or dealer's~~] parking area by a material object or barrier [~~barricade~~] that cannot be readily removed. [~~moved by an individual.~~]

(v) [~~(E)~~] The display area must be adequately illuminated if the retail dealer is open after sundown so that a vehicle [~~vehicles~~] for sale can be properly inspected by a potential buyer. [~~any prospective customer.~~]

(vi) [~~(F)~~] The display area may be located inside a building.

(12) Dealers holding a license issued under Occupations Code, Chapter 2302. [~~Dealer with salvage dealer license.~~] If a dealer also holds a license issued under Occupations Code, Chapter 2302, each salvage motor [~~salvage dealer license, each salvage~~] vehicle that is offered for sale on the premises of the dealer's display area must be clearly and conspicuously marked with a sign informing a potential buyer [~~that informs the potential buyers~~] that the vehicle is a salvage motor vehicle. This requirement does not apply to a licensed salvage pool operator.

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time [~~with the period~~] for which the dealer's license will be issued. The [~~That~~] lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the landlord as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises; [~~names of the lessor and lessee;~~]

(B) the period of time for which the lease is valid; [~~and~~]

(C) the street address or legal description of the property, provided that if only a legal description of the property is included [~~provided~~], the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and[~~,~~]

(D) the signature of the landlord as the lessor and the signature of the dealer as the tenant or lessee.

(14) Dealer must display license. A dealer must display the dealer's [~~dealer~~] license issued by the department at all times in a manner that makes the license easily readable by the public and in a conspicuous place at each place of business for which the dealer's license [~~it~~] is issued. If the dealer's license applies to more than one location, a copy of the original license may be displayed in each supplemental location.

§215.141. Sanctions.

(a) The board or department may:

(1) deny an application;

(2) revoke a license;

(3) suspend a license; and

(4) assess a civil penalty or other action against a license applicant, a license holder, or a person engaged in business for which a license is required.

[~~(a) Revocation/Denial. The Board may deny, revoke, or suspend a dealer's license (general distinguishing number) or assess civil penalties against any person if that person:~~]

(b) The board or department may take action described in subsection (a) of this section if a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) fails to maintain a good and sufficient bond in the amount of $25,000 if required;

(2) fails to maintain records required under this chapter; [~~an established and permanent place of business conforming to the regulations pertaining to office, sign, and display space requirements;~~]

(3) refuses [~~to permit~~] or fails to comply with a request by a representative of the department or a peace officer to examine and copy during the license holder's business hours at the licensed location: [~~to examine the~~]

(A) sales records required to be maintained by [~~kept under~~] §215.144 of this title (relating to Records); [~~subchapter (relating to Record of Sales and Inventory) and~~]

(B) ownership papers for a motor vehicle [~~vehicles~~] owned by that dealer or under that dealer's control;[~~,~~] and

(C) evidence of ownership or a current lease agreement for the property on which the business is located; [~~lease rights on the property upon which the dealer's business is located, during posted working hours or through a request made by the department pursuant to these rules;~~]

(4) refuses or fails to timely comply with a request for records made by a representative of the department;

(5) [~~(4)~~] holds a wholesale motor vehicle dealer's license and: [~~dealer license and, without notifying the division and meeting the vehicle display space requirements of §215.140 of this subchapter, is found to be selling or offering to sell a vehicle to someone other than a licensed dealer, unless authorized by statute;~~]

(A) fails to meet the requirements of §215.140 of this title (relating to Established and Permanent Place of Business); or

(B) sells or offers to sell a motor vehicle to a person other than a licensed dealer;

(6) [~~(5)~~] sells or offers to sell a type of vehicle that the person is not licensed to sell;

(7) [~~(6)~~] fails to notify the department [~~division~~] of a change of the license holder's physical address, [~~physical or~~] mailing address, [~~and/or~~] telephone number, or email address within 10 days of the [~~after such~~] change;

(8) [~~(7)~~] fails to notify the department [~~division~~] of a license holder's [~~dealer's~~] name change or ownership change within 10 days of the [~~after such~~] change;

(9) [~~(8)~~] except as provided by law, issues more than one buyer's temporary tag for the purpose of extending the purchaser's operating privileges for more than 60 days;

(10) [~~(9)~~] fails to remove a license plate or registration insignia [~~license plates as required by law~~] from a vehicle that is displayed for sale;

(11) [~~(10)~~] misuses a metal dealer's [~~dealer~~] license plate or a temporary tag;

(12) [~~(11)~~] fails to display a metal dealer's [~~dealer~~] license plate or temporary tag, as required by law; [~~plates or tags in a manner conforming to the regulations pertaining to the display of such plates and tags;~~]

[~~(12) fails to satisfy the notification requirements of §215.144 of this subchapter;~~]

(13) holds open a title [~~titles~~] or fails to take assignment of a certificate [~~all certificates~~] of title, manufacturer's certificate [~~certificates~~], or other basic evidence of ownership for a vehicle [~~vehicles~~] acquired by the dealer, or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle sold; [~~vehicles sold (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealer.);~~]

(14) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN [~~general distinguishing number~~] is issued by the department;

(15) violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1000-1005; a board order or rule; or a [~~any of the provisions the Codes, or any rule or~~] regulation of the department relating to the sale, lease, distribution, financing, or insuring of motor vehicles, including advertising rules under [~~set out in~~] Subchapter H of this chapter (relating to Advertising);

(16) is convicted of an offense that directly relates to the duties or responsibilities of the occupation;

(17) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;

(18) [~~(16)~~] has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(19) [~~(17)~~] files a false or forged: [~~title or~~]

(A) title document, including an affidavit making application for a certified copy of a title; or

(B) tax document, including a sales tax statement or affidavit; [~~application for certified copy of a title;~~]

(20) [~~(18)~~] uses or allows use of that dealer's license or location for the purpose of avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; [~~the provisions of the dealer law~~] or other laws;

(21) [~~(19)~~] omits information or makes a material misrepresentation in any application or other documentation [~~information~~] filed with the department; [~~division;~~]

(22) [~~(20)~~] fails to remit payment as ordered for a civil penalty assessed by the board or department; [~~for civil penalties assessed by the Board;~~]

(23) [~~(21)~~] sells a new motor vehicle [~~vehicles~~] without a franchised dealer's license issued by the department; [~~division;~~]

(24) [~~(22)~~] utilizes a temporary tag that fails to meet the requirements of [~~specifications as cited in~~] §215.153 of this title [~~subchapter~~] (relating to Specifications for All Temporary Tags); or

(25) [~~(23)~~] violates any state or federal law or regulation relating to the sale of a motor vehicle.

[~~(b) Civil penalties. The Board may assess a civil penalty of not less than $50 nor more than $1,000 against a person that is found to have engaged in conduct described in subsection (a) of this section, and in determining the amount of any such penalty may consider the relevant circumstances, including but not limited to the factors enumerated in Occupations Code, §2301.801(b).~~]

[~~(c) Warning letter. In lieu of imposing sanctions under subsection (a) or (b) of this section, the division may issue a warning letter to a person notifying that person of the nature of the violation, and specifying the date by which corrective action is to be completed and full compliance is to be met; provided, however, that the Board may not issue a warning letter in more than three subsequent violations of the same or similar nature by that person in the same calendar year.~~]

§215.144. Records [~~Record of Sales and Inventory~~].

(a) Purchases [~~Purchase~~] and sales records. A dealer must maintain [~~keep~~] a complete record of all vehicle purchases and sales for a minimum period of 48 months and make the record [~~those records~~] available for inspection and copying by a representative of the department or a peace officer during business hours.

(b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer must keep a complete written record of each [~~records relating to a~~] vehicle purchase, vehicle sale, [~~or sale~~] and any adaptive work performed on each [~~the~~] vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle.

(c) Location of records. A dealer's record [~~Records~~] reflecting purchases and sales for at least the preceding 13 months must be maintained at the dealer's licensed location. A dealer's record [~~location. Records~~] for prior time periods may be kept off-site [~~at a location within the same county~~].

(d) Request for records. Within 15 days of [~~Upon~~] receipt of a request sent by mail or electronic document transfer from a representative of the department, [~~the division,~~] a dealer must deliver a copy of the [~~produce copies of~~] specified records to the address listed in the request [~~within 15 days. If a dealer has a concern about the origin of a records request, the dealer may verify that request with the division prior to submitting its records~~].

(e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must contain: [~~As used in this subsection, a complete record of vehicle purchases and sales shall contain the following information or documents:~~]

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN; [~~vehicle identification number;~~]

(4) the name and address of the person selling the vehicle to the dealer;

(5) the name and address of the person purchasing the vehicle from the dealer;

(6) the name and address of the consigner [~~selling dealer~~] if the vehicle is offered for sale by consignment;

(7) except for [~~in~~] a purchase or sale by a wholesale motor vehicle auction license holder, a [~~dealer,~~] copy of the receipt, titled "Tax [~~Tax~~] Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax" [~~Tax, Form 31~~];

(8) a copy of [~~copies of any and~~] all documents, forms, and agreements applicable to a particular sale, including a copy of: [~~including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser;~~]

(A) the title application;

(B) the work-up sheet;

(C) the manufacturer's certificate of origin or manufacturer's statement of origin;

(D) the front and back of the title, unless the title is submitted through the electronic title system;

(E) the properly stamped title, if the title is submitted through the electronic title system;

(F) the factory invoice;

(G) the sales contract;

(H) the retail installment agreement;

(I) the buyer's order;

(J) the bill of sale;

(K) any waiver;

(L) any other agreement between the seller and purchaser; or

(M) Form VTR-136, relating to County of Title Issuance, completed and signed by the buyer;

(9) the original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title;

(10) [~~(9)~~] the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(11) [~~(10)~~] if the vehicle sold is a motor home or a towable recreational vehicle[~~,~~] subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, [~~sale~~] notifying the buyer that the vehicle is subject to inspection requirements.

(f) Title assignments. [~~All certificates of title, manufacturer's certificates, or other evidence of ownership for vehicles offered for sale or which have been acquired by a dealer must be properly assigned into the dealer's name.~~]

(1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take assignment in the dealer's name of any:

(A) title;

(B) manufacturer's statement of origin;

(C) manufacturer's certificate of origin; or

(D) other evidence of ownership.

(2) A dealer must apply in the name of the purchaser of a motor vehicle for the registration of the motor vehicle with the appropriate county tax assessor-collector as selected by the purchaser.

(3) To comply [~~To be in compliance~~] with Transportation Code, §501.0234(f), a registration is [~~and~~] considered filed within a reasonable time if the registration is filed within:[~~, a registration filed in Texas must be filed within~~]

(A) 20 business [~~20 working~~] days of the date of sale of the vehicle for a vehicle registered in Texas; or[~~. For a transaction that is dealer-financed, a registration filed in Texas within~~]

(B) 45 days of the date of sale of the vehicle for a dealer-financed transaction involving a vehicle that is registered in Texas. [~~will be considered filed within a reasonable time.~~]

(4) The dealer is required to [~~shall~~] provide to the purchaser the receipt for the registration application.

(5) The dealer is required to [~~and~~] maintain a copy of the receipt for the registration application in the dealer's sales file.

(g) Out of state sales. For [~~Out-of-state sales. When~~] a sales transaction involving [~~involves~~] a vehicle to be transferred out of state, the dealer must:[~~,~~]

(1) within 20 business [~~working~~] days of the date of sale, either file the application for certificate of title on behalf of [~~for~~] the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and[~~.~~]

(2) maintain in the dealer's record at the dealer's licensed location [~~In such instance,~~] a photocopy of the completed sales tax exemption form for out of state [~~out-of-state~~] sales approved by the Texas Comptroller of Public Accounts [~~shall be maintained on file at the dealer's business location~~].

(h) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement [~~for the vehicle~~] or a power of attorney for [~~covering~~] the vehicle. The dealer must, for a minimum of 48 months, [~~and shall~~] maintain a record of each [~~such~~] vehicle offered for sale by consignment, including the VIN and the name of the owner of the vehicle offered for sale by consignment. [~~by vehicle identification number and owner of each such vehicle handled on consignment for a minimum of 48 months.~~]

(i) Public motor vehicle auctions.

(1) A GDN holder that [~~general distinguishing number holder who~~] acts as a public motor vehicle auction must comply with [~~the requirements relating to consignment sales as set out in~~] subsection (h) of this section.

(2) A public motor vehicle auction:

(A) is not required to take assignment of title of a vehicle [~~vehicles~~] it offers for sale;[~~, but~~]

(B) must take assignment of title of a vehicle from a consignor prior to making application for title on behalf of the buyer; and[~~.~~]

(C) [~~(3)~~] [~~A public motor vehicle auction~~] must make application for title on behalf of the purchaser and remit motor vehicle sales tax within 20 business [~~within 20 working~~] days of the sale of the motor vehicle.

(3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle auction.

(j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder must maintain, for a minimum of 48 months, [~~auction must keep~~] a complete record of each vehicle purchase and sale [~~all vehicle purchases and sales~~] occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license holder shall make the record [~~auction for a minimum period of 48 months and such records shall be made~~] available for inspection and copying by a representative of the department or a peace officer during business hours.

(1) A wholesale motor vehicle auction license holder must maintain at the licensed location a record reflecting each purchase and sale [~~Records reflecting purchases and sales~~] for at least the preceding 24 months [~~must be maintained at the licensed location~~]. Records for prior time periods may be kept off-site [~~at a location within the same county~~].

(2) Within 15 days of [~~Upon~~] receipt of a request sent by mail[~~,~~] or by electronic document transfer from a representative of the department, a wholesale motor vehicle auction license holder must deliver a copy of the [~~auction must submit copies of~~] specified records to the address listed in the request [~~within 15 days~~].

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale shall, at a minimum, contain: [~~The records required to be kept by a wholesale auction shall at a minimum provide the following information:~~]

(A) the date of sale;

(B) the VIN; [~~vehicle identification number;~~]

(C) the name and address of the person selling the vehicle;

(D) the name and address of the person purchasing the vehicle;

(E) the dealer license number of both the selling dealer and the purchasing dealer, [~~seller and buyer~~] unless either is exempt from holding a license;

(F) all information necessary to comply with the Truth in Mileage Act;

(G) auction access documents, including the written authorization and revocation [~~cancellation~~] of authorization for an agent or employee, in accordance with [~~agents, employees, or representatives required by~~] §215.148 of this title [~~subchapter~~] (relating to Dealer Agents);

(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

(J) a copy [~~copies~~] of any written authorization [~~authorizations~~] allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by a representative of the department or a peace officer. A license holder does not have to maintain a copy of a motor vehicle title if the title is submitted through the electronic title system. [~~Any records required to be kept by a licensee may be kept in an electronic format, if the electronic records can be printed at the licensed location upon request by a representative of the department. Original hard copy titles or photocopies of the front and back of titles of vehicles in a dealer's inventory shall be kept in a secure location at the licensed location or within the same county as the licensed location.~~]

§215.145. Change of Dealer's Status.

(a) A dealer's name change requires [~~shall require~~] a new bond or a rider to the existing bond reflecting the new dealer name, unless the dealer is not otherwise required to purchase a bond. [~~The dealer may retain the same general distinguishing number.~~]

(b) A dealer shall notify the department [~~division~~] in writing within 10 days of a [~~if there is any~~] change of ownership. A licensed dealer that [~~who~~] proposes to sell or [~~and/or~~] assign to another any interest in the licensed entity, whether a corporation or otherwise, provided [~~so long as~~] the physical location of the licensed entity remains the same, shall notify the department [~~division~~] in writing within 10 [~~ten~~] days of the change by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the new entity must apply for and obtain a new license. A publicly held corporation needs [~~Publicly-held corporations need~~] only inform the department [~~division~~] of a change in ownership if one person or entity acquires 10% [~~10 percent~~] or greater interest in the licensed entity. [~~licensee.~~]

(c) If a dealer operates [~~dealership is operated~~] as a sole proprietorship and the sole proprietor dies, either the surviving spouse of the deceased dealer[~~,~~] or other individual deemed qualified by the department [~~division,~~] shall submit to the department [~~division~~] a bond rider adding the name of the surviving spouse or other qualifying person [~~his or her name~~] to the bond for the remainder of the bond and license term. The surviving spouse or other qualifying person [~~That person~~] may continue dealership operations under the current dealer license until the end of the license term. [~~its expiration. In the event the qualifying individual is a surviving spouse, he or she may change the ownership of the dealership upon renewal of the license without applying for a new general distinguishing number by submitting additional information regarding ownership, business background, and financial responsibility as required for a new application.~~]

(d) For purposes of subsection (c) of this section, if the qualifying person is the sole proprietor's surviving spouse, then the surviving spouse may change the ownership of the dealership at the time the license is renewed without applying for a new GDN. At the time the renewal application is filed, the sole proprietor's surviving spouse is required to submit to the department:

(1) an application to amend the business entity;

(2) a copy of the sole proprietor's certificate of death, naming the surviving spouse;

(3) the required ownership information; and

(4) a bond in the name of the surviving spouse.

(e) For purposes of subsection (c) of this section, if the qualifying person is not the surviving spouse, then the qualifying person may operate the sole proprietorship business during the term of the license. The qualifying person must file with the department:

(1) an application to amend the business entity, identifying the qualifying person as the manager; and

(2) an ownership information form, indicating that the qualifying person has no ownership interest in the business.

(f) For purposes of subsection (c) of this section, if the qualifying person is not the surviving spouse, then at the time the license is due to be renewed, the qualifying person must file with the department an application for a new GDN.

§215.146. Metal Converter's License Plates.

(a) A metal [~~Metal~~] converter's license plate [~~plates~~] shall be attached to the rear license plate holder of a vehicle in accordance with [~~vehicles on which the plates may be displayed pursuant to~~] Transportation Code, §503.0618.

[~~(b) Metal converter's license plates tags may be displayed only on the type of vehicle that the converter is engaged in the business of assembling or modifying.~~]

[~~(c) When an unregistered new motor vehicle is sold to a converter, the selling dealer shall remove the dealer's temporary tag. The selling dealer may attach a buyer's temporary tag to that vehicle or the~~

purchasing converter may display a converter's temporary tag or metal converter plate on that vehicle.]

(b) [(d)] A converter shall maintain a record of each metal converter's license plate [converter metal plate] issued to that converter. The record of each metal converter's license plate issued must contain: [that contains:]

(1) the assigned metal converter's license plate number;

(2) the year and make of the vehicle to which the metal converter's license plate is affixed;

(3) the VIN [vehicle identification number] of the vehicle [(VIN)]; and

(4) the name of the person in control of the vehicle.

(c) If a converter cannot account for a metal converter's license plate that the department issued to the converter, the converter must:

(1) document the metal converter's license plate as "void" in the converter's metal license plate record;

(2) within three days of discovering that the plate is missing, report to the department in writing that the metal converter's license plate is lost or stolen; and

(3) cease all use of the metal converter's license plate.

(d) A metal converter's license plate is no longer valid for use after the converter reports to the department that the plate is missing.

(e) A metal converter's license plate record shall be made available for inspection and copying by the department or a peace officer at the converter's licensed location during the converter's posted business hours.

[(e) Converter metal plates that cannot be accounted for shall be voided in the converter's dealer's record and reported as missing to the department within three days of the date that the discovery is made. After a plate is reported as missing it is no longer valid.]

[(f) The converter's record, required under subsections (d) and (e) of this section, shall be available at the converter's location during normal working hours for review by a representative of the department.]

§215.147. Export Sales.

(a) Before selling a motor vehicle for export from the United States to another country, a dealer must obtain a legible photocopy of the buyer's government-issued photo identification document. The photo identification document must be issued by the jurisdiction where the buyer resides and be [may consist of]:

(1) a passport;

(2) a driver's license;

[(3) a consular identity document;]

(3) [(4)] a national identification certificate or identity document; or

(4) [(5)] other identification document containing the: [issued by the jurisdiction where the buyer resides that is able to be verified by law enforcement and includes the]

(A) name of the issuing jurisdiction;[, the]

(B) buyer's full name;[,]

(C) buyer's foreign address;[,]

(D) buyer's date of birth;[,]

(E) buyer's photograph;[,] and

(F) buyer's signature.

(b) A license holder that sells a vehicle for export from the United States shall place a stamp on the title that includes the words "For Export Only" and includes the license holder's GDN. The stamp must be legible, in black ink, at least two inches wide, and placed on the:

(1) back of the title in all unused dealer reassignment spaces; and

(2) front of the title in a manner that does not obscure any names, dates, mileage statements, or other information printed on the title.

[(b) All licensees that sell a vehicle for export from the United States shall stamp in black ink on the back of the title in all unused dealer reassignment spaces the words "For Export Only" and their General Distinguishing Number. The licensee shall also place the stamp on the front of the title in a manner that does not obscure any names, dates, mileage statements or other information printed on the title. The stamp must be at least two inches wide, and all text and the license number must be clearly legible.]

(c) In addition to the records required to be maintained by §215.144 of this title (relating to Records), a license holder shall maintain, for each motor vehicle sold for export, a sales file record. The sales file record shall be made available for inspection and copying upon request by the department or a peace officer. The sales file record of each vehicle sold for export shall contain: [§215.144(d) and (i) of this subchapter (relating to Record of Sales and Inventory), a licensee shall maintain the following records in the sales file for each vehicle sold for export and shall make those records available upon request by a representative of the department:]

(1) a [A] completed copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for Vehicles Taken Out of State [for each vehicle sold], indicating that the vehicle has been purchased for export to a foreign country;

(2) a [A] copy of the front and back of the title of [to] the vehicle, showing the "For Export Only" stamp and the GDN of the license holder; and [General Distinguishing Number of the auction or dealer;]

[(3) A legible copy of each buyer's photo identification document; and]

(3) [(4)] if [If] applicable, an Export-only Sales Record Form, listing each motor vehicle sold for export only.

(d) A dealer, at the time of sale of a vehicle for export, shall:

(1) enter the information required by Transportation Code, §503.061 in the temporary tag database;

(2) designate the sale as "For Export Only"; and

(3) issue a buyer's temporary tag, in accordance with Transportation Code, §503.063. [temporary buyer's tag as required by Transportation Code, §503.061, and report the sale as for export.]

§215.148. Dealer Agents.

(a) A dealer must provide written authorization to each person with whom the dealer's agent or employee will conduct business on behalf of the dealer, including to a person that:

(1) buys and sells motor vehicles for resale; or

(2) operates a licensed auction.

(b) If a dealer's agent or employee that conducts business on behalf of the dealer commits an act or omission that would be cause for denial, revocation, or suspension of a license in accordance with Occupations Code, Chapter 2301, the board may:

(1) deny an application for a license; or

(2) revoke or suspend a license;

(c) The board may take action described in subsection (b) of this section after notice and an opportunity for hearing, in accordance with Occupations Code, Chapter 2301.

(d) A dealer's authorization to an agent or employee shall:

(1) be in writing;

(2) be signed by the dealer principal or person in charge of daily activities of the dealership;

(3) include the agent's or employee's name, current mailing address, and telephone number;

(4) the dealer's business name, address, and dealer license number or numbers;

(5) expressly authorize buying or selling by the specified agent or employee;

(6) state that the dealer is liable for any act or omission regarding a duty or obligation of the dealer that is caused by that agent or employee, including any financial considerations to be paid for the vehicle;

(7) state that the dealer's authorization remains in effect until the recipient of the written authorization is notified in writing of the revocation of the authority; and

(8) be maintained as a required dealer's record and made available upon request by a representative of the department or a peace officer, in accordance with the requirements of §215.144 of this title (relating to Records).

[(a) In regard to the duties and obligations of a dealer, a dealer is responsible for the acts and omissions of any agent, representative, or employee if that dealer has given authority to any person for that agent, representative, or employee to act on the behalf of the dealer. This section is not to be construed in any manner to allow retail sales by any dealer agent or representative. The term "employee" used in this section includes only those persons paid by the licensee and reported on the federal form W-2, Wage and Tax Statement.]

[(b) A dealer must provide written authorization to any person buying or selling motor vehicles for resale or operating a licensed auction for the sale of motor vehicles for resale with which an agent, representative, or employee will be conducting business or acting on the dealer's behalf.]

[(1) Once a dealer has given written authorization for an agent, representative, or employee to buy and sell motor vehicles for resale for that dealer, the dealer shall be liable for any acts or omissions regarding duties and obligations of dealers caused by that agent, representative, or employee unless and until either the earlier of written notification of revocation of the agent's, representative's or employee's authority or revocation of the dealer's license.]

[(2) Written authorization shall be a letter on the dealership letterhead of the dealer authorizing buying or selling, or on a form approved by the director, and stating that the dealer is liable for any acts or omissions regarding duties and obligations of dealers, caused by that agent, representative, or employee including any financial considerations to be paid for the vehicle unless and until the recipient is notified in writing of the revocation of the authority. The letter or form shall be signed by the dealer principal or person in charge of daily activities of the dealership.]

[(3) The written authorization shall include the employee, agent or representative's name; current mailing address; phone number; the business name, address, and license number of the dealer with whom the employee or agent is associated. The written authorization is a record that must be kept as all other records set out in §215.144 of this subchapter (relating to Record of Sales and Inventory) and shall be made available to a division representative upon request.]

(e) [(c)] A license holder, including a wholesale motor vehicle auction license holder that [Any licensee, including wholesale auctions who act on behalf of others, who] buys and sells vehicles on a wholesale basis, including by sealed bid, is required to verify the authority of any person claiming to be an agent or employee of a licensed dealer who purports to be buying or selling a motor vehicle: [either an employee, agent or representative who represents they are buying or selling motor vehicles]

(1) on behalf of a licensed dealer; or[.]

(2) under the written authority of a licensed dealer.

(f) [(d)] A title to a vehicle bought by an agent or employee [Titles to vehicles bought by an employee, agent or representative] of a dealer shall be:

(1) reassigned to the dealer by the seller or by the auction; and [auction and]

(2) shall not be delivered to the agent or employee, [agent or representative] but delivered only to the dealer [, the dealer's employee,] or the dealer's financial institution.

(g) Notwithstanding the prohibitions in this section, an authorized agent[, representative] or employee may sign a [any] required odometer statement. [statements.]

(h) [(e)] In a wholesale transaction for the purchase of a motor vehicle, the seller may accept as consideration only:

(1) a check or a draft drawn [Only checks or drafts drawn] on the purchasing dealer's account;[, or]

(2) a cashier's check [cashiers checks] in the name of the dealer;[,] or

(3) a wire transfer [wire transfers] from the dealer's bank account [shall be accepted for motor vehicles purchased in a wholesale transaction].

§215.149. Independent Mobility Motor Vehicle Dealers.

In accordance with Occupations Code, §2301.361, [§2301.362,] a transaction occurs through or by a franchised dealer of the motor vehicle's chassis line-make [line make] if the franchised dealer applies for title and registration of the mobility motor vehicle in the name of the purchaser. An independent mobility motor vehicle dealer may prepare the documentation necessary for a franchised dealer to comply with the requirements of Transportation Code, §501.0234 in connection with the sale of a mobility motor vehicle.

§215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag [Dealers who hold a General Distinguishing Number license may issue dealer temporary tags, buyer's temporary tags, and Internet-down temporary tags] for each type of motor vehicle the dealer is licensed to sell. A converter that [who] holds a converter's license under Occupations

Code, Chapter 2301 may issue a converter's temporary tag. [~~converter temporary tags.~~]

(b) A license holder [~~Licensees~~] may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag [~~temporary dealer, buyer's, or converter tags~~] until the [~~a~~] license is canceled [~~cancelled~~], revoked, or suspended [~~in accordance with law~~].

[~~(c) A dealer's authorization to obtain numbers in advance for use on Internet-down tags may be modified, suspended, or revoked after opportunity for hearing in accordance with Occupations Code, Chapter 2301 and Government Code, Chapter 2001, if the dealer has misused the tags or failed to comply with the requirements for issuance and recordkeeping in Transportation Code, §503.067 or this subchapter.~~]

§215.151. Temporary Tags, General Use Requirements, and Prohibitions.

(a) A dealer shall secure a temporary tag to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, including when the vehicle is being operated.

[~~(a) All temporary tags shall be displayed in the rear license plate display area of the vehicle. The tag must be secured to the vehicle so that the entire tag is visible and legible.~~]

(b) All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder or other device or material.

[~~(c) Homemade tags or tags that have buyer's tag information printed on one side and dealer's tag information printed on the other side are not permitted.~~]

(c) [~~(d)~~] A [~~Each~~] motor vehicle that is being transported using the full mount method, the saddle mount method, the tow bar method, or any combination of those methods in accordance with Transportation Code, §503.068(d), must have a dealer's temporary tag, a [~~or~~] converter's temporary tag, or a buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported. [~~that vehicle.~~]

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

(a) A dealer or a converter is required to [~~Dealers and converters must~~] have Internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this title [~~subchapter~~] (relating to Advance Numbers, Preprinted Internet-down [~~Buyer's~~] Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a [~~the~~] dealer or converter must:

(1) enter in the temporary tag [~~into the~~] database information about the vehicle, dealer, converter, or buyer, as appropriate;[~~,~~] and

(2) obtain a specific number for the temporary tag. [~~tag before a temporary tag may be issued and displayed on a vehicle.~~]

§215.153. Specifications for All Temporary Tags.

(a) Information printed or completed on a temporary tag [~~all temporary tags~~] must be in black ink on a white background. Other than for a motorcycle [~~For vehicles, other than motorcycles~~], a completed buyer's, dealer's, converter's, or preprinted [~~buyer, dealer, converter, and~~] Internet-down temporary tag shall be six [~~6~~] inches high and at least [~~by a minimum of~~] 11 inches wide. For a motorcycle [~~motorcycles~~], the completed buyer's, dealer's, converter's, or preprinted [~~buyer, dealer, converter, and~~] Internet-down temporary tag shall be four [4] inches high and at least seven [~~by 7~~] inches wide.

(b) A temporary tag [~~All temporary tags~~] must be:

(1) composed of plastic or other durable, weather-resistant material; or[~~, or must be~~]

(2) sealed in a two [~~2~~] mil clear poly bag that encloses the entire temporary tag.

(c) A dealer or converter may manually copy the information [~~provided~~] from the temporary tag database to a preprinted [~~pre-printed~~] temporary tag template. A temporary tag completed in this manner must: [~~in accordance with the specifications of the appropriate appendix listed in subsection (c) of this section. Temporary tags completed by hand must have~~]

(1) display the information drawn in letters and numerals with a permanent, thick, black marking pen; and[~~.~~]

(2) comply with the specifications of the applicable temporary tag identified by the following appendices:

[~~(c) If a dealer uses the option provided by subsection (b) of this section, the dealer or converter shall use the design of the respective temporary tag from the appropriate following Appendices:~~]

(A) [~~(1)~~] Appendix A-1 - Dealer's Temporary Tag [~~Dealer~~] - Assigned to Specific Vehicle;
Figure: 43 TAC §215.153(c)(2)(A)
[~~Figure: 43 TAC §215.153(c)(1)~~]

(B) [~~(2)~~] Appendix A-2 - Dealer's Temporary Tag [~~Dealer~~] - Assigned to Agent;
Figure: 43 TAC §215.153(c)(2)(B)
[~~Figure: 43 TAC §215.153(c)(2)~~]

(C) [~~(3)~~] Appendix B-1 - Buyer's Temporary Tag [~~Buyer~~];
Figure: 43 TAC §215.153(c)(2)(C)
[~~Figure: 43 TAC §215.153(c)(3)~~]

(D) [~~(4)~~] Appendix B-2 - Preprinted Internet-down Temporary Tag; and
Figure: 43 TAC §215.153(c)(2)(D)
[~~Figure: 43 TAC §215.153(c)(4)~~]

(E) [~~(5)~~] Appendix C-1 - Converter's Temporary Tag [~~Converter~~].
Figure: 43 TAC §215.153(c)(2)(E)
[~~Figure: 43 TAC §215.153(c)(5)~~]

§215.154. Dealer's [~~Dealer~~] Temporary Tags.

(a) A dealer's temporary tag [~~Dealer temporary tags~~] may be displayed only on the type of vehicle for which the GDN [~~general distinguishing number~~] is issued and for which the [~~a~~] dealer is licensed by the department to sell.

[~~(b) Dealer temporary tags may be used by the dealer only to:~~]

[~~(1) demonstrate the vehicle or cause the vehicle to be demonstrated to a prospective buyer for sale purposes only;~~]

[~~(2) convey or cause the vehicle to be conveyed:~~]

[~~(A) from one of the dealer's places of business in this state to another of the dealer's places of business in this state;~~]

[~~(B) from the dealer's place of business to a place where the vehicle is to be repaired, reconditioned, or serviced;~~]

[~~(C) from the state line or a location in this state where the vehicle is unloaded to the dealer's place of business;~~]

[~~(D) from the dealer's place of business to a place of business of another dealer;~~]

[~~(E) from the point of purchase by the dealer to the dealer's place of business;~~]

[(F) to road test the vehicle;]

[(3) use the vehicle for or allow its use by a charitable organization or use the vehicle or allow its use in parades; or]

[(4) permit a customer to temporarily operate a vehicle while the customer's vehicle is being repaired. A vehicle-specific type dealer temporary tag shall be used for this purpose.]

[(c) A vehicle being conveyed under this section is exempt from the inspection requirements of Transportation Code, Chapter 548.]

(b) [(d)] A wholesale motor vehicle auction license holder that also holds a dealer GDN [A dealer who holds a wholesale motor vehicle auction general distinguishing number] may display a dealer's temporary tag on a vehicle that is being [its dealer temporary tags on any vehicles that are] transported to or from the licensed auction location [by a bona fide employee or agent of the auction].

(c) [(e)] When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's [its dealer] temporary tag. The purchasing dealer may display its dealer temporary tag or its metal dealer's license [dealer] plate on the vehicle. [If a vehicle is consigned from one dealer to another, the vehicle must display the temporary tag of the dealer to which that vehicle was consigned.]

(d) [(f)] A dealer's temporary tag [Dealer temporary tags] may not be displayed on:

(1) a laden commercial vehicle [vehicles] being operated or moved on [upon] the public streets or highways; or

(2) on the dealer's service or work vehicles.

(e) [(1)] For purposes of this section, a dealer's service or work vehicle includes: [Examples of vehicles considered as service or work vehicles for purposes of this subsection are:]

(1) [(A)] a vehicle used for towing or transporting other vehicles;

(2) [(B)] a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) [(C)] a courtesy car [on which a courtesy car sign is displayed];

(4) [(D)] a rental or lease vehicle; and

(5) [(E)] any boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

[(2) A light truck is not considered to be a laden commercial vehicle when it is:]

[(A) mounted with a camper unit; or]

[(B) towing a trailer for recreational purposes.]

(f) [(3)] For purposes of subsection (d) of this section, a [A] vehicle bearing a dealer's temporary tag is not considered [to be] a laden commercial vehicle when the vehicle [it] is:

(1) [(A)] towing another vehicle bearing the same dealer's temporary tags;[,] and

(2) [(B)] both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle [auto] auction or from a licensed wholesale motor vehicle [auto] auction to the dealer's place of business.

(g) [(4)] As used in this section, "light truck" has the [same] meaning assigned by Transportation Code, §541.201.

(h) [(g)] A dealer's [dealer] temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(i) [(h)] A dealer's [dealer] temporary tag must show its expiration date, which must [which may] not exceed 60 days after the date the temporary tag was issued. [its date of issuance.]

(j) [(i)] A dealer's [dealer] temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(k) [(j)] A dealer that [who] issues a dealer's [dealer] temporary tag to a specific motor vehicle must ensure that the following information is placed on the temporary tag:

(1) the vehicle-specific number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN [vehicle identification number (VIN)] of the vehicle; [and]

(4) the month, day, and year of the temporary tag's expiration; and[.]

(5) the name of the dealer.

(l) [(k)] A dealer that [who] issues a dealer's [dealer] temporary tag to an agent must ensure that the following information is placed on the temporary tag:

(1) the specific [agent-specific] number from the temporary tag database; [and]

(2) the month, day, and year of the temporary tag's expiration; and[.]

(3) the name of the dealer.

§215.155. Buyer's Temporary Tags.

(a) A buyer's temporary [buyer's] tag may be displayed only on a vehicle that can be legally operated on [may be operated upon] the public streets and highways and for which a sale has been consummated.

(b) A buyer's temporary tag may be displayed only a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

(1) dealer's temporary tag; or

(2) metal dealer's license plate.

[(b) A dealer must place a temporary buyer's tag on any new or used vehicle sold by the dealer, except for a vehicle sold in a wholesale transaction in which the purchasing dealer places its own dealer temporary tag or the purchasing dealer's metal dealer plate on the vehicle.]

(d) [(c)] A buyer's temporary tag is [temporary buyer's tag are] valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

(e) [(d)] The dealer must ensure that the following information is placed on a buyer's temporary tag that the dealer issues:

(1) the vehicle-specific number obtained from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN [~~vehicle identification number (VIN)~~] of the vehicle; [~~and~~]

(4) the month, day, and year of the expiration of the buyer's temporary tag; and [~~tag's expiration.~~]

(5) the name of the dealer.

§215.156. Buyer's Temporary Tag Receipt.

A dealer must provide a buyer's temporary tag receipt to the buyer of each vehicle for [~~to~~] which a buyer's temporary tag is issued, regardless of whether the buyer's temporary tag is issued using the temporary tag database or if the tag is a preprinted [~~in the ordinary course of business or is an~~] Internet-down temporary tag. The dealer may print the image of the buyer's temporary tag receipt issued from the temporary tag database or create [~~construct~~] the form using the same information. The dealer shall instruct the buyer to keep a copy of the buyer's temporary tag receipt in the vehicle until the vehicle is registered in the buyer's name and until metal plates are affixed to the vehicle. The buyer's temporary tag receipt must include the following information:[~~.~~]

(1) the issue date of the buyer's temporary tag;

(2) the year, make, model, body style, color, and VIN [~~vehicle identification number (VIN)~~] of the vehicle sold;

(3) the vehicle-specific temporary tag number;

(4) the expiration date of the temporary tag;

(5) the date of the sale;

(6) the name of the issuing dealer and the dealer's license number; and

(7) the buyer's name and mailing address.

§215.157. Advance Numbers, Preprinted Internet-down [~~Buyer's~~] Temporary Tags.

(a) In accordance with Transportation Code, §503.0631(d), a dealer may obtain an advance supply of preprinted Internet-down temporary tags with specific numbers and buyer's temporary tag receipts to issue in lieu of buyer's temporary tags if the dealer is unable to access the Internet.

(b) If a dealer is unable to access the Internet at the time of a sale, the dealer must complete the preprinted Internet-down temporary buyer's tag and buyer's temporary tag receipt by providing details of the sale, signing the buyer's temporary tag receipt, and retaining a copy. The dealer must [~~and sign the buyer's receipt, retain a copy of the signed buyer's receipt, and~~] enter the required information regarding [~~on~~] the sale in the temporary tag [~~into the~~] database not later than the close of the next business day that the dealer has access to the Internet. The buyer's temporary tag receipt must include [~~have~~] a statement that the dealer has Internet access[~~,~~] but, at the time of the sale, the dealer was unable to access the Internet or the temporary tag database.

§215.158. General Requirements and Allocation of Preprinted Internet-down Temporary Tag Numbers.

(a) [~~Preprinted tags with Internet-down numbers shall be kept in a secure place.~~] The dealer is responsible for the safekeeping of preprinted Internet-down temporary tags and shall store them in a secure place. The dealer [~~those tags and~~] shall report any loss, theft, or destruction of preprinted Internet-down temporary [~~those~~] tags to the department within 24 hours of discovering [~~the time of~~] the loss, theft, or destruction.

(b) A dealer may use a preprinted Internet-down temporary tag [~~Tags with Internet-down numbers may be used~~] up to 12 months after the date the preprinted Internet-down temporary tag is created. [~~of issuance of the tag from the database.~~] A dealer may create replacement preprinted Internet-down temporary tags [~~tags with Internet-down numbers,~~] up to the maximum allowed, when:

(1) a dealer uses one or more preprinted Internet-down temporary tags and then enters the required information in the temporary tag database [~~tags with Internet-down numbers and then enters the data into the system,~~] after access to the temporary tag database [~~system~~] is again available; or

(2) a preprinted Internet-down temporary tag expires. [~~tag with an Internet-down number expires.~~]

(c) The number of preprinted Internet-down temporary tags that [~~tags with Internet-down numbers~~] a dealer may create is equal to the greatest of:

(1) the number of preprinted Internet-down temporary tags previously allotted by the department to the dealer;

(2) 30 [~~thirty~~]; or

(3) 1/52 of the dealer's total annual sales.

(d) For good cause shown, a dealer may obtain more than the number of preprinted Internet-down temporary tags described in subsection (c) of this section. The director of the Vehicle Titles and Registration Division of the department[~~,~~] or that director's delegate[~~,~~] may approve, in accordance with this subsection, an additional allotment of preprinted Internet-down temporary tags [~~with Internet-down numbers~~] for a dealer if the additional allotment is essential for the continuation of the dealer's business. The director of the Vehicle Titles and Registration Division of the department[~~,~~] or that director's delegate[~~,~~] will base the determination of the additional allotment of preprinted Internet-down temporary tags on the dealer's past sales, inventory, and any other factors that the director of the Vehicle Titles and Registration Division of the department[~~,~~] or that director's delegate[~~,~~] determines pertinent, such as an emergency. A request for additional preprinted Internet-down temporary tags [~~tags with Internet-down numbers~~] must specifically state why the additional preprinted Internet-down temporary tags are necessary for the continuation of the applicant's business.

§215.159. Converter's Temporary Tags.

[~~(a) Converter's temporary tags may be used only by the converter or the converter's employees on unregistered vehicles to:~~]

[~~(1) demonstrate the vehicle, or cause the vehicle to be demonstrated, to a prospective buyer who is a franchised motor vehicle dealer or an employee of a franchised motor vehicle dealer; or~~]

[~~(2) convey the vehicle or cause the vehicle to be conveyed:~~]

[~~(A) from one of the converter's places of business in this state to another of the converter's places of business in this state;~~]

[~~(B) from the converter's place of business to a place where the vehicle is to be assembled, repaired, reconditioned, modified, or serviced;~~]

[~~(C) from the state line or a location in this state where the vehicle is unloaded to the converter's place of business;~~]

[~~(D) from the converter's place of business to a place of business of a franchised motor vehicle dealer; or~~]

[~~(E) to road test the vehicle.~~]

[~~(b) Prospective buyers who are employees of a franchised dealer or a converter may operate a vehicle displaying converter's temporary tags during a demonstration.~~]

[(c) A vehicle being conveyed while displaying a converter's temporary tag is exempt from the inspection requirements of Transportation Code, Chapter 548.]

[(d) Converter's temporary tags may not be used to operate a vehicle for the converter's or a converter's employee's personal use.]

(a) [(e)] A converter's temporary tag [Converter's temporary tags] may be displayed only on the type of vehicle that the converter is engaged in the business of assembling or modifying.

[(f) When an unregistered new motor vehicle is sold to a converter, the selling dealer shall remove a dealer's temporary tag. The selling dealer may attach a buyer's temporary tag to the vehicle or the purchasing converter may display a converter's temporary tag or metal converter plate on the vehicle.]

(b) [(g)] A converter's [A converter] temporary tag must show its expiration date, which may not be more than 60 days after the date of its issuance.

[(h) A converter temporary tag may be issued by a converter to a specific vehicle or to a converter's agent who is authorized to operate a motor vehicle owned by the converter.]

(c) [(i)] A converter that [who] issues a converter's temporary [converter's] tag to a specific vehicle shall ensure that the following information is placed on the converter's temporary tag:

(1) the vehicle-specific [vehicle specific] number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN [vehicle identification number (VIN)] of the vehicle; [and]

(4) the month, day, and year of [the tag's] expiration of the converter's temporary tag; and[.]

(5) the name of the converter.

[(j) A converter who issues a temporary converter's tag to an agent shall ensure that the following information is placed on the tag:]

[(1) the agent-specific number from the database; and]

[(2) the month, day, and year of the tag's expiration.]

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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43 TAC §§215.133, 215.136, 215.142, 215.143

(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 Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.133. General Distinguishing Number.
§215.136. Off-site Sales.
§215.142. GDN Sanction and Qualification Hearing.
§215.143. Manufacturers License Plates.

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

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SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

43 TAC §§215.171, 215.173 - 215.181

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code,

§503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.171. Purpose and Scope [~~Objective~~]

This subchapter implements [~~The objective of this subchapter is to implement the intent of the legislature as declared in~~] Occupations Code, Chapter 2301 and more specifically[~~, and in particular~~], §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262, 2301.357, and 2301.551 - 2301.556[~~, by prescribing rules to regulate the business of leasing motor vehicles in this state~~].

§215.173. License.

(a) No person may engage in business as a vehicle lessor or a vehicle lease facilitator unless that person holds a valid license issued by the department [~~has a currently valid license assigned by the division~~], or is otherwise exempt by law from obtaining such a license.

(b) Any person who facilitates vehicle leases on behalf of a vehicle lease facilitator must:

(1) be on the vehicle lease facilitator's payroll and receive compensation from which social security, federal unemployment tax [~~in which Social Security, Federal Unemployment Tax~~], and all other appropriate taxes are withheld from the representative's paycheck and [~~said taxes are~~] paid to the proper taxing authority; and

(2) have work details such as when, where, and how the final results are achieved, directed, and controlled by the vehicle lease facilitator.

§215.174. Application for a License.

(a) An applicant [~~Application~~] for a vehicle lessor's or vehicle lease facilitator's license must submit a complete application to the department. To be complete, the application must [~~shall~~] be on a form prescribed by the department and accompanied by all required supporting documentation. [~~division, properly completed by the applicant, and shall be submitted with supporting documentation showing all information requested.~~]

(b) The supporting documentation for a vehicle lessor's license application shall include:

(1) a letter of appointment for each vehicle lease facilitator or [~~acceptable~~] substitute documentation [~~as~~] designated by the department [~~division~~];

(2) [~~a~~] verification of the criminal background of each owner and officer of the applicant, if applicable;

(3) the fee required [~~for the license as prescribed~~] by law for each type of license required;

(4) a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk; [~~and~~]

(5) a sample copy of the vehicle lease agreement between the vehicle lessor and a lessee; and[~~.~~]

(6) a sample copy of the required fee disclosure statement regarding fees paid by the vehicle lessor to a vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid.

(c) The supporting documentation for a vehicle lease facilitator's license application shall include:

(1) a letter of appointment from each vehicle lessor or [~~acceptable~~] substitute documentation [~~as~~] designated by the department [~~division~~];

(2) [~~a~~] verification of the criminal background of each owner and officer of the applicant, if applicable;

(3) the fee required [~~for the license as prescribed~~] by law for each type of license required;

(4) a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;

(5) a sample copy of the vehicle lease agreement between the vehicle lease facilitator and a lessee; [~~and~~]

(6) a sample copy of the required fee disclosure statement regarding fees paid by a vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid; and

(7) [~~(6)~~] a list of all vehicle lessors, including names and addresses, for [~~with~~] whom any vehicle lease facilitator solicits or procures a lessee. The vehicle lease facilitator shall update the list upon renewal of a license and within 10 [~~executes leases. This list must be updated in writing upon renewal of a license, and within ten~~] days of the addition of any vehicle lessor to this list.

§215.175. Sanctions.

(a) The board or department may:

(1) deny a vehicle lessor or vehicle lease facilitator application;

(2) revoke or suspend a vehicle lessor or vehicle lease facilitator license; or

(3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required.

(b) The board or department may take action described in subsection (a) of this section if a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required:

[~~(a) Revocation/Denial. The Board may revoke, deny or suspend a lessor or lease facilitator's license, or assess civil penalties, if that lessor or lease facilitator.~~]

(1) fails to maintain an established and permanent place of business required by [~~conforming to~~] §215.177 of this title [~~subchapter~~] (relating to Established and Permanent Place of Business);

(2) fails to maintain records required under this subchapter;

(3) [~~(2)~~] refuses [~~to permit~~] or fails to comply with a request by a representative of the department [~~division~~] to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the vehicle lessor's or vehicle lease facilitator's licensed location: [~~the current and previous year's leasing records required to be kept under §215.178 of this subchapter (relating to Records of Leasing) and ownership papers for vehicles owned, leased, or under that lessor or lease~~

facilitator's control, and evidence of ownership or lease agreement for the property upon which the business is located:]

(A) a vehicle leasing record required to be maintained by §215.178 of this title (relating to Records Required for Vehicle Lessors and Vehicle Lease Facilitators);

(B) ownership papers for a vehicle owned, leased, or under that vehicle lessor's or vehicle lease facilitator's control; or

(C) evidence of ownership or a current premises lease agreement for the property upon which the business is located;

[(A) during normal working hours at the lessor's or lease facilitator's permanent place of business, or]

[(B) through a request made by the division pursuant to these rules;]

(4) refuses or fails to timely comply with a request for records made by a representative of the department;

(5) [(3)] fails to notify the department in writing within 10 days [division] of a change of the vehicle lessor or vehicle lease facilitator license holder's: [address within ten days after such change;]

(A) mailing address;

(B) physical address;

(C) telephone number; or

(D) email address;

(6) [(4)] fails to notify the department in writing within 10 days [division] of a change of the vehicle lessor or vehicle lease facilitator license holder's name or ownership; [lessor/lease facilitator's name or ownership within ten days after such a change;]

(7) [(5)] fails to comply with [observe] the fee restrictions or other requirements under [as described in] Occupations Code, §2301.357 or [and] §§2301.551-2301.556;

(8) [(6)] fails to maintain [leasing and/or] advertisement records or otherwise fails to comply with the advertising requirements of: [as described in these rules;]

(A) §215.178; or

(B) Subchapter H of this chapter (relating to Advertising);

[(7) fails to remain regularly and actively engaged in the business of leasing vehicles or facilitating the leasing of vehicles for which the license is issued;]

(9) [(8)] violates any law relating to the sale, lease, distribution, financing, or insuring of motor vehicles;

(10) is convicted of an offense that, in accordance with Occupations Code, Chapter 53 and with §215.88 of this title (relating to Criminal Offense and Action on License), directly relates to the duties or responsibilities of the licensed occupation;

(11) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a vehicle lessor or vehicle lease facilitator license;

(12) [(9)] uses or allows use of a vehicle lessor or vehicle lease facilitator license in violation of any law or for the purpose of avoiding any provision [provisions] of Occupations Code, Chapter 2301; or

(13) [(10)] wilfully omits material information or makes a material misrepresentation in any application or other documentation [information] filed with the department. [division;]

[(11) fails to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within ten days of any changes to this list and upon renewal of the license;]

[(12) violates any state or federal law relating to the leasing of new motor vehicles.]

(c) The board or department may take action on a vehicle lessor's license or assess civil penalties for the vehicle lessor's failure to notify the department in writing within 10 days of any change, addition, or deletion to the list of vehicle lease facilitators with whom the vehicle lessor conducts business, including any change to a vehicle lease facilitator's mailing address, physical address, telephone number, or email address.

(d) The board or department may take action on a vehicle lease facilitator's license or assess civil penalties for the vehicle lease facilitator's failure to notify the department in writing within 10 days of any change, addition, or deletion to the list of vehicle lessors for whom the vehicle lease facilitator conducts business, including any change to a vehicle lessor's mailing address, physical address, telephone number, or email address.

(e) The board or department may take action on a vehicle lessor's or vehicle lease facilitator's license if the vehicle lessor or vehicle lease facilitator accepts a fee from a dealer, directly or indirectly, for referring a customer who purchases or considers purchasing a motor vehicle.

[(b) Referral fees prohibited. A lessor or lease facilitator may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.]

§215.176. More Than One Location.

(a) A vehicle lease facilitator [Lease facilitators] must be licensed separately for each business location.

(b) A vehicle lessor or vehicle lease facilitator that relocates [Lessors or lease facilitators that relocate] from a point outside the limits of a city or relocates[, or relocate] to a point not within the limits of the same city of the initial location is [are] required to obtain a new license.

(c) A vehicle lessor is [Lessors are] required to obtain a license for the vehicle lessor's primary location. A vehicle lessor [their primary locations. Lessors] must provide the address, telephone number, and the name of a contact person for all other satellite offices that conduct business in the state of Texas.

§215.177. Established and Permanent Place of Business.

(a) A vehicle lessor or vehicle lease facilitator operating within the State [state] of Texas must meet the following requirements at each location where vehicles are leased or offered for lease.

(1) Physical location requirements.

(A) A vehicle lessor or vehicle lease facilitator operating within the State of [within] Texas must be open to the public. The vehicle lessor's or vehicle [lessor or] lease facilitator's business hours for each day of the week must be posted at the main entrance of the office. The[, and the] owner or an employee of the vehicle lessor or vehicle lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or an employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the

date and time such owner or employee will resume vehicle leasing operations.

(B) A vehicle lessor's or vehicle leasing facilitator's office [~~The~~] structure must be of sufficient size to accommodate the following required equipment: [~~and must be equipped with~~]

(i) a desk and chairs from which the vehicle lessor or vehicle lease facilitator transacts [~~his~~] business; and[~~. The office also must be equipped with~~]

(ii) a working telephone number [~~instrument~~] listed in the business name or assumed name under which the vehicle lessor or vehicle lease facilitator conducts [~~does~~] business.

(C) [~~(B)~~] A vehicle lessor or vehicle lease facilitator that files an application for a new license or a vehicle lessor that files an application for a satellite location must comply with [~~supplemental location must conform to~~] the following requirements.[~~:~~]

(i) The office must be located in a building[~~,~~] with connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.

(iv) The physical address of the office must be recognized by the U.S. Postal Service and [~~or~~] capable of receiving U.S. mail.

(D) [~~(C)~~] A portable-type office structure may qualify as an office only if the structure meets the[~~, provided it meets the minimum~~] requirements of this section and is not a readily moveable trailer or other [~~such~~] vehicle.

(E) One or more licensed vehicle lessors or vehicle lease facilitators, or a combination of one or more licensed vehicle lessors and vehicle lease facilitators may occupy the same business structure and conduct vehicle leasing operations in accordance with the license held by the vehicle lessor or licensed vehicle lease facilitator. Each person engaged in business as a vehicle lessor or vehicle lease facilitator must have:

[~~(D) In those instances when two or more lessors or lease facilitators occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors or lease facilitators operating from such location will be acceptable; provided, however, each lessor or lease facilitator must have:~~]

(i) a separate desk from which that vehicle lessor or vehicle lease facilitator transacts business;

(ii) a separate working telephone number listed [~~instrument, number, and listing~~] in the vehicle lessor or vehicle lease facilitator's business name or assumed name;

(iii) a separate right of occupancy that meets [~~meeting~~] the requirements of this section; and[~~.~~]

(iv) a vehicle lessor or vehicle lease facilitator license issued by the department in the name of the vehicle lessor or vehicle lease facilitator.

(F) [~~(E)~~] A vehicle lease facilitator's established and permanent place of business[~~, as prescribed in this rule,~~] must be physically located within the State [~~state~~] of Texas.

(2) Sign requirements. A vehicle lessor or vehicle lease facilitator shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor or vehicle lease facilitator conducts business. Outdoor signs must contain letters that are at least [~~no smaller than~~] six inches in height.

(3) Premises lease [~~Lease~~] requirements. If the premises from which a licensed vehicle lessor or vehicle lease facilitator conducts business is [~~are~~] not owned by the license holder, the license holder must maintain for the licensed location a valid premises lease that is continuous during the period of time for which the vehicle [~~licensee, such licensee shall maintain a lease continuous for the same period of time as the~~] lessor's or vehicle lease facilitator's license will be issued. The premises[~~, and such~~] lease agreement must [~~shall~~] be on a properly executed form containing at a minimum[~~, but not limited to the following information~~]:

(A) the name of the landlord of the premises and the name of the vehicle lease facilitator as the tenant of the premises [~~names of the lessor and lessee~~];

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application [~~or street address~~]; and

(C) the period of time for which the premises lease is valid.

(b) A vehicle lessor that does not deal directly with the public to execute vehicle leases and [~~lessor~~] whose licensed location is in another state [~~and who does not deal directly with the public to execute leases~~] must meet the following requirements at each location.

(1) Physical location requirements.

(A) The vehicle lessor's office structure must be of sufficient size to accommodate the following required equipment: [~~and must be equipped with~~]

(i) a desk and chairs from which the vehicle lessor transacts [~~his~~] business; and[~~. The office also must be equipped with~~]

(ii) a working telephone number [~~instrument~~] listed in the business name or assumed name under which the vehicle lessor conducts [~~lessor or lease facilitator does~~] business.

(B) A vehicle lessor that files an application for a new license or a satellite location with a primary [~~supplemental location whose~~] licensed location [~~is~~] in another state must conform to the following requirements.[~~:~~]

(i) The office must be located in a building[~~,~~] with connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.

(iv) The physical address of the office must be recognized by the U.S. Postal Service and [~~or~~] capable of receiving U.S. mail.

(C) A portable-type office structure may qualify as an office only if the structure meets the[~~, provided it meets the minimum~~] requirements of this section and is not a readily moveable trailer or other [~~such~~] vehicle.

(D) More than one licensed vehicle lessor may occupy the same business structure and conduct vehicle leasing operations un-

der different names in accordance with the license held by each vehicle lessor. Each person engaged in business as a vehicle lessor must have:

[(D) In those instances when two or more lessors occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors operating from such location will be acceptable; provided, however, each lessor must have:]

(i) a separate desk from which that vehicle lessor transacts business;

(ii) a separate working telephone number listed [instrument, number, and listing] in the vehicle lessor's business name or assumed name;

(iii) a separate right of occupancy that meets [meeting] the requirements of this section; and[.]

(iv) a vehicle lessor license issued by the department in the name of the vehicle lessor.

(2) Sign requirements. An out of state vehicle lessor shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor conducts business. Outdoor signs must contain letters at least [no smaller than] six inches in height.

(3) Premises lease [Lease] requirements. If the out of state premises from which a licensed vehicle lessor conducts business is [are] not owned by the license holder, the license holder must maintain a valid premises lease for [that person or entity, that person or entity shall maintain a lease on] the property of the licensed location. The premises lease must be continuous during the period of time for which the license will be issued. The premises lease agreement must [continuous for the same period of time as the license, and such agreement shall] be on a properly executed form containing at a minimum[, but not limited to the following information]:

(A) the name [names] of the landlord of the premises and the name of the licensed lessor identified as the tenant of the premises [lessor and lessee];

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application [or street address]; and

(C) the period of time for which the premises lease is valid.

(c) [Independence.] A vehicle lessor or vehicle lease facilitator shall be independent of financial institutions and dealerships in location and in business activities, unless that vehicle lessor or vehicle lease facilitator is an:

(1) employee or [of, a] legal subsidiary of the financial institution or dealership; or[, or an]

(2) entity wholly owned by the financial institution or dealership.

(d) For [the] purposes of this section [subsection], an employee is a person who meets the requirements of §215.173(b) of this title [chapter] (relating to License).

§215.178. Records Required for Vehicle Lessors and Vehicle Lease Facilitators [of Leasing].

(a) Purchase and leasing records. A vehicle lessor or vehicle lease facilitator must maintain [keep] a complete record of all vehicle purchases and sales for [a minimum period of] at least one year after the expiration of the vehicle lease.

(1) Records reflecting vehicle lease transactions that [have] occurred within the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site at a location within the same county or within 25 miles of the licensed location.

(2) Within 15 days of [Upon] receipt of a request sent by mail or by electronic document transfer from a representative of the department, a vehicle lessor or vehicle lease facilitator must deliver a copy of the [produce copies of] specified records to the address listed in the request [within 15 days].

(b) Content of records. A complete record for a vehicle lease transaction must contain: [As used in this subsection, a complete lease file shall contain the following information or documents:]

(1) the name, address [names, addresses], and telephone number [numbers] of the lessor of the vehicle subject to [in] the transaction;

(2) the name, mailing address, physical address [names, addresses], and telephone number of each [numbers of the] lessee of the vehicle subject to [in] the transaction;

(3) the name, address [names, addresses], telephone number [numbers], and license number [numbers] of the lease facilitator of the vehicle subject to [in] the transaction;

(4) the name, home address, and telephone number of each employee of the vehicle lease facilitator that [who] handled the transaction;

(5) a complete description of the vehicle involved in the transaction, including the VIN [its vehicle identification number (VIN)];

(6) the name, address, telephone number, and GDN [general distinguishing number] of the dealer selling the vehicle, as well as the franchise license number of the dealer if the vehicle involved in the transaction is a new motor vehicle;

(7) the amount of fee [received by or] paid to the vehicle lease facilitator or a statement that no fee was paid;

(8) a copy [copies] of the buyer's [buyers] order and sales contract for the vehicle;

(9) a copy of the vehicle lease contract;

(10) a copy [copies] of all other contracts, agreements, or disclosures between the vehicle lease facilitator and the consumer lessee; and

(11) a copy [copies] of the front and back of the manufacturer's statement of origin, manufacturer's certificate of origin, [Manufacturer's Statement/Certificate of Origin] or the title of the vehicle if the vehicle involved in the transaction is a new motor vehicle.

(c) Records of advertising. A vehicle lessor or vehicle lease facilitator must maintain a copy [copies] of all advertisements, brochures, scripts, or an [or] electronically reproduced copy [copies,] in whatever medium appropriate, of promotional materials for a period of at least 18 months. Each copy is[,] subject to inspection upon request by a representative of the department or a peace officer [Board] at the business of the license holder during posted [licensee during regular] business hours.

(1) Vehicle Lessors and vehicle lease facilitators must comply with all federal and state advertising laws and regulations, including [~~All advertisements by lessors or lease facilitators must be in accordance with~~] Subchapter H of this chapter (relating to Advertising).

(2) A vehicle lessor or vehicle lease facilitator [~~Lessors and lease facilitators~~] may not state or infer in any advertisement, either directly or indirectly, that the [~~in any manner such as advertisements, stationery or business cards that their~~] business involves the sale of new motor vehicles.

(d) Title assignments. Each certificate [~~All certificates~~] of title, manufacturer's certificate [~~certificates~~] of origin, or other evidence of ownership for a vehicle that has [~~vehicles which have~~] been acquired by a vehicle lessor for lease must be properly assigned [~~properly~~] from the seller in the vehicle [~~into the~~] lessor's name.

(e) Letters of appointment. A letter [~~All letters~~] of appointment between a vehicle lessor and a vehicle [~~each lessor or~~] lease facilitator with whom the vehicle lessor conducts [~~the licensee does~~] business must be executed by both parties.

(f) Electronic records. Any record [~~records~~] required to be maintained [~~kept~~] by a vehicle lessor or vehicle lease facilitator may be maintained [~~kept~~] in an electronic format, provided [~~if~~] the electronic record [~~records~~] can be printed at the licensed location upon request for the record by a representative of the department or a peace officer.

§215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator Status.

(a) Change of ownership. A vehicle lessor or vehicle lease facilitator that [~~who~~] proposes to sell or assign [~~and/or assign~~] to another any interest in the licensed entity, whether a corporation or otherwise, provided [~~so long as~~] the physical location of the licensed entity remains the same, shall notify the department [~~division~~] in writing within 10 [~~ten~~] days by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the purchasing or assignee [~~purchasing/assignee~~] entity must apply for and obtain a new license. A publicly held corporation licensed as a vehicle lessor or vehicle lease facilitator needs only inform the department [~~Publicly held corporations licensed as lessors or lease facilitators need only inform the division~~] of a change in ownership if one person or entity acquires 10% or greater interest in the licensed entity [~~licensee~~].

(b) Change of operating status of business location. A license holder [~~licensee~~] shall obtain department [~~division~~] approval prior to opening a satellite location or relocating [~~the opening of a supplemental location, or the relocation of~~] an existing location, in accordance with §215.176 of this title [~~subchapter~~] (relating to More than One Location). A license holder [~~Also, a licensee~~] must notify the department [~~division~~] when closing an existing location or a satellite location.

§215.180. Required Notices to Lessees.

Vehicle lessors and vehicle [~~Lessors and~~] lease facilitators shall provide notice of the complaint procedures provided by Occupations Code, §§2301.204 and 2301.601 - 2301.613 to each lessee of a new motor vehicle with whom they enter into a vehicle [~~transact a~~] lease.

§215.181. General Distinguishing Number Exception.

A licensed vehicle lessor is not required to hold a GDN [~~It is not necessary for a licensed lessor to hold a general distinguishing number (GDN)~~] in order to sell a motor vehicle that the vehicle lessor owns to [~~lessor owns, to either~~] the lessee or to a duly licensed dealer, either directly or through a licensed wholesale motor vehicle auction. A licensed vehicle lessor may not purchase a motor vehicle [~~lessor is not allowed to purchase vehicles~~] at a wholesale motor vehicle auction. Any existing GDN held by a vehicle lessor that [~~lessor who~~] does not otherwise qualify for a GDN shall be canceled. A vehicle [~~cancelled. A~~] lessor whose GDN has been canceled [~~cancelled~~] under this section may reapply for a GDN once all the qualifications for a GDN are met.

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 June 5, 2015.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 465-5665

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43 TAC §215.172

(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 Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.172. Definitions.

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

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General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

43 TAC §§215.201 - 215.210

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.201. Purpose and Scope [Objective and Definitions].

(a) This subchapter implements Occupations Code, §§2301.204 and 2301.601 - 2301.613. [It is the objective of this subchapter to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, Subchapter M (§§2301.601-2301.613) and Occupations Code, §2301.204. These rules provide a simplified and fair procedure for the enforcement of these provisions of the Code, including the processing of complaints, the conduct of hearings, and the formal or informal disposition of complaints filed by owners seeking relief under these provisions of the Code.]

(b) Practice and procedure in contested cases heard by the department's [State] Office of Administrative Hearings (OAH) are addressed in Subchapter B of this chapter (relating to Adjudicative Practice and Procedure) [(SOAH) are provided for in Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings)] and the provisions of this subchapter to the extent that the provisions do not conflict with state law, rule, or court order. [SOAH rules.]

(c) [(b)] The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Comparable Motor Vehicle--A new motor vehicle, with comparable mileage, from the same manufacturer, converter, or distributor's product line and the same model year or newer as the motor vehicle to be replaced or as reasonably equivalent to the motor vehicle to be replaced.

(2) Lemon Law--Refers to Occupations Code, Chapter 2301, Subchapter M (§§2301.601 - 2301.613).

[(3) Owner--A person as defined by Occupations Code, §2301.601(2).]

(3) [(4)] Warranty Performance--Refers to Occupations Code, §2301.204.

§215.202. Filing of Complaints.

(a) Lemon law complaints [Law Complaints].

(1) Complaints seeking [for] relief under the lemon law must be in writing [written] and filed with the department. A complaint filed with the department shall be delivered:

(A) in person to the department; [by hand delivery to the department's headquarters building in Austin,]

(B) by mail to the address of the department;[, or]

(C) by email [by e-mail or facsimile transmission] to a department-designated email address; or [e-mail address or]

(D) by facsimile transmission to a department-designated facsimile number.

(2) Complaints may be submitted in letter or other written format, or on complaint forms provided by the department.

(3) [(2)] Complaints shall [should] state sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming [which form] the basis of the claim for relief under the lemon law.

(4) [(3)] Complaints shall, at a minimum, [should] provide the following information:

(A) the name, address, and telephone [phone] number of the motor vehicle owner;

(B) the identification of the motor vehicle, including the [vehicle by] make, model, [and] year, and manufacturer's VIN; [vehicle identification number;]

(C) the type of warranty coverage;

(D) the name and address of the dealer[,] or other person from whom the motor vehicle was purchased or leased, including the name and address of the vehicle lessor, if applicable;

(E) the date of delivery of the motor vehicle to the original owner[;] and in the case of a demonstrator, the date the motor vehicle was placed into demonstrator service;

(F) the motor vehicle mileage at the time when: [time]

(i) the motor vehicle was purchased or leased;[, mileage when]

(ii) problems with the motor vehicle were first reported; and[,]

(iii) the complaint was filed;

(G) the name of the dealer or the name of the manufacturer's, converter's, or distributor's agent to whom the problems were first reported[, and current mileage];

(H) [(G)] identification of the motor vehicle's existing problems and a brief description of the history of problems and repairs on the motor vehicle, including:

(i) the date and mileage of each repair; and

(ii) a copy of each repair order[, with copies of repair orders] where possible;

(I) [~~(H)~~] the date the motor [~~date on which written notification of complaint was given to the~~] vehicle manufacturer, converter, or distributor received written notification of the complaint;[~~, and~~]

(J) the date and results of the motor vehicle inspection, if the motor vehicle was [~~if the vehicle has been~~] inspected by the manufacturer, converter, or distributor[~~, the date and results of such inspection~~]; and

(K) [~~(I)~~] any other information [~~which~~] the complainant deems relevant [~~believes to be pertinent~~] to the complaint.

(5) [~~(4)~~] The department's staff will provide information concerning the complaint procedure and complaint forms to any person requesting [~~information or~~] assistance.

(6) [~~(5)~~] The filing fee required under the lemon law should be remitted with the complaint by any form of payment accepted by the department. The filing fee is nonrefundable, but a complainant that [~~who~~] prevails in a case is entitled to reimbursement of the filing fee from the nonprevailing party. Failure to remit the filing fee with the complaint will delay commencement of the 150-day period referenced in paragraph (8) [~~(7)~~] of this subsection and may result in dismissal of the complaint.

(7) [~~(6)~~] The commencement of a lemon law proceeding occurs on the date the filing fee is received [~~of receipt of the filing fee~~] by the department or its authorized agent.

(8) [~~(7)~~] If the hearings examiner has not issued an order within 150 days after the commencement of the lemon law proceeding in accordance with paragraph (7) [~~(6)~~] of this subsection, department staff shall notify the parties by mail that the complainant may file a civil action in state district court to seek relief under the lemon law. The notice will inform the complainant of the complainant's right to continue the lemon law complaint through the department. The 150-day period shall be extended upon request of the complainant or if a delay in the proceeding is caused by the complainant.

(b) Warranty performance complaints (repair-only relief). [~~Performance Complaints (Repair-Only Relief).~~]

(1) Complaints for warranty performance relief filed with the department must comply with the requirements of subsection (a)(1) - (4) [~~(a)(1) - (3)~~] of this section.

(2) A [~~No~~] filing fee is not required for a complaint that is subject to [~~filed for~~] a warranty performance claim.

(3) A complaint may be filed with the department in accordance with this section if [~~If~~] the defect in the motor vehicle subject to [~~that is the subject of~~] the warranty performance complaint was reported to the manufacturer, converter, distributor, or to an [~~or distributor or its~~] authorized agent prior to the expiration of the warranty period[~~, a complaint may be filed with the department in accordance with this section~~].

(4) If the defect is not [~~cannot be~~] resolved pursuant to §215.205 of this title [~~subchapter~~] (relating to Mediation; Settlement), a hearing will be scheduled and conducted in accordance with this subchapter and with Occupations Code, Chapter 2301.

(5) The final order authority will issue an order on the warranty performance complaint. A party who disagrees with the order may oppose the order in accordance with [~~using the procedures described in~~] §215.207 of this title [~~subchapter~~] (relating to Contested Cases: Final Orders).

(6) Department staff will provide information concerning the complaint procedure and complaint forms to any person requesting [~~information or~~] assistance.

§215.203. Review of Complaints.

Department staff will promptly review a complaint [~~All complaint complaints will be reviewed promptly by department staff~~] to determine if the complaint meets [~~whether they satisfy~~] the minimum requirements of a lemon law or a warranty performance complaint.

(1) If department staff cannot determine [~~it cannot be determined~~] whether a complaint meets [~~satisfies~~] the minimum lemon law or warranty performance requirements, the complainant will be contacted for additional information.

(2) If department staff determines [~~it is determined~~] that the complaint meets [~~does meet~~] the minimum lemon law or warranty performance requirements, the complaint will be processed in accordance with [~~the procedures set forth in~~] this subchapter.

§215.204. Notification to Manufacturer, Converter, or Distributor.

(a) Upon receipt of a complaint for lemon law or warranty performance relief, the department will:

(1) provide notification of the complaint to, and request a response from, the appropriate manufacturer, converter, or distributor; and[~~, and a response to the complaint will be requested. The department will also~~]

(2) provide a copy of the complaint to, and may request a response from, the selling dealer and any other dealer [~~dealers that have been~~] involved with the complaint[~~, and a response may be requested~~].

(b) The manufacturer shall, upon request by the department, provide a copy of the warranty for the motor vehicle subject to the lemon law or warranty performance complaint.

§215.205. Mediation; Settlement.

(a) Department [~~Before a complaint filed under Occupations Code, §§2301.204 or §2301.601-2301.613 is scheduled for a hearing, department~~] staff will attempt to settle or resolve a lemon law or warranty performance complaint through nonbinding mediation before a hearing on the complaint is scheduled. [~~effect a settlement or resolution of the complaint through mediation.~~]

(b) The parties are required [~~While the mediation is not binding, all parties are required~~] to participate in the nonbinding mediation process in good faith.

(c) In a case filed under Occupations Code, §§2301.204 or 2301.601 - 2301.613 [~~§2301.204 or §§2301.601-2301.613~~], the mediator shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

§215.206. Hearings.

Lemon law or warranty performance complaints that satisfy the jurisdictional requirements of the Occupations Code will be set for hearing. Notification[~~, and notification~~] of the date, time, and place of the hearing will be given to all parties by certified mail. Additional information contained in the notice of hearing shall be consistent with §215.34 of this title (relating to Notice of Hearing in Contested Cases).

(1) When [~~Where~~] possible, hearings will be held in the city in which [~~where~~] the complainant resides [~~or at a location reasonably convenient to the complainant~~].

(2) Hearings will be scheduled at the earliest date possible, provided that a 10-day notice or other notice [~~, or such other notice as is~~] required by law[~~,~~] is given to all parties.

(3) Hearings will be conducted expeditiously by a hearings examiner in accordance with Government Code, Chapter 2001; Occupations Code, §2301.704; and with the provisions of Subchapter B of

this chapter (relating to Adjudicative Practice and Procedure) and this subchapter.

(4) Hearings will be conducted informally [~~informal~~]. The parties have the right to be represented by attorneys at a hearing, although attorneys are not required. Any party who intends to be represented at a hearing by an attorney or an authorized representative [~~at a hearing~~] must notify the hearings examiner, the department, and any [~~the~~] other party in writing at least five business days prior to the hearing. Failure to provide [~~such~~] notice will result in postponement of the hearing if [~~postponement is~~] requested by any [~~the~~] other party.

(5) Subject to a hearings examiner ruling, a party may present that party's case [~~hearings examiner rulings, parties may present their cases~~] in full, including testimony from witnesses[~~,~~] and documentary evidence such as repair orders, warranty documents, and the motor vehicle sales contract.

(6) By agreement of the parties and with the written approval of the hearings examiner, the hearing may be conducted by written submission [~~submissions~~] only or by telephone.

(7) Except for a hearing [~~hearings~~] conducted by written submission [~~only~~], each party may be questioned by the other party[~~,~~] at the discretion of the hearings examiner.

(8) Except for a hearing [~~hearings~~] conducted by written submission [~~only~~] or by telephone, the complainant must bring the motor vehicle in question to the hearing so that the motor vehicle may be inspected and test driven, unless otherwise ordered by the hearings examiner upon a showing of good cause by the complainant.

(9) The department may have the motor vehicle in question inspected by an expert prior to the hearing, if the department determines that an expert opinion may assist in arriving at a decision. An inspection under this section [~~Any such inspection~~] shall be made only upon prior notice to all parties, who shall have the right to be present at such inspection. A copy [~~Copies~~] of any findings or report from such inspection will be provided to all parties before, or at, the hearing.

(10) Except for hearings conducted by written submission [~~only~~], all hearings will be recorded by the hearings examiner. A copy of the recording [~~Copies of the hearing recordings~~] will be provided to any party upon request and upon payment for the cost of the copy, as provided by law or board rules.

§215.207. Contested Cases: Final Orders.

(a) A motion for rehearing of a final order issued by the board for a complaint filed [~~Board~~] under Occupations Code, Chapter 2301, Subchapters E or M shall proceed in accordance with Occupations Code, §2301.713. [~~Subchapter E or M, shall follow the procedures in Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings).~~]

[~~(b) A motion for rehearing of a final order issued by a hearings examiner shall follow the procedures in this subsection.~~]

(b) [~~(1)~~] The hearings examiner shall [~~will~~] prepare a final order as soon as possible, but not later than 60 days after the hearing is closed, or as otherwise provided by law. The final order shall [~~will~~] include the hearings examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all parties by certified mail [~~of record~~].

(c) [~~(2)~~] A party who [~~that~~] disagrees with the final order may file a motion for rehearing in accordance with Occupations Code, §2301.713. A motion for rehearing of a final order issued by a hearings examiner must: [~~within 20 days from the date of the notification of the final order.~~]

(1) be filed with and decided by the chief hearings examiner;

[~~(3) A motion for rehearing of a final order issued by a hearings examiner must be filed with the appropriate department office and decided by the chief hearings examiner.~~]

(2) [~~(4)~~] [~~A motion for rehearing must~~] include the specific reasons, exceptions, or grounds [~~that are~~] asserted by a party as the basis of the request for a rehearing; and[~~. A motion for rehearing shall~~]

(3) recite, if applicable, the specific findings of fact, conclusions of law, or any other portions of the final order to which the party objects.

(d) [~~(5)~~] Replies to a motion for rehearing must be filed with the chief hearings examiner in accordance with [~~motion for rehearing authority under~~] Occupations Code, §2301.713 within 30 days after the date of the notification of the final order.

[~~(6) The motion for rehearing authority must act on the motion within 45 days after the date of notification of the final order, or as otherwise provided by law, or the motion is overruled by operation of law. The motion for rehearing authority may, by written order, extend the period for filing, replying to, and taking action on a motion for rehearing, not to exceed 90 days after the date of notification of the final order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the date of notification of the final order.~~]

(e) [~~(7)~~] If the chief hearings examiner [~~motion for rehearing authority~~] grants a motion for rehearing, the parties will be notified by mail and a[~~. A~~] rehearing will be scheduled promptly [~~as promptly as possible~~]. After rehearing, a final order shall be issued with any additional findings of fact or conclusions of law, if necessary to support the final order. The chief hearings examiner [~~motion for rehearing authority also~~] may issue an order granting the relief requested in a motion for rehearing or requested in a reply to a motion for rehearing [~~replies thereto~~] without the need for a rehearing. If a motion for rehearing and the relief requested is denied, an order [~~so stating~~] will be issued.

(f) [~~(8)~~] A party who has exhausted all administrative remedies[~~,~~] and who is aggrieved by a final order in a contested case from which appeal may be taken is entitled to judicial review pursuant to Occupations Code, §§2301.751-2301.756, under the substantial evidence rule. A petition for judicial review [~~The petition~~] shall be filed in a district court of Travis County or in the Court of Appeals, Third District [~~Court of Appeals for the Third Court of Appeals District~~] within 30 days after the order is final and appealable. A copy of the petition must be served on the final order authority and any other parties of record. After service of the petition and within the time permitted for filing an answer, the final order authority shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders that new evidence [~~to~~] be presented to the final order authority, the final order authority [~~such decision-maker~~] may modify the findings and decision or order by reason of the new evidence, and shall transmit the additional record to the court.

§215.208. Lemon Law Relief Decisions.

(a) Unless otherwise indicated, this section applies to decisions that relate to lemon law complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605, where applicable.

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the motor vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's motor vehicle, creating [~~vehicle which creates~~] a serious safety haz-

ard or substantially impairing [~~impairs~~] the use or market value of the motor vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606[~~,~~] are not applicable, the final order authority shall issue a final order to the manufacturer, distributor, or converter to:

(A) replace the motor vehicle with a comparable motor vehicle, less a reasonable allowance for the owner's use of the vehicle;[~~,~~] or

(B) accept the return of the motor vehicle from the owner and refund [~~to the owner~~] the full purchase price of the motor vehicle to the owner [~~vehicle~~], less a reasonable allowance for the owner's use of the motor vehicle.

(2) In any decision in favor of the complainant, the final order authority will, to the extent possible, accommodate the complainant's request with respect to replacement or repurchase of the motor vehicle[~~, to the extent possible~~].

(b) This subsection applies only to the repurchase of motor vehicles.

(1) When [~~Where~~] a refund of the purchase price of a motor vehicle is ordered, the purchase price shall be the total purchase price of the motor vehicle, excluding [~~vehicle, but shall not include~~] the amount of any interest, finance charge, or insurance premiums. The award to the motor vehicle owner shall include reimbursement of [~~for~~] the amount of the lemon law complaint filing fee paid by, or on behalf of, the motor [~~the~~] vehicle owner. The refund shall be made payable to the motor vehicle owner and to any lienholder, respective to their ownership interest. [~~the lienholder, if any, as their interests require.~~]

(2) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000 miles. Except in cases where the preponderance of the evidence shows that the motor vehicle has a longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use of the motor vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The [~~the~~] product obtained by multiplying the purchase price, as defined in paragraph (1) of this subsection, of the motor vehicle[~~, as defined in paragraph (1) of this subsection,~~] by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% [~~50 percent~~] of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(3) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 3,650 days or 10 years [~~(10 years)~~]. Except in cases where a preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 3,650 days or 10 years [~~(10 years)~~], the reasonable allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price, as defined in paragraph (1) of this subsection, of the towable recreational vehicle[~~, as defined in paragraph (1) of this subsection,~~] by a fraction having as its denominator 3,650 days or 10 years [~~(10 years)~~], except the denominator shall be 1,825 days or five years [~~(5 years)~~], if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50% [~~50 percent~~] of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days or 10 years [~~(10 years)~~], except the denominator shall be 1,825 days or five years [~~(5 years)~~], if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(C) Any day or part of a day that the vehicle is out of service for repair will be deducted from the numerator in determining the reasonable allowance for use of a towable recreational vehicle in this paragraph.

(c) This subsection applies only to leased motor vehicle relief.

(1) Except in cases involving unusual and extenuating circumstances[~~,~~] supported by a preponderance of the evidence, when a [~~where~~] refund of the purchase price of a leased motor vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the vehicle lessor, respectively, in accordance with [~~set out as follows in~~] subparagraphs (A) and (B) of this paragraph.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by the lessee to the vehicle [~~him to the~~] lessor under the terms of the lease; and

(ii) all sums previously paid by the lessee to the vehicle [~~him to the~~] lessor in connection with entering into the lease agreement, including, but not limited to[~~,~~] any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license, [~~and~~] registration fees, and other documentary fees, if applicable.

(B) The vehicle lessor shall receive the total of:

(i) the actual price paid by the vehicle lessor for the motor vehicle, including tax, title, license, and documentary fees, if paid by the vehicle lessor and [~~lessor, and as~~] evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; and [~~plus~~]

(ii) an additional 5.0% of the [~~5 percent of such~~] purchase price plus any amount or fee paid by vehicle lessor to secure the lease or interest in the lease;

(C) [~~(iii)~~] A credit [~~provided, however, that a credit,~~] reflecting all of the payments made by the lessee[~~,~~] shall be deducted from the actual purchase price that [~~which~~] the manufacturer, converter, or distributor is required to pay the vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph. [~~clauses (i) and (ii) of this subparagraph.~~]

(2) When the final order authority orders a manufacturer, converter, or distributor to refund the purchase price in a leased vehicle transaction, the motor vehicle shall be returned to the manufacturer, converter, or distributor with clear title upon payment of the sums indicated in paragraph (1)(A) and (B) of this subsection. The vehicle lessor shall transfer title of the motor vehicle to the manufacturer, converter, or distributor, as necessary to effectuate the lessee's rights. The lease shall be terminated without penalty to the lessee.

(3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective to their ownership interest. [any lienholders as their interest may appear.] The refund to the lessee under paragraph (1)(A) of this subsection shall be reduced by a reasonable allowance for the lessee's use of the motor vehicle. A reasonable allowance for use shall be computed in accordance with [according to the formula in] subsection (b)(2) or (3) of this section, using the amount in paragraph (1)(B)(i) of this subsection as the applicable purchase price.

(d) This subsection applies only to replacement of motor vehicles.

(1) Upon issuance of an order from the final order authority to a manufacturer, converter, or distributor to replace a motor vehicle, the manufacturer, converter, or distributor shall:

(A) promptly [Promptly] authorize the exchange of the complainant's motor vehicle with the complainant's choice of any comparable motor vehicle; and[.]

(B) instruct [Instruct] the dealer to contract the sale of the selected comparable motor vehicle with the complainant under the following terms.[:]

(i) The sales price of the comparable motor vehicle shall be the vehicle's manufacturer's suggested retail price (MSRP). [Manufacturer's Suggested Retail Price (MSRP);]

(ii) The trade-in value of the complainant's motor vehicle shall be the MSRP at the time of the original transaction, less a reasonable allowance for the complainant's use of the complainant's motor vehicle. [vehicle; and]

(iii) The use allowance for replacement relief shall be calculated in accordance with [using the formulas outlined in] subsection (b)(2) and (3) of this section.

(2) Upon any replacement of a complainant's motor vehicle, the complainant shall be responsible for payment or financing of the usage allowance of the complainant's vehicle, any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees.

(A) If the comparable motor vehicle has a higher MSRP than the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the difference in the MSRP between the two motor vehicles [two vehicles' MSRPs] to the manufacturer, converter or distributor.

(B) If the comparable motor vehicle has a lower MSRP than the complainant's vehicle, the complainant will be credited the difference in the MSRP between the two motor vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the complainant's vehicle.

(3) The complainant is responsible for obtaining [to obtain] financing, if necessary, to complete the transaction.

(4) The replacement transaction, as described in paragraphs (2) and (3) of this subsection, shall be completed as specified in the final order. If the replacement transaction cannot be completed [this cannot be accomplished] within the ordered time period, the manufacturer shall repurchase the complainant's motor vehicle in accordance with [pursuant to] the repurchase provisions of this section. If repurchase relief occurs, a party may request calculation of the repurchase price by the final order authority.

(e) If the final order authority finds that a complainant's motor vehicle does not qualify for replacement or repurchase, an order may be entered in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's warranty obligations.

(f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor vehicle's condition [its condition,] beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the repurchase price contained in the final order.

(g) In any award in favor of a complainant, the final order authority may require the dealer involved to reimburse the complainant, manufacturer, converter, or distributor for the cost of any items or options added to the motor vehicle if one or more of those [such] items or options contributed to the defect that is the basis for the order, repurchase, or replacement. This subsection shall not be interpreted to require a manufacturer, converter, or distributor to repurchase a motor vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.

§215.209. Incidental Expenses.

(a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The expenses must be reasonable and verifiable [verified through receipts or similar written documents]. Reimbursable incidental expenses include, but are not limited to the following costs:

(1) alternate transportation;

(2) towing;

(3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the motor vehicle;

(4) meals and lodging necessitated by the motor vehicle's failure during out of town [out-of-town] trips;

(5) loss or damage to personal property;

(6) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and

(7) items or accessories added to the motor vehicle at or after purchase, less a reasonable allowance for use.

(b) Incidental expenses shall be included in the final repurchase price required to be paid by a manufacturer, converter, or distributor to a prevailing complainant or in the case of a motor vehicle replacement, shall be tendered to the complainant at the time of replacement.

(c) When awarding reimbursement for the cost of items or accessories presented under subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature, functionality, and value added by the items or accessories and whether the items or accessories are original equipment manufacturer (OEM) parts or non-OEM parts.

§215.210. Compliance with Order Granting Relief.

(a) Compliance with an order issued by the final order authority will be monitored by the department.

(b) [(1)] A complainant is not bound by a final decision and order [and may either accept or reject the decision].

(c) [(2)] If a complainant does not accept the final decision, the proceeding before the final order authority will be deemed concluded and the complaint file closed.

(d) [(3)] If the complainant accepts the final decision, then the manufacturer, converter, or distributor, and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is necessary to implement the final decision and order.

(e) [(4)] If a manufacturer, converter, or distributor replaces or repurchases a motor vehicle pursuant to an order issued by the final order authority, reacquires a vehicle to settle a complaint filed under Occupations Code, §§2301.204 or 2301.601 - 2301.613 [Chapter 2301, Subchapter M or Occupations Code, §2301.204], or brings a motor vehicle into the State [state] of Texas that [which] has been reacquired to resolve a warranty claim in another jurisdiction, then the manufacturer, converter, or distributor shall, prior to the resale of such motor vehicle, retitle [vehicle, re-title] the vehicle in Texas and shall:

(1) issue a disclosure statement on a form provided by or approved by the department; and[. In addition, the manufacturer, converter, or distributor reacquiring the vehicle shall]

(2) affix a department-approved disclosure label in a conspicuous [disclosure label provided by or approved by the department on an approved] location in or on the motor vehicle.

(f) The [Both the] disclosure statement and [the] disclosure label required under subsection (e) of this section shall accompany the motor vehicle through the first retail purchase. No person or entity holding a license or GDN [general distinguishing number] issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle to the first retail purchaser.

(g) A manufacturer, converter, or distributor shall provide to the department [in writing,] the name, address, and telephone number of the transferee [any transferee, regardless of residence,] to whom the manufacturer, distributor, or converter[, as the case may be,] transfers the motor vehicle on the disclosure statement [vehicle] within 60 days of each transfer. The selling dealer shall return the completed disclosure statement to the department within 60 days of the retail sale of a reacquired motor vehicle.

(h) The [Any manufacturer, converter, or distributor or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Occupations Code. In addition, the] manufacturer, converter, or distributor must repair the defect or condition in the motor vehicle that resulted in the vehicle being reacquired and issue[, at a minimum,] a basic warranty excluding non-OEM items or accessories, for a minimum of 12 months or 12,000 miles, whichever comes first. The [for (12 months/12,000 mile, whichever comes first), except for non-original equipment manufacturer items or accessories, which] warranty shall be provided to the first retail purchaser of the motor vehicle.

(i) [(5)] In the event this section conflicts with [of any conflict between this section and] the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(j) [(6)] The failure of any manufacturer, converter, distributor, or dealer to comply with a final order issued by the final order authority within the time period prescribed in the order may subject the manufacturer, converter, [or] distributor, or dealer to formal action by the department, including the assessment of civil penalties or other sanctions prescribed by Occupations Code, Chapter 2301, for the failure to comply with an order issued by the final order authority.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER H. ADVERTISING

43 TAC §§215.241 - 215.261, 215.263 - 215.271

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.241. Purpose and Scope [Objective].

This subchapter implements [The objective of this subchapter is to implement the intent of the legislature as declared in] Occupations Code, Chapter 2301[,] by regulating the advertising of persons under the jurisdiction of the department [Board] by requiring truthful and accurate advertising practices for the benefit of the citizens of this state.

§215.242. General Prohibition.

A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the department [Board] to be false, deceptive, or misleading, whether herein described [or not enumerated herein], shall be deemed a violation of Occupations Code, Chapter 2301 [violations of the Code,] and shall also be considered a violation [violations] of the general prohibition.

§215.243. Specific Rules.

The violation of an advertising rule shall be considered by the department [Board] as a prima facie violation of Occupations Code, Chapter 2301.

§215.244. Definitions.

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

(1) Advertisement--

(A) An oral, written, graphic, or pictorial statement or representation made in the course of soliciting business, including, but not limited to [~~without limitation,~~] a statement or representation:

(i) made in a newspaper, magazine, or other publication;[~~, or~~]

(ii) contained in a notice, sign, poster, display, circular, pamphlet, or letter;[~~, or on radio,~~]

(iii) aired on the radio;

(iv) broadcast on the Internet or television; or[~~, or via an on-line service, or on television.~~]

(v) streamed via an online service.

(B) Advertisement [~~The term~~] does not include direct communication between a person or person's [~~dealer or dealer's~~] representative and a prospective purchaser.

(2) Advertising provision--

(A) A provision of Occupations Code, Chapter 2301, [~~the Code~~] relating to the regulation of advertising; or

(B) A rule relating to the regulation of advertising, adopted pursuant to the authority of Occupations Code, Chapter 2301 [~~the Code~~].

(3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain a lead to a person [~~leads to persons~~] interested in buying or leasing merchandise of the type advertised and to switch a consumer [~~consumers~~] from buying or leasing the advertised product in order to sell or lease some other product at a higher price or on a basis more advantageous to the licensee. [~~advertiser.~~]

(4) Balloon payment--Any scheduled payment made as required by a consumer credit transaction that is more than twice as large as the average of all prior scheduled payments except the down payment.

~~[(5) Buyers guide--A form as required by the Federal Trade Commission under 16 Code of Federal Regulations, Part 455. This form is to be completed and displayed on the side window of a vehicle that has been driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer.]~~

(5) [~~(6)~~] Clear and conspicuous--The statement, representation, or term being disclosed is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning.

(6) [~~(7)~~] Dealership addendum--A form that is [~~which is to be~~] displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts, or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a motor vehicle for delivery to a buyer.

(A) The purpose of the addendum is to disclose:

(i) [~~(A)~~] that it is supplemental;

(ii) [~~(B)~~] any added feature, service, equipment, part, or accessory, including the retail price, charged and added by the dealership [~~and the retail price therefore,~~];

(iii) [~~(C)~~] any additional charge to the selling price such as additional dealership markup; and

(iv) [~~(D)~~] the total dealer selling price.

(B) The dealership addendum form shall not be deceptively similar in appearance to the Monroney sticker, as defined by paragraph (11) of this section. [~~manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act.~~]

(7) [~~(8)~~] Demonstrator--A new motor vehicle that is currently in the inventory of the automobile dealership and used [~~or has been used~~] primarily for test drives by customers and for other purposes [~~other dealership purposes and so~~] designated by the dealership.

(8) [~~(9)~~] Disclosure--Required information that is clear, conspicuous, and accurate.

(9) [~~(10)~~] Factory executive/official motor vehicle--A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

(10) [~~(11)~~] Licensee--Any person required to obtain a license from the department.

(11) [~~(12)~~] Monroney sticker-- [~~Manufacturer's label--~~] The label required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231-1233, to be affixed by the manufacturer to the windshield or side window of each new motor vehicle [~~automobile~~] delivered to the dealer and that contains information about the motor vehicle, including the manufacturer's suggested retail price.

(12) New motor vehicle--A motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(13) Online [~~On-line~~] service--A network that connects computer users.

(14) Rebate or cash back--A sum of money refunded to a purchaser or refunded for the benefit of the purchaser after full payment has been rendered. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to the purchaser for the purchaser's [~~himself or for his~~] benefit subsequent to payment in full.

(15) Savings claim or discount--An offer to sell a motor vehicle at a reduced price, including a manufacturer's customer rebate, a dealer discount, and a limited rebate.

(16) [~~(15)~~] Subsequent violation--Conduct that is the same or substantially the same as conduct the department [~~Board~~] has previously alleged in an earlier communication to be a violation of an advertising provision.

§215.245. Availability of Motor Vehicles.

(a) A licensee may advertise a specific new motor vehicle or line-make of vehicles for sale if the specific motor vehicle or line-make is in the possession of the licensee at the time the advertisement is placed.[~~, or if~~]

(b) If the specific motor vehicle or line-make is not in the possession of the licensee at the time the advertisement is placed, the licensee must clearly and conspicuously disclose [~~discloses~~] that fact in the advertisement and state [~~states~~] that the motor vehicle may be obtained from the manufacturer, distributor, or some other source. The advertisement must set[~~; and~~]

[~~(1)~~] [~~the advertisement sets~~] forth the number of motor vehicles available at the advertised price, if a price is advertised, at the time the advertisement is placed[~~;~~] or

[~~(2)~~] the [~~a~~] dealer can show that it has the number of motor vehicles available to meet the anticipated public demand. [~~he has available a reasonable expectable public demand based on prior experience.~~]

(c) [~~(b)~~] If an advertised price pertains to only one specific motor vehicle, then the advertisement must also disclose the motor vehicle's stock number or VIN. [~~vehicle identification number.~~]

(d) [~~(c)~~] This section does not prohibit general advertising of motor vehicles by a manufacturer, dealer advertising association, or distributor, nor does it prohibit [~~and~~] the inclusion of the names and addresses of the dealers selling such motor vehicles in the particular area.

(e) [~~(d)~~] A motor vehicle dealer may advertise a specific used motor vehicle for sale if:

(1) the specific used motor vehicle is in the possession of the dealer at the time the advertisement is placed; and

(2) the title certificate to the used motor vehicle has been assigned to the dealer.

§215.246. Accuracy.

Advertisements [~~All advertisements~~] shall be accurate, clear, and conspicuous. Advertisements [~~and~~] shall not be false, deceptive, or misleading. For an Internet advertisement, a disclosure may be considered accurate, clear, and conspicuous if:

(1) the viewer hovers a mouse across the screen and the disclosure is immediately visible; or

(2) only one click is required to view the disclosure.

§215.247. Untrue Claims.

The following statements are prohibited.

(1) Statements such as "write your own deal," "name your own price," "name your own monthly payments," or statements with similar meaning.

(2) Statements such as "everybody financed," "no credit rejected," "we finance anyone," and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless the dealer can show such is the case.

(4) Statements representing that because of its large sales volume, a dealer is able to purchase motor vehicles for less than another dealer selling the same make of motor vehicles, unless the dealer can show such is the case.

§215.248. Layout.

The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio and television [~~radio/TV~~] advertisements shall not convey or permit an erroneous or misleading impression as to which motor vehicle or vehicles are offered for sale or lease at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading. Any [~~and any~~] necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

§215.249. Manufacturer's Suggested Retail Price.

(a) Except as provided by subsection (b) of this section, the manufacturer's suggested retail price (MSRP) [~~The suggested retail price~~] of a new motor vehicle [~~when~~] advertised by a manufacturer or distributor shall include all costs and charges for the motor vehicle advertised.[~~, except that~~]

(b) The following costs and charges may be excluded if an advertisement described in subsection (a) of this section clearly and conspicuously states the costs and charges are excluded:

(1) destination and dealer preparation charges;[~~, and any~~]

(2) registration, certificate of title, license fees, or an additional registration fee, if any;[~~, charged by a full service deputy as provided by Transportation Code, §502.114; any~~]

(3) taxes; and [~~any~~]

(4) other fees or charges that are allowed or prescribed by law. [~~may be excluded from such price, provided that the advertisement clearly and conspicuously states that such costs and charges are excluded.~~]

(c) Except as provided by this subsection, if the price of a motor vehicle is stated in an advertisement [~~However, with respect to advertisements~~] placed with local media in the State of Texas by a manufacturer or distributor and [~~which include~~] the names of the local dealers for the motor vehicles advertised are included in that advertisement, then the [~~, if the price of a vehicle is stated in the advertisement, such~~] price must include all costs and charges for the motor vehicle advertised, including destination and dealer preparation charges. The only costs and charges that may be excluded from the price are: [~~and may exclude only any~~]

(1) registration, certificate of title, license fees, or an additional registration fee, if any;[~~, charged by a full service deputy as provided by Transportation Code, §502.114; any~~]

(2) taxes; and [~~any~~]

(3) other fees or charges that are allowed or prescribed by law.

(d) The MSRP, when advertised by a dealer, must be the actual MSRP set by the manufacturer as it appears on the Monroney sticker.

§215.250. [~~Dealer~~] Price Advertising; Savings Claims; Discounts [~~Internet or E-Pricing~~].

(a) When featuring a sales [~~an advertised sale~~] price of a new or used motor vehicle, the dealer must be willing to sell the motor vehicle for that featured sales [~~such advertised~~] price to any retail buyer. The featured sales [~~advertised sale~~] price shall be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges must be included in the featured sales price. [~~The only charges that may be excluded from the advertised price are:~~]

[~~(1) any registration, certificate of title, or license fees;~~]

[~~(2) any taxes; and~~]

[~~(3) any other fees or charges that are allowed or prescribed by law.~~]

(b) The only costs and charges that may be excluded from the featured sales price are:

(1) registration, certificate of title, or license fees;

(2) taxes; and

(3) other fees or charges that are allowed or prescribed by law.

(c) [~~(b)~~] A qualification may not be used when featuring a sales price for a motor [~~advertising the price of a~~] vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(d) Advertising an "Internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an online or Internet consumer or transaction is prohibited.

(e) A savings claim or discount offer is prohibited except to advertise a new motor vehicle. No person may advertise a savings claim or discount offer on a used motor vehicle.

(f) Statements such as "up to," "as much as," and "from" shall not be used in connection with savings claims or discount offers.

(g) The savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount available to any and all members of the buying public.

(h) If an advertisement includes a savings claim or discount offer, the amount and type of each incentive that makes up the total amount of the savings claim or discount offer must be disclosed.

[~~(c) If a price advertisement discloses a rebate, cash back, or discount savings claim, the price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.~~]

(1) If a savings claim or discount offer includes only a dealer discount, that [~~an advertisement discloses a discount savings claim, this~~] incentive must be disclosed as a deduction from the MSRP [~~manufacturer's suggested retail price (MSRP)~~]. The following are acceptable formats [~~is an acceptable format~~] for advertising a dealer discount with and without a sales price. [~~price with a discount savings claim.~~]
Figure: 43 TAC §215.250(h)(1)
[~~Figure: 43 TAC §215.250(c)(1)~~]

(2) If a savings claim or discount offer includes only a manufacturer's customer rebate, that [~~an advertisement discloses a rebate, this~~] incentive must be disclosed as a deduction from the MSRP [~~advertised price~~]. The following are acceptable formats [~~is an acceptable format~~] for advertising a manufacturer's customer rebate with and without a sales price. [~~price with a rebate.~~]
Figure: 43 TAC §215.250(h)(2)
[~~Figure: 43 TAC §215.250(c)(2)~~]

(3) If a savings claim or discount offer includes both a manufacturer's customer rebate and a dealer discount, [~~an advertisement discloses both a rebate and a discount savings claim,~~] the incentives must be disclosed as deductions [~~a deduction~~] from the MSRP. The following are acceptable formats for advertising both a manufacturer's customer rebate and a dealer discount with and without a sales price. [~~is an acceptable format for advertising a price with a rebate and a discount savings claim.~~]
Figure: 43 TAC §215.250(h)(3)
[~~Figure: 43 TAC §215.250(c)(3)~~]

(i) [~~(d)~~] If a savings claim or discount offer includes a manufacturer's option package discount, [~~In the event that the manufacturer offers a discount on a package of options, then~~] that discount should be disclosed above, or prior to, the MSRP with a total sales price of the motor vehicle before option discounts. Any additional savings or discounts should then be disclosed below the MSRP. The following are acceptable formats for advertising a manufacturer's option package discount with and without a sales price. [~~The following is an acceptable format.~~]
Figure: 43 TAC §215.250(i)
[~~Figure: 43 TAC §215.250(d)~~]

(j) [~~(e)~~] If a rebate is only available to a selected portion of the public and not to the public as a whole, the sales price should be disclosed in accordance with subsection (h) [~~as in subsection (c)~~] of this section first. The [~~and then the~~] nature of the limitation and the amount of the limited rebate must then [~~may~~] be disclosed as a separate statement, or a secondary sales price including the limited rebate must then be advertised. If multiple limited rebates are disclosed, a secondary sales price including all of the limited rebates may not be advertised. The following are acceptable formats for advertising a limited rebate with and without a sales price.[~~. The following is an acceptable format.~~]
Figure: 43 TAC §215.250(j)
[~~Figure: 43 TAC §215.250(e)~~]

(k) If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a savings claim may not be advertised for that vehicle. If a dealer has added an option obtained from the manufacturer or distributor and disclosed that option and its factory suggested retail price on a dealership addendum, the dealer may advertise a savings claim for that motor vehicle if the option is listed, and the difference is shown between the dealer's sales price and the factory suggested retail price of the vehicle including the option obtained from the manufacturer or distributor.

[~~(f) Advertising an "Internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an on-line or Internet consumer or transaction is prohibited.~~]

§215.251. Identification.

(a) When the sales price of a motor vehicle is advertised, the following must be disclosed:

(1) model year;

(2) make;

(3) model line and style or model designation; and

(4) if applicable, whether the motor vehicle is [~~a~~] used, a demonstrator, or a factory executive/official vehicle.

(b) Expressions such as "fully equipped," "factory equipped," "loaded," and other such terms shall not be used in any advertisement that contains the sales price of a motor vehicle unless the optional equipment of the motor vehicle is listed in the advertisement.

(c) A photograph or other representation [~~An illustration~~] of a motor vehicle used in an advertisement must be of the motor vehicle being advertised or substantially the same as that of the motor vehicle advertised.

§215.252. Advertising at Cost or Invoice.

(a) The term "dealer's cost" or other reference to the cost of the motor vehicle shall not be used.

(b) The terms [~~use of the term~~] "invoice" or "invoice price" in advertising shall not be used.

§215.253. Trade-in Allowances.

No guaranteed trade-in amount or range of amounts shall be used in advertising. Additionally, an advertisement shall not state an amount or range of amounts for trade-in assistance or advertise that an offer is any specific amount or range of amounts over blue book value, black book value, or use any other similar language indicating there is an established retail value or starting price point for a used motor vehicle.

§215.254. Used Motor Vehicles.

A used motor vehicle shall not be advertised in any manner that creates the impression that it is new. A used motor vehicle shall be identified as [~~either~~] "used" or "pre-owned." Terms such as "program car," "special purchase," "factory repurchase," or other similar terms shall not be used

to identify a motor vehicle as used. [are not sufficient to designate a vehicle as used, and these vehicles must be identified as "used" or "pre-owned."]

§215.255. Demonstrators and Factory Executive/Official Motor Vehicles[, Factory, Executives/Official Vehicles].

If a demonstrator or factory executive/official motor vehicle is advertised, the advertisement must clearly and conspicuously identify the motor vehicle as a demonstrator or factory executive/official motor vehicle. A demonstrator or factory executive/official motor [official] vehicle may not be advertised or sold except by a dealer franchised and licensed to sell that line-make [line make] of new motor vehicle.

§215.256. Free Offers.

(a) No merchandise or enticement may be described as "free" if the:

(1) motor vehicle can be purchased or leased for a lesser sales price without the merchandise or enticement; or [if the]

(2) sales price of the motor vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement.

(b) The advertisement shall clearly and conspicuously disclose the conditions under which the "free" merchandise or enticement being offered [offer] may be obtained.

§215.257. Authorized Dealer.

The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a dealer license to sell the motor [those] vehicles the dealer identifies itself [is holding itself out] as "authorized" to sell.

§215.258. Manufacturer and Distributor Rebates.

It is unlawful for a manufacturer or distributor to advertise any offer of a rebate, interest or finance charge reduction, or other financial inducement or incentive[,] for the benefit of the purchaser of a motor vehicle if the selling dealer contributes in any manner to that incentive program, unless the advertisement discloses that the dealer's contribution may affect the final negotiated sales price of the motor vehicle.

§215.259. Rebate and Financing Rate Advertising by Dealers.

(a) It is unlawful for a dealer to advertise an offer of a manufacturer's or distributor's rebate, interest or finance charge reduction, or other financial inducement or incentive if the dealer contributes to the incentive program, unless such advertising discloses that the dealer's contribution may affect the final negotiated price of the motor vehicle.

(b) An advertisement containing an offer of an interest or finance charge incentive that is paid for or financed by the dealer rather than the manufacturer or distributor[,] shall disclose:

(1) that the dealer pays for or finances the interest or finance charge rate reduction;[,]

(2) the amount of the dealer's contribution in either a dollar or percentage amount;[,] and

(3) that such arrangement may affect the final negotiated price of the motor vehicle.

(c) An offer or promise to pay or to [to pay, promise to pay, or] tender cash to a buyer of a motor vehicle, as in a rebate or cash back program, may not be advertised[,] unless the rebate or cash back program [it] is offered and paid in part by the motor vehicle manufacturer or distributor directly to the retail purchaser or to the assignee of the retail purchaser and unless the advertisement sets forth the contribution disclosures required by this rule.

§215.260. Vehicle Lease Advertisements.

A vehicle lease advertisement [Vehicle lease advertisements] shall clearly and conspicuously disclose that the advertisement is for the lease of a motor vehicle. Statements such as "alternative financing plan," "drive away for $ per month," or other terms or phrases that do not use the term "lease" ["lease,"] do not constitute adequate disclosure of a lease. A vehicle lease advertisement [Lease advertisements] shall not contain the phrase "no down payment" or similar words or phrases if any payment [words of similar import if any outlay of money] is required to be paid by the customer to lease the motor vehicle. Vehicle lease [Lease] terms that are not available to the general public shall not be included in advertisements directed at the general public, or all limitations and qualifications applicable to the vehicle lease terms advertised shall be clearly and conspicuously disclosed.

§215.261. Manufacturer Sales and[:] Wholesale Prices.

A motor vehicle shall not be advertised for sale in any manner that creates the impression that it is being offered for sale by the manufacturer or distributor of the motor vehicle. An advertisement shall not:

(1) contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory approved," "factory sponsored," or "manufacturer sale"; ["manufacturer sale,"]

(2) use a manufacturer's name or abbreviation in any manner calculated or likely to create an impression that the motor vehicle is being offered for sale by the manufacturer or distributor;[,] or

(3) use any other similar terms which indicate sales other than retail sales from the dealer.

§215.263. Sales Payment Disclosures.

An advertisement that contains the amount of any payment, including a down payment[,] in either a percentage or dollar amount, or an advertisement that contains[; the amount of any payment, in either a percentage or dollar amount;] the number of payments,[;] the period of repayment,[;] or the amount of any finance charge[,] must include the following:

(1) the amount or percentage of the down payment;

(2) the terms of repayment, from which the number of months to make repayment and the amount per month can be determined, [(from which the number of months to make repayment and the amount per month can be determined)] including any balloon payment;

(3) the annual percentage rate (APR) [or APR]; and

(4) the amount of the APR [annual percentage rate], if increased, after consummation of the credit transaction.

§215.264. Payment Disclosure - Vehicle Lease.

(a) An advertisement that promotes a consumer lease and contains the amount of any payment or that contains either[; or] a statement of any capitalized cost reduction or other payment or a statement [or] that no payment is required [prior to or] at consummation or prior to consummation or [by] delivery, if delivery occurs after consummation, must clearly and conspicuously include the following:

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due [prior to or] at consummation or prior to consummation or [by] delivery, if delivery occurs after consummation;

(3) the number, amount, and due date or period [amounts, and due dates or periods] of scheduled payments under the vehicle lease;

(4) a statement of whether [or not] a security deposit is required; and

(5) a statement that an extra charge may be imposed at the end of the vehicle lease term where the lessee's liability, if any, is based on the difference between the residual value of the leased property and its realized value at the end of the vehicle lease term.

(b) Except for a periodic payment, a reference to a charge [~~as~~] described in subsection (a)(2) of this section[~~, i.e., to components of the total due at lease signing or delivery,~~] cannot be more prominently advertised than the disclosure of the total amount due at vehicle lease signing or delivery.

(c) Except for disclosures of limitations on rate information, if [~~If~~] a percentage rate is advertised, that rate shall not be more prominently advertised [~~prominent~~] than any of the following disclosures [~~stated~~] in the advertisement[~~, with the exception of paragraph (19) of this subsection, the notice required to accompany the rate~~].

(1) Description of payments.

(2) Amount due at vehicle lease signing or delivery.

(3) Payment schedule and total amount of periodic payments.

(4) Other itemized charges that are not included in the periodic payment. These charges include the amount of any liability that the vehicle lease imposes upon the lessee at the end of the vehicle lease term.

(5) Total number of payments.

(6) Payment calculation, including:

(A) gross [~~Gross~~] capitalized cost;[~~.~~]

(B) capitalized [~~Capitalized~~] cost reduction;[~~.~~]

(C) adjusted [~~Adjusted~~] capitalized cost;[~~.~~]

(D) residual value; [~~Residual value.~~]

(E) depreciation [~~Depreciation~~] and any amortized amounts;[~~.~~]

(F) rent charge; [~~Rent charge.~~]

(G) total [~~Total~~] of base periodic payments;[~~.~~]

(H) vehicle lease term; [~~Lease term.~~]

(I) base [~~Base~~] periodic payment;[~~.~~]

(J) itemization [~~Itemization~~] of other charges that are a part of the periodic payment; and[~~.~~]

(K) total [~~Total~~] periodic payment.

(7) Early termination conditions and disclosure of charges.

(8) Maintenance responsibilities.

(9) Purchase option.

(10) Statement referencing nonsegregated disclosures.

(11) Liability between residual and realized values.

(12) Right of appraisal.

(13) Liability at the end of the vehicle lease term based on residual value.

(14) Fees and taxes.

(15) Insurance.

(16) Warranties or guarantees.

(17) Penalties and other charges for delinquency.

(18) Security interest.

[~~(19) Limitations on rate information.~~]

(d) If a vehicle lessor provides a percentage rate in an advertisement, a notice stating [~~that~~] "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The vehicle lessor shall not use the terms [~~term~~] "annual percentage rate," "annual lease rate," or any equivalent terms in any advertisement containing a percentage rate. [~~term.~~]

(e) A multi-page advertisement that provides a table or schedule of the required disclosures is considered a single advertisement, provided that for vehicle lease terms appearing [~~if, for lease terms that appear~~] without all of the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(f) A merchandise tag stating any item listed in subsection (a) of this section[~~,~~] must comply with subsection (a)(1) - (5) [~~the disclosures in subsection (a)~~] of this section by referring to a sign or to a display prominently posted in the vehicle lessor's place of business. The sign or display must contain [~~that contains~~] a table or schedule of the required disclosures under subsection (a)(1) - (5).

(g) An advertisement made through television or radio stating any item listed in subsection (a) of this section, must include the following statements: [~~state in the advertisement:~~]

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due [~~prior to or~~] at consummation or due prior to consummation or [~~by~~] delivery, if delivery occurs after consummation; and

(3) the number, amount, and due date or period [~~amounts, and due dates or periods~~] of scheduled payments under the vehicle lease. [~~lease; and~~]

(h)In addition to the requirements of subsection (g)(1) - (3) of this section, an advertisement made through television or radio stating any item listed in subsection (a) of this section, must:

[~~(4) Either:~~]

(1) [~~(A)~~] provide a toll-free telephone number along with a statement that the telephone [~~reference that such~~] number may be used by consumers to obtain the information in subsection (a) of this section[~~. The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast and the lessor shall provide the information in subsection (a) of this section orally or in writing upon request~~]; or

(2) [~~(B)~~] direct the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that the required disclosures in subsection (a) of this section are included in the advertisement. [~~The written advertisement shall be published beginning at least three days before and ending at least 10 days after the broadcast.~~]

(i) The toll-free telephone number required by subsection (h)(1) of this section shall be available for at least 10 days, beginning on the date of the broadcast. Upon request, the vehicle lessor shall provide the information in subsection (a) of this section orally or in writing.

(j) The written advertisement required by subsection (h)(2) of this section shall be published beginning at least three days before the broadcast and ending at least 10 days after the broadcast.

§215.265. Bait Advertisement.

Bait [~~"Bait"~~] advertisement shall not be used by any person.

§215.266. Lowest Price Claims.

(a) Claims that represent a lowest price, best price, best deal, [~~Representing a lowest price claim, best price claim, best deal claim,~~] or other similar superlative claims shall not be used in advertising.

(b) If a [~~dealer advertises a~~] "meet or beat" guarantee is advertised, then the advertisement must clearly and conspicuously disclose the conditions and requirements necessary in order for a person to receive the offer or guarantee. [~~any advertised cash amount.~~]

§215.267. Fleet Prices.

Terms such as "fleet prices," "fleet sales," [~~"fleet prices" or "fleet sales"~~] or other terms or phrases implying that individual retail [~~implying that retail individual~~] customers will be afforded the same price or [~~and/or~~] discount as multi purchase commercial businesses shall not be used [~~in advertising~~].

§215.268. Bankruptcy and Liquidation Sales [~~Bankruptcy/Liquidation Sale~~].

[~~No licensee may willingly misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out of business.~~] A person who advertises a liquidation sale, auction sale, or going out of business sale shall state the correct name and permanent address of the owner of the business in the advertisement. The phrases [~~A person may not conduct a sale advertised with the phrase~~] "going out of business," "closing out," "shutting doors forever," [~~or~~] "bankruptcy sale," "foreclosure," [~~or~~] "bankruptcy," or similar phrases or words indicating that an enterprise is ceasing business shall not be used unless the business is closing its operations and follows the procedures required by [~~the~~] Business and Commerce Code, Chapter 17, Subchapter F.

§215.269. Finding of Violation.

A person shall not [~~No person shall~~] be held in violation of the rules, including the general prohibition, except upon a finding of a violation [~~thereof~~] made by the department [~~Board,~~] after the filing of a Notice of Department Decision and [~~complaint and notice and~~] an opportunity to request a [~~for~~] hearing as provided in Occupations Code, Chapter 2301. [~~the Code.~~]

§215.270. Enforcement.

(a) The department [~~Board~~] may file a Notice of Department Decision [~~complaint~~] against a licensee alleging a violation of an advertising provision pursuant to Occupations Code, §2301.203, provided the department [~~only if the Board~~] can show:

(1) that the licensee who allegedly violated an advertising provision has received from the department [~~Board~~] a notice of an opportunity to cure the violation by certified mail, return receipt requested, in compliance with subsection (b) of this section [~~relating to effectiveness of notice~~]; and

(2) that the licensee committed a subsequent violation of the same advertising provision.

(b) An effective notice issued under subsection (a)(1) of this section must:

(1) state that the department [~~Board~~] has reason to believe that the licensee violated an advertising provision and must identify the provision;

(2) set forth the facts upon which the department [~~Board~~] bases its allegation of a violation; and

(3) state that if the licensee commits a subsequent violation of the same advertising provision, the department [~~Board~~] will formally file a Notice of Department Decision. [~~complaint.~~]

(c) As a part of the cure procedure, the department [~~Board~~] may require a licensee[~~,~~] who allegedly violated an advertising provision[~~,~~] to publish a retraction notice to effect an adequate cure of the alleged violation. A [~~An adequate~~] retraction notice must:

(1) appear in a newspaper of general circulation in the area in which the alleged violation occurred;

(2) appear in the [~~that~~] portion of the newspaper[~~, if any,~~] devoted to motor vehicle advertising, if any;

(3) identify the date and the medium of publication, print, electronic, or other, in which the advertising alleged to be a violation appeared; and

(4) identify the alleged violation of the advertising provision and contain a statement of correction.

(d) A [~~Performance of a~~] cure is made solely for the purpose of settling an allegation and is not an admission of a violation of these rules; Occupations Code, Chapter 2301;[~~, the Code,~~] or other law.

§215.271. Auction.

Terms such as "auction," "auction special," or other terms with similar meaning [~~"auction" or "auction special" and other terms of similar import~~] shall be used only in connection with a motor vehicle offered or sold at a bona fide auction.

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 June 5, 2015.

TRD-201502140
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 465-5665

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43 TAC §215.262

(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 Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates;

and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.262. Savings Claims; Discounts.

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 June 5, 2015.

TRD-201502139
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 465-5665

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SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §§215.301 - 215.308, 215.310, 215.311, 215.314 - 215.317

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.301. Purpose and Scope [~~Scope and Purpose~~].

(a) The purpose and scope [~~scope and purpose~~] of this subchapter is to provide practice and procedure for contested cases [~~case hearings~~] under the jurisdiction of the department that are conducted by an ALJ under Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 - 1005. [~~a SOAH ALJ under the Codes.~~]

(b) A contested case hearing held by an [~~a SOAH~~] ALJ shall be conducted in accordance with Government Code, Chapter 2001; applicable SOAH rules; and board [~~Board~~] rules.

(c) Unless otherwise provided by statute or by this chapter, this subchapter governs practice and procedure relating to contested cases [~~matters~~] filed with the department [~~Board~~] on or after September 1, 2007.

(d) Practice and procedure in contested cases filed on or after January 1, 2014, under Occupations Code, Chapter 2301, Subchapters E or M [~~Subchapter E or M,~~] are addressed in Subchapter B of this chapter (relating to Adjudicative Practice and Procedure).

§215.302. Conformity with Statutory Requirements.

In the event of a conflict between Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, the definition or procedure referenced in Occupations Code, Chapter 2301 controls. [~~shall control.~~]

§215.303. Application of Board and SOAH Rules.

[~~(a)~~] Upon referral by the department [~~Board~~] of a contested case [~~matter~~] to SOAH, the rules contained in 1 TAC Chapter 155 [~~(relating to Rules of Procedure)~~] and the provisions of this subchapter, to the extent they are not in conflict with 1 TAC Chapter 155, govern the processing of the contested case [~~matter~~] until the ALJ disposes of the contested case. [~~matter.~~]

[~~(b) The ALJ shall consider the rules and policies applicable to the Board in the hearing and preparation of the proposal for decision.~~]

§215.305. Filing of Complaints, Protests, and Petitions; Mediation.

(a) All complaints, protests, and petitions required or allowed to be filed under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; [~~the Codes~~] or this chapter must be delivered to the department:

(1) in person;

(2) by first-class mail; or [~~filed with the appropriate department office in person, by mail, or~~]

(3) by electronic document transfer at a destination designated by the department. [~~for receipt of those documents.~~]

(b) Except as provided by subsections (d), (n), and (o) of this section, parties to a contested case filed under Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000 - 1005 [~~case under the Codes~~] are required to participate in mediation, in accordance with this section, before the case is referred for hearing.

(c) The term "mediation" as used in this section has the meaning assigned by Occupations Code, §2301.521. [~~means a nonbinding forum in which an impartial mediator facilitates communication between parties to promote reconciliation, settlement, or resolution among the parties.~~]

(d) This section does not limit the parties' ability to settle a case without mediation.

(e) The department shall provide mediation services.

(f) The mediator shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

(g) The mediation process will conclude within 60 days of the date a contested case [~~matter~~] is assigned to a mediator unless, at the department's discretion, the mediation deadline is extended.

(h) The department will assign [~~appoint~~] a different mediator if:

(1) either [Either] party promptly and with good cause objects to an assigned mediator; or

(2) an [An] assigned mediator is recused.

(i) At any time before a contested case is referred for hearing, the parties may file a joint notice of intent to retain an outside [a private] mediator. The notice must include:

(1) the name, address, email address [e-mail], facsimile number, and telephone number of the outside [private] mediator selected;

(2) a statement that the parties have entered into an agreement with the outside [private] mediator regarding the mediator's rate and method of compensation;

(3) an affirmation that the outside mediator qualifies for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154; and

(4) a statement that the mediation will conclude within 60 days of the date of the joint notice of retention unless, at the department's discretion, the mediation deadline is extended.

(j) All communications in a mediation are confidential and subject to the provisions of the Governmental Dispute Resolution Act, Government Code, §2009.054.

(k) Agreements reached by the parties in mediation shall be reduced to writing by the mediator and signed by the parties before the mediation concludes or as soon as practical [practicable].

(l) Within 10 days of the conclusion of the mediation period, a mediator shall provide to the department and to the parties a written report stating:

(1) whether the parties attended the mediation;

(2) whether the matter settled in part or in whole;

(3) any unresolved issues; and

(4) any other stipulations or matters the parties agree to report.

(m) Upon receipt of the mediator's report required under this section, the department shall:

(1) enter an order [identifying and] disposing of resolved issues; and

(2) refer unresolved issues for hearing.

(n) Parties to a contested case filed as an enforcement action brought by the department are not required to participate in mediation.

(o) Parties to a contested case filed under Occupations Code, §§2301.204 or 2301.601 - 2301.613 [§2301.204 or §§2301.601 - 2301.613,] must participate in mediation in accordance with §215.205 of this title [chapter] (relating to Mediation; Settlement).

§215.306. Referral to SOAH.

Contested cases [Matters] shall be referred to SOAH upon determination that a hearing is appropriate under Occupations Code, Chapter 2301, Subchapter O; Transportation Code, Chapter 503; or this chapter, including contested cases [matters] relating to:

(1) an enforcement complaint on the department's own initiative;

(2) a notice of protest[,] that has been timely filed in accordance with §215.106 of this title [chapter] (relating to Time for Filing Protest);

[(3) a complaint under Occupations Code, §2301.204 or §§2301.601-2301.613, that satisfies the jurisdictional requirements of the applicable provisions filed on and after September 1, 2007, and before January 1, 2014;]

(3) [(4)] a protest filed under Occupations Code, §2301.360 or a complaint or protest filed under Occupations Code, Chapter 2301, Subchapters I or J; [Subchapter I or Subchapter J;]

(4) [(5)] issuance of a cease and desist order, whether the order is issued with or without prior notice at the time the order takes effect; or

(5) [(6)] any other contested matter that meets [matter meeting] the requirements for a hearing at SOAH under Occupations Code, Chapter 2301.

§215.307. Notice of Hearing.

(a) The requirements for a notice of hearing in a contested case are provided by Government Code, §2001.052; [are set out in] Occupations Code, §2301.705;[, Government Code, §2001.052,] and 1 TAC §155.401 [(relating to Notice of Hearing)], as applicable.

(b) For service of parties outside of the United States, in addition to service under Occupations Code, §2301.265, the department may serve a notice of hearing by any method allowed under [by] Texas Rules of Civil Procedure, Rule 108a(1)[,] or that provides for confirmation of delivery to the party.

(c) The last known address of a license holder is the mailing address provided to the department when the license holder applies for or renews its license.

§215.308. Reply to Notice of Hearing and Default Proceedings.

(a) On or before the 20th day after a notice of hearing has been served on a party in a contested case [matter] referred by the department to SOAH, the party may file a written reply or pleading responding to all allegations. The written reply or responsive pleading must be filed with SOAH in accordance with 1 TAC §155.101 [(relating to Filing Documents),] and must identify the SOAH and department docket numbers [docket number] as reflected on the notice of hearing.

(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive pleading on each party or party's representative [provide service of copies of the reply or pleadings to other parties] in compliance with 1 TAC §155.103 [(relating to Service of Documents on Parties)]. Any party filing a reply or responsive pleading shall also provide a copy to the department. The presumed time of receipt of served documents is subject to 1 TAC §155.103.

(c) A party may file an amended or supplemental [amend or supplement its] reply or responsive pleading [pleadings] in accordance with 1 TAC §155.301 [(relating to Required Form of Pleadings)].

(d) If a party properly noticed under this chapter does not appear at the hearing, a [another] party may request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed from the SOAH docket, the case may [matter and if dismissed the case can] be presented to the board [Board] for disposition based on the default pursuant to 1 TAC §155.501. The board [(relating to Default Proceedings). The Board] may enter a final order finding [with findings] that the allegations in the petition are deemed admitted and granting relief in accordance with applicable law. No later than 10 days after the hearing date, if a final order has not been issued, a party may file a motion with the board [Board] to set aside the [a] default and reopen the record. The board [Board], for good cause shown, may grant the motion, set aside the default, and refer the case back to SOAH for further proceedings.

§215.310. Issuance of Proposals for Decision[, ~~Recommendations,~~] and Orders.

(a) All [~~recommendations or~~] proposals for decision prepared by the ALJ shall [~~will~~] be submitted to the board [~~Board~~] and copies furnished to the parties.

(b) All decisions and orders issued by the board shall [~~Board will~~] be furnished to the parties and to the ALJ.

§215.311. Amicus Briefs.

(a) Any interested person may submit [~~wishing to file~~] an amicus brief for consideration by the board [~~Board regarding~~] in a contested case by [~~must file the brief not later than~~] the deadline for exceptions under 1 TAC §155.301 [~~(relating to Required Form of Pleadings)~~]. A party may submit [~~file~~] one written response to the [~~an~~] amicus brief no later than the deadline for replies to exceptions under 1 TAC §155.301.

(b) Amicus briefs and responses to amicus briefs must be submitted to the board and the ALJ, and copies must be served on all parties. [~~must be filed with the Board, the ALJ, and all parties to the proceeding.~~]

(c) Any amicus brief, or response to that brief, not submitted to the board and the ALJ within the deadlines prescribed by subsection (a) of [~~filed with the Board and with SOAH within the period prescribed by~~] this section will not be considered by the board [~~Board~~], unless good cause is shown why the [~~this~~] deadline should be waived or extended.

(d) The ALJ may amend the proposal for decision in response to any amicus brief or response to an amicus brief.

§215.314. Cease and Desist Orders.

(a) Whenever it appears [~~to the ALJ~~] that a person is violating any provision of Occupations Code, Chapter 2301,[~~,~~] Transportation Code, Chapter 503; or a board rule or order,[~~, or a Board rule or order, the ALJ may enter~~] an order requiring the person to cease and desist from the violation may be entered.

(b) If it appears from specific facts shown by affidavit or by verified complaint that one or more of the conditions [~~enumerated~~] in Occupations Code, §2301.802(b) will occur before notice can be served and a hearing held, the order may be issued without notice; otherwise, the order must be issued after a hearing has been held to determine the validity of the order and to allow the person who requested the order to show good cause why the order should remain in effect during the pendency of the contested case.[~~, otherwise it must be issued subject to a notice of hearing to determine the validity of the order.~~]

(c) Each [~~A~~] cease and desist order issued without notice must include:

(1) the date and hour of issuance;

(2) a statement of which of the conditions [~~enumerated~~] in Occupations Code, §2301.802(b) will occur before notice can be served and a hearing held; and

(3) a notice of hearing for the earliest date possible to determine the validity of the order and to allow the person who requested the order to show good cause why the order should remain in effect during the pendency of the contested case [~~proceedings~~].

(d) Each [~~A~~] cease and desist order shall: [~~issued with or without notice must:~~]

(1) state [~~set out~~] the reasons for its issuance; and

(2) describe in reasonable detail[~~, and not by reference to the complaint or other document,~~] the act or acts [~~sought~~] to be restrained.

(e) A cease and desist order shall not be issued unless the person requesting the order presents a petition or complaint, verified by affidavit, containing a plain [~~and intelligible~~] statement of the grounds for seeking the cease and desist order. [~~relief.~~]

(f) A cease and desist order issued without notice expires as provided in the order, but shall not exceed 20 days.

(g) A cease and desist order may be extended for a period of time equal to the period of time granted in the original order if,[~~, if~~] prior to the expiration of the previous order, good cause is shown for the extension or the party against whom the order is directed consents to the extension. [~~No more than one extension may be granted unless subsequent extensions are unopposed.~~]

(h) The person against whom a cease and desist order was issued without notice may request that the scheduled hearing be held earlier than the date set in the order.

(i) After the hearing, the ALJ shall prepare a written order, including a [~~reasoned~~] justification[~~,~~] explaining why the cease and desist order should remain in place during the pendency of the contested case. [~~proceeding.~~]

(j) A party may appeal to the board [~~Board~~] an order granting or denying a motion for a cease and desist order.

(k) An appeal of an order granting or denying a motion for a cease and desist order [~~the interlocutory decision~~] must be made to the board [~~Board~~] before a person may seek judicial review of an order issued under this section. [~~An interlocutory decision is sufficient for a complaining party to seek judicial review of the matter.~~]

(l) Upon appeal to a district court of an order issued under this section [~~to the district court, as provided in the Codes~~], the order may be stayed by the board [~~Board~~] upon a showing of good cause by a party [~~of interest~~].

(m) Prior to the commencement of a proceeding by SOAH, the director is authorized to issue a cease and desist order under this section. An ALJ shall hold a hearing to determine whether an interlocutory cease and desist order should remain in effect during the pendency of the proceeding.

§215.315. Statutory Stay.

(a) A [~~In accordance with Occupations Code, §2301.803(e), a~~] person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may request a hearing before an ALJ to modify, vacate, or clarify the extent and application of the statutory stay.

(b) After a hearing on a motion to modify, vacate, or clarify a statutory stay, the ALJ shall expeditiously prepare a written order, including a [~~reasoned~~] justification[~~,~~] explaining why the statutory stay should or should not be modified, vacated, or clarified.

(c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301[~~,~~] may initiate a proceeding before the board to modify, vacate, or clarify the extent and application of the statutory stay.

§215.316. Informal Disposition.

(a) Notwithstanding any other provision in this subchapter, at any time during the contested case, the board [~~adjudication process, the Board~~] may informally dispose of a contested case [~~matter~~] by stipulation, agreed settlement, dismissal, or consent order.

(b) If the parties have settled or otherwise determined that a contested case proceeding is not required, the party who brought the protest, complaint, or petition shall file a motion to dismiss the contested case [~~proceeding~~] from SOAH's docket and present a proposed agreed order or dismissal order to the board. [~~Board for consideration.~~]

(c) Agreed orders must contain proposed findings of fact and conclusions of law that are signed by all [~~the~~] parties or their authorized [~~designated~~] representatives.

(d) Upon receipt of the agreed order, the board [~~Board~~] may:

(1) adopt the settlement agreement and issue a final order;

(2) reject the settlement agreement and remand the contested case for a hearing before SOAH; or

(3) take other action that the board [~~Board~~] finds just.

§215.317. Motion for Rehearing.

(a) A motion for rehearing and any reply to a motion for rehearing will be processed in accordance with Government Code, Chapter 2001.

(b) For an order issued by the board [~~Board~~], a motion for rehearing and reply to a motion for rehearing must be filed with the department and decided by the board [~~Board,~~] unless the board [~~Board~~] specifically delegates motion for rehearing authority.

(c) For an order issued by a board delegate [~~director authorized directly by law, rather than through delegated authority~~], a motion for rehearing and reply to a motion for rehearing must be filed with the department and decided by the board delegate who [~~director that~~] issued the order.

(d) The requirements for a motion for rehearing regarding a complaint filed on or after January 1, 2014, under Occupations Code, §§2301.204 or 2301.601 - 2301.613 [~~§2301.204 or §§2301.601 - 2301.613,~~] are governed by §215.207 of this title [~~chapter~~] (relating to Contested Cases: Final Orders).

[~~(e) This section in no way precludes delegation by the Board or executive director under the Codes.~~]

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 June 5, 2015.

TRD-201502142
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 19, 2015
For further information, please call: (512) 465-5665

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43 TAC §§215.309, 215.312, 215.313

(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 Department of Motor Vehicles or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.309. Recording and Transcriptions of Hearing Cost.

§215.312. Discovery.

§215.313. Official Notice of Records.

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

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David D. Duncan
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SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §§215.500 - 215.503

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002, which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to

adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.500. Administrative Sanctions and Procedures.

(a) An administrative sanction [~~Administrative sanctions~~] may include:

(1) denial of an application for a license; [~~license denial,~~]

(2) suspension of a license;[~~,~~]

(3) revocation of a license; or[~~, and~~]

(4) the imposition of civil penalties.

(b) The department shall issue and mail a Notice of Department Decision to a license applicant, license holder, or other person by certified mail, return receipt requested, to the [~~or a licensee by certified mail to its~~] last known address upon a determination [~~that,~~] under Occupations Code, Chapters 2301 and 2302 [~~Chapter 2301~~] or Transportation Code, Chapter 503 that:

(1) an application for a license should be denied; or

(2) administrative sanctions should be imposed.

(c) The last known address of a license holder is the mailing address provided to the department when the license holder applies for or renews its license.

(d) [~~(c)~~] The Notice of Department Decision includes a statement: [~~shall include:~~]

(1) setting forth [~~a statement describing~~] the department decision and the [~~its~~] effective date;

(2) [~~a description~~] of each alleged violation[~~, if applicable~~];

(3) of each proposed [~~a description of each~~] administrative sanction [~~being proposed~~];

(4) setting forth [~~a statement as to~~] the legal basis for each administrative sanction;

(5) informing [~~a statement as to the right of~~] the license applicant, license holder, or other person of the right to request a hearing [~~or the licensee to request an administrative hearing~~];

(6) setting forth the procedure to request a [~~a statement as to the procedure for requesting an administrative~~] hearing, including the deadline for filing [~~period during which a request must be received by the department~~]; and

(7) informing the license applicant, license holder, or other person [~~a statement~~] that the proposed decision and administrative sanctions [~~specified~~] in the Notice of Department Decision will become final on the date specified if the license applicant, license holder, or other person [~~or the licensee~~] fails to timely request a hearing.

(e) [~~(d)~~] The license applicant, license holder, or other person must submit, in writing, a request for a [~~A request for an administrative~~] hearing under this section. The department must receive a request for a hearing [~~must be made in writing and received by the department~~] within 26 days of the date of the Notice of Department Decision [~~is mailed by the department~~].

(f) [~~(e)~~] If the department receives a timely request for a hearing [~~If a request for an administrative hearing is timely received~~], the department will [~~shall~~] set a hearing date and give notice to the license applicant, license holder, or other person [~~or the licensee~~] of the date, time, and location of the hearing. [~~where it will be held. The hearing shall be conducted under the provisions set forth in this chapter by an administrative law judge of the State Office of Administrative Hearings.~~]

(g) [~~(f)~~] If the license applicant, license holder, or other person [~~or the licensee~~] does not make a timely request for a [~~an administrative~~] hearing or enter into a settlement agreement within 27 days of the date of [~~before the 27th day after the date~~] the Notice of Department Decision, the department [~~is mailed the department's~~] decision becomes final.

§215.501. Final Decisions and Orders; Motions for Rehearing.

(a) If a department decision becomes final under a Notice of Department Decision issued under §215.500 of this title (relating to Administrative Sanctions and Procedures), the matter will be forwarded to the [~~the department or~~] final order authority for issuance of [~~shall issue~~] a final order incorporating the decisions, findings, and administrative sanctions imposed by the Notice of Department Decision. The department will send a copy of the final order to the parties.

(b) The provisions of Government Code, Chapter 2001, Subchapter F govern: [~~(Administrative Procedure Act), Subchapter F (Contested Cases: Final Decisions and Orders; Motions for Rehearing) govern~~]

(1) the issuance of a final order issued under this subchapter; and

(2) motions for rehearing filed in response to a final order. [~~thereto.~~]

§215.502. Judicial Review of Final Order.

The provisions of Government Code, Chapter 2001, Subchapter G [~~(Administrative Procedure Act), Subchapter G (Contested Cases: Judicial Review)~~] govern the appeal of a final order issued under this subchapter.

§215.503. Refund of Fees.

The department will not refund a fee [~~fees~~] paid by a license applicant, license holder, or other person if: [~~or a licensee if~~]

(1) the application or license is:

(A) denied;[~~,~~]

(B) suspended;[~~,~~] or

(C) revoked; or [~~under this subchapter.~~]

(2) the license applicant, license holder, or other person is subject to an unpaid civil penalty imposed against the license applicant, license holder, or other person by a final order.

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

Filed with the Office of the Secretary of State on June 5, 2015.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER I. SALVAGE VEHICLE DEALERS

43 TAC §217.193

The Texas Department of Motor Vehicles (department) proposes new §217.193, Delegation of Final Order Authority.

EXPLANATION OF PROPOSED NEW SECTION

Proposed new §217.193 implements the delegation authority provided in Transportation Code, §1003.00. In enforcement cases involving salvage vehicle dealers, salvage vehicle rebuilders and salvage pool operators in which there will not be a decision made based on the merits of the case, the authority to issue a final order to dispose of the case currently rests with the Board of the Texas Department of Motor Vehicles (board). Cases in which there will not be a decision made based on the merits of the case include, but are not limited to: cases resolved by settlement between the parties, cases settled by agreed order, cases where the complaint or protest has been withdrawn, cases to be dismissed because of want of prosecution or want of jurisdiction, cases where the respondent has defaulted, cases resolved by summary judgment or summary disposition, and cases where a party waives its opportunity for a hearing. The board is authorized to delegate authority to issue a final order in these cases to the director of a division of the department.

Delegation of final order authority in these cases will expedite the resolution of these cases, thereby better serving the parties in these cases, and will reduce the time required by the board and staff to address these cases during board meetings.

Cases where a hearing has been held at the State Office of Administrative Hearings and a proposal for decision has been issued by an administrative law judge will still be resolved by the board issuing a final order.

Subsection (a) of the proposed rule delegates the board's authority to issue final orders in certain cases brought under the salvage chapter, Occupations Code, Chapter 2302, to the director of the department's division that regulates the distribution and sale of motor vehicles. It is that division that licenses salvage vehicle dealers, salvage vehicle rebuilders and salvage pool operators.

Subsection (b) of the proposed rule provides that the person to whom the board has delegated final order authority shall decide whether a motion for rehearing shall be granted or denied.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no anticipated fiscal implications for state or local governments as a result of enforcing or administering the new section.

William P. Harbeson, Director of the Enforcement Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be a reduction in time to conclude a wide variety of enforcement cases dealing with salvage industry licensees.

There are no anticipated economic costs for persons required to comply with the new section as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed new section may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on July 20, 2015.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; and more specifically, Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer and enforce Chapter 2302.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2302; and Transportation Code, Chapters 1002 and 1003.

§217.193. Delegation of Final Order Authority.

(a) In accordance with Transportation Code, §1003.005(b), in cases brought under Occupations Code, Chapter 2302, the director of the division that regulates the distribution and sale of motor vehicles is authorized to issue a final order in a case without a decision on the merits, including, but not limited to a case resolved:

(1) by settlement;

(2) by agreed order;

(3) by withdrawal of the complaint;

(4) by dismissal for want of prosecution;

(5) by dismissal for want of jurisdiction;

(6) by summary judgment or summary disposition;

(7) by default judgment; or

(8) when a party waives opportunity for a hearing.

(b) In contested cases in which the board has delegated final order authority under subsection (a) of this section, a motion for rehearing shall be filed with and decided by the final order authority delegate.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 1. EMISSION CREDIT BANKING AND TRADING

30 TAC §101.304

The Texas Commission on Environmental Quality withdraws the proposed repeal of §101.304 which appeared in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10186).

Filed with the Office of the Secretary of State on June 5, 2015.

TRD-201502133
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: June 5, 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

The Texas Commission on Environmental Quality withdraws the proposed repeal of §101.374 which appeared in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10186).

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: June 5, 2015
For further information, please call: (512) 239-6812

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §336.739

The Texas Commission on Environmental Quality withdraws proposed new §336.739, which appeared in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9484).

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

SUBCHAPTER D. PROCEDURES IN CONTESTED CASES

43 TAC §§206.61 - 206.73

The Texas Department of Motor Vehicles withdraws the proposed repeal of §§206.61 - 206.73, which appeared in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1019).

Filed with the Office of the Secretary of State on June 5, 2015.

TRD-201502077
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: June 5, 2015
For further information, please call: (512) 465-5665

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Isabella Jones
5th 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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER A. TEXAS SCHOOL NUTRITION POLICIES

The Texas Department of Agriculture (TDA or department) adopts amendments to §26.1, new §26.2, and the repeal of §§26.2, 26.10, 26.11, and 26.12, all relating to Texas school nutrition policies, without changes to the proposed text as published in the March 13, 2015, issue of *Texas Register* (40 TexReg 1161).

The amendment of §26.1 removes a definition no longer applicable as a result of the repeal of §26.12. The repeal of §26.2, related to deep fat fryers, §26.10, related to soft drinks prohibitions, and §26.11, related to time and place restrictions, will allow Texas public, charter and private schools (schools), through local nutrition and wellness policies, to adopt nutrition standards that fit the needs of the local schools, including stricter guidelines, so long as the schools' local regulations are consistent with federal law. The repeal of §26.12 eliminates an unnecessary rule which prescribed enforcement provisions which are currently outlined in federal statute. New §26.2 allows schools a set number of exempt fundraisers at each campus per year, as required by 7 CFR §210.11. The department repeals §§26.2, 26.10 and 26.11 to return control of school nutrition policies, to the extent authorized by federal and state law, to Texas public, charter and private schools that participate in the National School Lunch or School Breakfast Programs; to minimize additional state-level requirements for Texas schools that participate in those programs; and to streamline state regulation of School Nutrition Policies consistent with applicable federal law. Additionally, TDA supports schools' efforts to facilitate a successful environment by fostering healthy choices through grant programs, outreach, as well as the 3E's of Healthy Living-Education, Exercise and Eating Right.

No comments were received regarding the amendment of §26.1, related to definitions, or the repeal of §26.12, related to violations and appeals. These sections are adopted without changes.

TDA received many comments on the proposal from various organizations, including: Action for Healthy Kids, American Heart Association, Fantastic Fundraisers, Jim Walter and Associates, JTM Food Group, Partnership for a Healthy Texas, Rio Grande Valley Association of School Nutrition, Sustainable Food Center, Texas Academy of Nutrition and Dietetics, Texas Nurses Association, and Texas PTA. TDA also received comments from individual schools and from the following school districts: Aldine, Aledo, Belton, Bridge City, Brownsville, Crandall, Dallas, Dickinson, Ferris, Galena Park, Georgetown, Katy, Killeen, La Joya, Laredo, Leander, Llano, Mansfield, McAllen, Midland, Mt. Pleasant, Navarro, New Caney, Round Rock, Smithville, Southwest, Spring Branch, Tomball, Vidor, Weslaco, West Orange Cove, and Ysleta. Additional comments were received from businesses, students and individuals.

TDA received comments that were in favor of the repeal of §26.2, related to deep fat frying restrictions, as well as several related to §26.11, regarding time and place restrictions. While the majority of comments received were in support of more stringent food regulations in schools, including maintaining restrictions related to deep fat frying, carbonated beverages, and time and place, TDA is confident that schools and their governing boards are in the best position to establish and adopt nutrition standards that meet the needs of their student bodies. USDA regulations give schools the authority to set policies which meet or exceed those set by USDA related to the food environment at schools. TDA fully supports healthy school environments and is actively engaged in establishing relationships by facilitating local wellness efforts which include support of initiatives such as "Farm to School" programs. TDA encourages individuals and organizations to work with schools, parents and other stakeholders to set local policies that best meet the needs of local schools, including policies that address the nutritional content of foods available at each school, as well as the time and place foods may be sold.

Numerous comments were received related to the proposal of new §26.2, regarding the sale of foods items that do not meet federal nutritional requirements for an infrequent number of days during the school year. Most comments received were generally in favor of the proposal to allow exempt food items to be sold as part of fundraisers during the school day. TDA also received comments which were in favor of the proposal, but with fewer fundraising opportunities throughout the school year. While TDA recognizes the comments requesting to reduce or eliminate the number of exempt fundraisers, it is important to note that the rule only prescribes the maximum number of exempt fundraisers that a school district may set per year; local policy may include restrictions on fundraisers, including the number of fundraisers, which are more stringent than TDA rule. Additionally, TDA acknowledges that fundraisers are time honored traditions and an infrequent number of exempt fundraisers during the school year allows for the continuance of those traditions. One comment received in favor of §26.2 stated that fundraisers were vital "to connect with the community"; other comments generally expressed that fundraisers were necessary to help supplement the needs of the school and students which may otherwise go unmet because of lack of funding. Commenters explained that fundraisers can provide a significant stream of revenue to support students' participation in school activities, including scholarships, when fund-

ing would otherwise be deficient or unavailable. New §26.2 will be effective by July 1, 2015 to coincide with the school calendar year.

4 TAC §26.1, §26.2

The amendment of §26.1 and new §26.2 are adopted under §12.0025 of the Texas Agriculture Code (the Code), which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program. Section 12.016 of the Code authorizes the department to adopt rules as necessary for the administration of its powers and duties, including the preceding school food and nutrition programs delineated in the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2015.

TRD-201502153
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: June 28, 2015
Proposal publication date: March 13, 2015
For further information, please call: (512) 463-4075

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4 TAC §§26.2, 26.10 - 26.12

The repeal of §§26.2, 26.10, 26.11, and 26.12 is adopted under §12.0025 of the Texas Agriculture Code (the Code), which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program. Section 12.016 of the Code authorizes the department to adopt rules as necessary for the administration of its powers and duties, including the preceding school food and nutrition programs delineated in the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2015.

TRD-201502157
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: June 28, 2015
Proposal publication date: March 13, 2015
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER DD. CRIMINAL HISTORY RECORD INFORMATION REVIEW

19 TAC §153.1111, §153.1113

The Texas Education Agency (TEA) adopts amendments to §153.1111 and §153.1113, concerning criminal history record information reviews. The amendments are adopted without changes to the proposed text as published in the April 3, 2015 issue of the *Texas Register* (40 TexReg 1936) and will not be republished. The sections address requirements for the national criminal history record information reviews for substitute teachers and charter school educators, respectively. The adopted amendments remove obsolete language where appropriate and add clarifying language regarding the criminal history process.

The Texas Education Code, §22.0836 and §22.0832, added by Senate Bill 9, 80th Texas Legislature, 2007, require that the TEA conduct national criminal history record information reviews of certain open-enrollment charter school employees and substitute teachers hired after January 1, 2008. To implement these requirements, the commissioner exercised rulemaking authority by adopting rules in 19 TAC Chapter 153, School District Personnel, Subchapter DD, Criminal History Record Information Review, effective December 30, 2007.

As currently written, 19 TAC §153.1111, Substitute Teachers, and 19 TAC §153.1113, Charter School Educators, contain language that is obsolete, referencing a process that was in place for the initial implementation of the national criminal history record information reviews and is no longer valid. The adopted amendments add language to clarify the process that is and has been in place as to when a criminal history record information review must be conducted during the employment process.

The adopted amendments do not have any additional procedural or reporting implications. The adopted amendments do not add any additional locally maintained paperwork requirements.

The public comment period on the proposal began April 3, 2015, and ended May 4, 2015. No public comments were received.

The amendments are adopted under the Texas Education Code (TEC), §22.0836, which authorizes the commissioner to adopt rules as necessary to implement national criminal history record information review of substitute teachers and TEC, §22.0832, which authorizes the agency to implement the review of national criminal history record information of certain charter school employees.

The amendments implement the Texas Education Code, §22.0836 and §28.0832.

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 June 3, 2015.

TRD-201502053
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: June 23, 2015
Proposal publication date: April 3, 2015
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.2

The Texas State Board of Dental Examiners adopts amendments to §115.2, concerning permitted duties of a dental hygienist. This rule is adopted without changes to the proposed text as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1599).

Amendments to §115.2 include an explanation of when a hygienist may use a laser and the training required and incorporates the statutorily permitted duties of a hygienist.

The Board received five written comments regarding this rule. TDA commented in opposition to the proposed amendments to §115.2, stating that the use of lasers is an inherently irreversible act due to the potential irreversible effects of the use of lasers in dental procedures and the potential harm to patients. TDA believes that the use of lasers by dental hygienists should only be limited to data gathering to assist the dentist in making a diagnosis and developing a comprehensive treatment plan. TDA also commented on the insufficient evidence for the use of lasers in the treatment of periodontal diseases.

Carolyn Jackson, RDH, commented in support of the proposed amendments to §115.2, but made the following recommendations: (1) permit usage of lasers by dental hygienists under general supervision; and (2) change the continuing education requirement to 6 hours with 3 hours of hands-on clinical simulation in order to avoid hardship on clinicians in remote areas by having a multi-day training requirement.

Tracy McCready, RDH, commented in support of the proposed amendments to §115.2, but made the following recommendations: (1) permit usage of lasers by dental hygienists under general supervision as general supervision would allow greater patient access to laser therapy; and (2) change the continuing education requirement to 6 hours with 3 hours of hands-on clinical simulation in order to avoid hardship on clinicians in remote areas by having a multi-day training requirement. Ms. McCready also pointed out that the majority of Board-approved continuing education courses follow a 6-hour, single day regimen, and expressed concern that 12 hours of continuing education would consume an entire year's worth of a hygienist's continuing education requirement.

The Texas Dental Hygienists' Association commented in support of the proposed amendments to §115.2, but made the following recommendations: (1) permit usage of lasers by dental hygienists under general supervision because the use of lasers is an adjunctive procedure to scaling and root planing, and the Dental Practice Act requires general supervision for scaling and root planing by hygienists; (2) to only require 6-8 hours of the continuing education be in-person, following the Academy of Laser Dentistry's course lengths, and permit hygienists to obtain the remainder of the 12 hours through online courses.

The Academy of Laser Dentistry (ALD) commented in support of the proposed amendments to §115.2, but made the following recommendations. (1) Require the same level of supervision as required for the underlying procedure. For example, scaling and root planing by a hygienist is performed under general supervision so the use of a laser as adjunctive treatment to scaling and root planing should also be under general supervision. (2) Require a hands-on in-person continuing education requirement that can be completed in one day in order to reduce the financial burden and support access to education and care for clinicians in remote areas. (3) Require that the lead instructor for the training program shall be of equal or greater professional licensing level as the course attendees.

The majority of the public comments addressing the amendment to §115.2 make two recommendations: (1) general supervision instead of direct; and (2) decrease the number of continuing education hours to allow hygienists to complete the continuing education in one day.

Given the relatively new technology of lasers in the practice of dentistry, the Board feels that direct supervision of hygienists using lasers is necessary in order to ensure patient safety. Because direct supervision only requires that the supervising dentist be in the building and not in the actual operatory where the hygienist is using the laser, the Board does not feel that this requirement is burdensome. The Board may consider in the future amending this rule to permit hygienists to use lasers under general supervision once the use of lasers by hygienists becomes more common practice. The Board also feels that twelve hours of continuing education is appropriate for similar reasons. While the Board understands the concerns about access to care, the proposed amendments ensure that hygienists are adequately trained in the use of lasers in order to prevent patient harm.

In response to TDA's comment, the proposed rule was not intended to address the use of lasers for dentists and dental hygienists. Because the Board's law and rules do not prohibit a dentist from using a laser for various purposes in the practice of dentistry, the Board does not feel that it is appropriate to prohibit the use of lasers by hygienists for treatment that is within the scope of a hygienist. In the past, the Board has refrained from limiting the modalities used in treatment and has only passed rules concerning the requirements for treatment that is within the practice of dentistry. The Board has not been presented with evidence that lasers are dangerous to the practice of dentistry and, therefore, does not believe it is appropriate to limit the use of lasers for dentists or hygienists to data gathering. Further, the Board was not presented with evidence that the use of lasers, in comparison to other tools used by hygienists for duties within their scope of practice, are irreversible or intentionally cut the hard and soft tissue.

Amendments to §115.2 are adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety. No other statutes, articles, or codes are affected by the 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 June 3, 2015.

TRD-201502043

Nycia Deal
Interim Executive Director
State Board of Dental Examiners
Effective date: June 23, 2015
Proposal publication date: March 20, 2015
For further information, please call: (512) 475-0977

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.20

The Texas State Board of Examiners of Psychologists adopts new §461.20, Agency Staff Training and Education, without changes to the proposed text as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1629). 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 will ensure compliance with the State Employee Training Act, Chapter 656, Subchapter C, Texas Government Code.

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 June 4, 2015.

TRD-201502061
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2015
Proposal publication date: March 20, 2015
For further information, please call: (512) 305-7700

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22 TAC §461.21

The Texas State Board of Examiners of Psychologists adopts new §461.21, Sick Leave Pool, without changes to the proposed text as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1629). 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 will ensure compliance with Texas Government Code Ann. §661.002(c), which requires the Board to adopt rules relating to the operation of the agency's sick leave pool.

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 June 4, 2015.

TRD-201502062
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2015
Proposal publication date: March 20, 2015
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.27

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.27, Temporary License for Persons Licensed in Other States, without changes to the proposed text as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1630). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted will clarify the statutory requirements for temporary licensure set forth in Texas Occupations Code Ann. §501.263 and provide fewer burdens and greater flexibility to both the public and agency staff when issuing and regulating temporary licenses.

No comments were received regarding the adoption of the repeal.

The repeal 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 June 4, 2015.

TRD-201502063
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2015
Proposal publication date: March 20, 2015
For further information, please call: (512) 305-7700

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22 TAC §463.27

The Texas State Board of Examiners of Psychologists adopts new §463.27, Temporary License for Persons Licensed in Other States, without changes to the proposed text as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1630). 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 will clarify the statutory requirements for temporary licensure set forth in Texas Occupations Code Ann. §501.263, and provide fewer burdens and greater flexibility to both the public and agency staff when issuing and regulating temporary licenses.

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 June 4, 2015.

TRD-201502065
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2015
Proposal publication date: March 20, 2015
For further information, please call: (512) 305-7700

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22 TAC §463.30

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.30, Licensing of Military Spouses and Applicants with Military Experience, without changes to the proposed text as published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1631). 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 ensure consistency between the requirements for supervised experience needed for licensure as a psychological associate under this rule and Board rule §463.8.

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 June 4, 2015.

TRD-201502066
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2015
Proposal publication date: March 20, 2015
For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §1.91 and §1.181, concerning contracting and procurement. The repeals are adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2370).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These

exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

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.

SUBCHAPTER G. CLINICAL HEALTH SERVICES

25 TAC §1.91

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

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 June 1, 2015.

TRD-201502003
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER O. PROCUREMENT OF PROFESSIONAL SERVICES

25 TAC §1.181

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

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 June 1, 2015.

TRD-201502004
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §§37.13, 37.14, 37.217, 37.536, and 37.537, concerning contracting and procurement. The repeals are adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2371).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize

confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

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.

SUBCHAPTER B. MARCH OF DIMES RULES ON HEALTH EDUCATION GRANTS

25 TAC §37.13, §37.14

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

Subchapter B. March of Dimes Rules on Health Education Grants.

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 June 1, 2015.

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Lisa Hernandez
General Counsel
Department of State Health Services
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SUBCHAPTER K. EPILEPSY SERVICES

25 TAC §37.217

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
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SUBCHAPTER T. SCHOOL-BASED HEALTH CENTERS

25 TAC §37.536, §37.537

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
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CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM
SUBCHAPTER A. PRIMARY HEALTH CARE SERVICES PROGRAM

25 TAC §39.4

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §39.4, concerning contracting and procurement. The repeal is adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2373).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted repeal is authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
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CHAPTER 49. ORAL HEALTH PROGRAM
SUBCHAPTER C. PROVIDER PARTICIPATION IN FFS ORAL HEALTH TREATMENT BENEFITS

25 TAC §49.11, §49.12

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §49.11 and §49.12, concerning contracting and procurement. The repeals are adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2375).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

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.

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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CHAPTER 56. FAMILY PLANNING

25 TAC §56.17

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §56.17, concerning contracting and procurement. The repeal is adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2376).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed

rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted repeal is authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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CHAPTER 61. CHRONIC DISEASES

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §61.6 and §61.36, concerning contracting and procurement. The repeals are adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2377).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

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.

SUBCHAPTER A. KIDNEY HEALTH CARE

25 TAC §61.6

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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SUBCHAPTER C. BREAST AND CERVICAL CANCER SERVICES

25 TAC §61.36

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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CHAPTER 83. PUBLIC HEALTH IMPROVEMENT GRANTS

SUBCHAPTER A. PERMANENT FUND FOR CHILDREN AND PUBLIC HEALTH

25 TAC §83.8

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §83.8, concerning contracting and procurement. The repeal is adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2379).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These

exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted repeal is authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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CHAPTER 146. PROMOTORES OR COMMUNITY HEALTH WORKERS

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 §§146.1 - 146.12 and new §§146.1 - 146.8, concerning the regulation of training and certification of promotores or community health workers (CHWs). New §§146.1 - 146.8 are adopted with changes to the proposed text as published in the February 27, 2015, issue of the *Texas Register* (40 TexReg 888). The repeal of §§146.1 - 146.12 is adopted without changes.

BACKGROUND AND PURPOSE

Health and Safety Code, Chapter 48, requires the department to establish a program designed to train and educate persons who act as promotores or CHWs. This chapter also requires minimum standards for the certification of promotores or CHWs.

The Promotor(a) or Community Health Worker Training and Certification Program provides leadership to enhance the development and implementation of statewide training and certification standards and administrative rules for the Promotor(a) or Community Health Worker Training and Certification Program. The Promotor(a) or Community Health Worker Training and Certification Advisory Committee (committee) has provided advice to the Health and Human Services Commission and the department related to recommendations for rules for the Promotor(a) or Community Health Worker Training and Certification Program. This committee was established under Health and Safety Code, §48.101.

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 146.1 - 146.12 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

The repeal of §§146.1 - 146.12 and new §§146.1 - 146.8 clarify the rules through restructuring information to address specific affected entities, i.e. sponsoring organizations, CHW instructors, and promotores or CHWs. The restructure of the rules also provides simplicity, clarifies definitions, and implements changes to eligibility requirements, application procedures, continuing education requirements, and standards for the approval of curricula.

SECTION-BY-SECTION SUMMARY

In new §146.1, Definitions, the outdated definition of "administrator" was removed.

New §146.2, Applicability, describes who is eligible for the CHW certification program under the Health and Safety Code, Chapter 48.

New §146.3, Promotor(a) or Community Health Worker Training and Certification Advisory Committee, includes the primary purpose, roles, and responsibilities of the advisory committee and reflect changes to the review of the committee, reports, and committee meetings.

New §146.4, Application Requirements and Procedures for Sponsoring Organizations, clarifies the application requirements and procedures for certification of sponsoring organizations to provide training for CHWs or instructors. Changes to this section include requirements for a program plan to provide training on at least an annual basis and standards for the approval of curricula. New requirements also include a component for hands

on learning, such as a field practice, internship or practicum and clarify requirements for certificate renewal.

New §146.5, Eligibility Requirements and Application Procedures for Community Health Worker Instructors, and §146.6, Eligibility Requirements and Procedures for Promotores or Community Health Workers, include new language regarding a residency requirement and achievement of core competencies; and clarify procedures related to notification of incomplete applications. The new rules also clarify verification of the certification status and requirements for recertification.

New §146.7, Professional and Ethical Standards, establishes the standards of professional and ethical conduct required of a sponsoring organization, instructor, promotor(a) or CHW and includes a minor change regarding updating contact information.

New §146.8, Violations, Complaints and Subsequent Actions, details the department's process for filing of complaints, investigation, and potential action and includes a minor change to update department contact information.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: a member of the committee; the University of Texas Institute for Health Policy - Project on CHW Policy & Practice; and the Texas Dental Association (TDA). The commenters were in favor of the rules in general; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §146.2, one commenter noted that the proposed rules do not provide for enforcement of §146.2(b) which states that certification under this section is voluntary for promotores or CHWs who provide services without receiving compensation and mandatory for promotores or CHWs who provide services for compensation. The commenter also recommended that the department focus on improving certification and training standards rather than on enforcement of the rule. The commenter also suggested reinterpretation of that section to make certification voluntary in general, but to require certification for individuals employed as CHWs under certain state government grants and contracts or under programs such as Medicaid.

Response: The department disagrees because Health and Safety Code, Chapter 48 specifies that certification is mandatory for a promotor(a) or CHW who provides services for compensation. The department also did not include additional enforcement language in §146.2. No change was made to the rule as a result of this comment.

Comment: One commenter recommended a continuous verification of reporting of data and results that confirm, track, and monitor the reaching of milestones and projected outcomes.

Response: The department acknowledges the importance of data and currently has processes in place for the accurate reporting of data. The department revised §146.3(n)(4) to add language that the annual written report to the Executive Commissioner may include the reporting of data and results to track program milestones and outcomes.

Comment: Concerning §146.4, a commenter from the TDA recommended adding a requirement to include oral health education as a mandatory core competency within the CHW training. Another commenter also recommended that the department verify that certified agencies that provide CHW and instructor training meet current mandates and requirements.

Response: The department agrees that oral health education is an important focus for CHW training and education and is currently partnering with committee to identify a list of specific standardized topics and skill sets to be included in each of the core competencies. The department plans to consult with the TDA in this effort and may consider changes to rules in a future rulemaking based on the results of this work. The department currently works closely with agencies that provide CHW and instructor training to ensure that current mandates and requirements are met. No change was made to the rule as a result of these comments.

Comment: Concerning §146.5 and §146.6, one commenter recommended extending the period for renewing a CHW or an instructor certification from two years to three years. Another commenter recommended verifying the core competencies, code of ethics commitment, and Health Insurance Portability and Accountability Act (HIPAA) performance of certified CHWs and instructors on a yearly or random basis.

Response: The department implements processes to assist CHWs and instructors in maintaining their certifications, but declined to increase the renewal period from two to three years. The department will focus on increasing opportunities for continuing education for CHWs and instructors, including access to distance learning opportunities. Additionally, the department will implement a CHW survey to gather data to better understand CHW perspectives about certification and reasons for renewing or not renewing their certification. The department currently provides renewal information and reminders to CHWs and instructors via email, mail, and phone calls and is working to implement an automated phone outreach system in 2015 to further increase contact with CHWs and instructors regarding certification renewal. Based on comparison with continuing education requirements and renewal periods for other regulated health professions, the department has determined that the current renewal process is sufficient to ensure that CHWs and instructors maintain qualifications through the completion of required continuing education every two years. No changes were made to the rules as a result of these comments.

Comment: Concerning §146.8, one commenter requested clarification regarding language stating that it is a violation for a person to intentionally or knowingly represent oneself as an instructor, promotor(a) or CHW without a certificate issued under the Health and Safety Code, Chapter 48.

Response: The department agrees and added the phrase "a certified" in §146.8(c)(1) to clarify that it is a violation for a person to intentionally or knowingly represent oneself as a certified instructor, promotor(a) or CHW without a certificate issued under the Health and Safety Code, Chapter 48.

DEPARTMENT COMMENTS

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following changes:

Based on further review, in §146.3(k), the department specified that the committee will use the 11th Edition of Roberts Rules of Order, Newly Revised.

The department made the following additional non-substantive changes to the proposed rules: corrected grammar in §146.1(2), §146.2(a) and §146.4(k)(4) by replacing the word "who" with "that"; corrected a typographical error in §146.6(m)(1)(B) to specify a license, registration, or certification; revised the wording in §146.7(1)(C) and (I) to parallel wording elsewhere in the subchapter; and corrected grammar in §146.8(d)(1) concerning a hearing.

A sentence was deleted in §146.4(e), §146.5(g), and §146.6(g) to clarify application processing.

A redundant subsection heading in §146.5(j)(1) and §146.6(j)(1) was deleted concerning certificate renewal.

The word "shall" was changed to "may" in §146.5(f)(3) and §146.6(f)(3) to clarify that an applicant whose application has been disapproved has the option of reapplying.

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 §§146.1 - 146.12

STATUTORY AUTHORITY

The repeals are adopted under the Health and Safety Code, §48.053, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the implementation of the training and certification program for promotores, community health workers, and instructors; 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 June 4, 2015.

TRD-201502060
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 24, 2015
Proposal publication date: February 27, 2015
For further information, please call: (512) 776-6972

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CHAPTER 146. TRAINING AND REGULATION OF PROMOTORES OR COMMUNITY HEALTH WORKERS

25 TAC §§146.1 - 146.8

STATUTORY AUTHORITY

The new sections are adopted under the Health and Safety Code, §48.053, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the implementation of the training and certification program for promotores, community health workers, and instructors; 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.

§146.1. Definitions.

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

(1) Advisory Committee--Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(2) Applicant--A promotor(a) or community health worker who applies to the Department of State Health Services for a certificate of competence; an instructor who applies to the department to train promotores or community health workers; or a sponsoring organization that applies to the department to offer training approved by the department to train promotores or community health workers.

(3) Certificate--Certificate issued to a promotor(a) or community health worker, instructor or sponsoring organization by the Department of State Health Services.

(4) Commission--The Health and Human Services Commission.

(5) Commissioner--The Commissioner of the Department of State Health Services.

(6) Compensation--Includes receiving payment or receiving reimbursement for expenses.

(7) Core Competencies--Key skills for promotores or community health workers required for certification by the department, including communication skills, interpersonal skills, knowledge base on specific health issues, service coordination skills, capacity-building skills, advocacy skills, teaching skills, and organizational skills.

(8) Department--The Department of State Health Services.

(9) Distance Learning--The acquisition of knowledge and skills through mediated information and instruction, encompassing all technologies and other forms of learning at a distance.

(10) Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.

(11) Health--A state of complete physical, mental and social well-being where an individual or group is able to realize aspirations and satisfy needs, and to change or cope with the environment. Health is a resource for everyday life, not the objective of living; it is a positive concept emphasizing social and personal resources as well as physical capabilities. This definition is from the World Health Organization, "Ottawa Charter for Health Promotion, 1986."

(12) Certified Instructor--An individual approved by the department to provide instruction and training in one or more core competencies to promotores or community health workers.

(13) "Promotor(a)" or "Community Health Worker"--A person who, with or without compensation, is a liaison and provides cultural mediation between health care and social services, and the community. A promotor(a) or community health worker: is a trusted member, and has a close understanding of, the ethnicity, language, socio-economic status, and life experiences of the community served.

A promotor(a) or community health worker assists people to gain access to needed services and builds individual, community, and system capacity by increasing health knowledge and self-sufficiency through a range of activities such as outreach, patient navigation and follow-up, community health education and information, informal counseling, social support, advocacy, and participation in clinical research.

(14) Sponsoring organization--An organization approved by the department to deliver a certified training curriculum to promotores or community health workers or instructors.

(15) Certified Training Curriculum--An educational, community health training curriculum approved by the department for the purpose of training promotores or community health workers or instructors.

§146.2. Applicability.

(a) The provisions of this chapter apply to any promotor(a) or community health worker, and instructor, representing that he or she performs or will perform as a certified promotor(a) or community health worker or, trains or will train promotores or community health workers respectively. It also applies to any sponsoring organization that delivers a certified training curriculum for promotores or community health workers.

(b) Certification under this section is voluntary for promotores or community health workers who provide services without receiving compensation and mandatory for promotores or community health workers who provide services for compensation.

§146.3. Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(2) The committee is established under the Health and Safety Code, §48.101.

(b) Applicable law. The committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose and tasks.

(1) The committee shall advise the department and the commission on the implementation of standards, guidelines, and requirements adopted under the Health and Safety Code, Chapter 48, relating to the training and regulation of persons working as promotores or community health workers.

(2) The committee shall advise the department on matters related to the employment and funding of promotores and community health workers.

(3) The committee shall provide to the department recommendations for a sustainable program for promotores and community health workers consistent with the purposes of Health and Safety Code, Chapter 48, Subchapter C.

(4) The committee shall review applications from sponsoring organizations, and recommend certification to the department if program requirements are met.

(d) Review and duration. By May 1, 2019, the Executive Commissioner will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(e) Composition. The committee shall be composed of nine members appointed by the Commissioner. The composition of the committee shall include:

(1) four promotores or community health workers currently certified by the department;

(2) two public members, which may include consumers of community health work services or individuals with paid or volunteer experience in community health care or social services;

(3) one member from the Higher Education Coordinating Board, or a higher education faculty member who has teaching experience in community health, public health or adult education and has trained promotores or community health workers; and

(4) two professionals who work with promotores or community health workers in a community setting, including employers and representatives of non-profit community-based organizations or faith-based organizations.

(f) Terms of office. The term of office of each member shall be three years, and the member may be reappointed once.

(1) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(2) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1st of each year.

(g) Officers. The Commissioner shall appoint members of the advisory committee as presiding officer and assistant presiding officer after August 31st of each year.

(1) Each officer shall serve until the next appointment of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Executive Commissioner. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until the Commissioner appoints a successor to complete the unexpired portion of the term of the office of presiding officer.

(4) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(5) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(h) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place. Meetings may be conducted in person, through conference call, or other technology.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Government Code, Chapter 551. The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(i) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the Commissioner. The report shall include attendance at committee and subcommittee meetings.

(j) Staff. Staff support for the committee shall be provided by the department.

(k) Procedures. Roberts Rules of Order, Newly Revised, 11th Edition, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff and approved by the committee at the next scheduled meeting.

(l) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(m) Statement by members.

(1) The Executive Commissioner, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(n) Reports to the Executive Commissioner. The committee shall file an annual written report with the Executive Commissioner.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the department and the commission, the status of any rules which were recommended by the committee to the department and the commission, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee.

(3) The report shall cover the meetings and activities in the immediate preceding calendar year and shall be filed with the Executive Commissioner each April of the following year.

(4) The report may include data and results to track program milestones and outcomes.

(o) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses

incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

§146.4. Application Requirements and Procedures for Sponsoring Organizations.

(a) Minimum eligibility requirements for sponsoring organizations. The following requirements apply to all organizations applying for certification as an approved training program:

(1) physical location in Texas;

(2) experience in training or sponsoring training for promotores, community health workers, and other health care professionals or paraprofessionals including training that utilizes adult learning principles and is related to core competencies in communication skills, interpersonal skills, service coordination, capacity-building skills, advocacy, organizational skills, teaching, and knowledge base on specific health issues;

(3) affiliation with one or more instructors currently certified by the department; and

(4) program plan to provide training for community health workers or instructors on at least an annual basis, including primary training location(s), training schedule, and procedures related to target population, recruitment, registration/enrollment, cost class attendance, training methodology, course completion/graduation requirements, and evaluation of training.

(b) Application requirements and procedures.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation in a format specified by the department.

(2) A sponsoring organization may submit an application that includes the use of a certified curriculum from another sponsoring organization who has agreed to share the certified curriculum. In this situation, the application must include a description of changes, if any, to the certified curriculum.

(3) The department shall send a notice listing the additional materials and revisions required to an applicant whose application is incomplete. The department may require a sponsoring organization to submit a new application if additional materials and revisions are not submitted within 90 days.

(c) Application approval.

(1) The committee shall review initial applications from sponsoring organizations and recommend to the department certification for applications and curricula that meet program requirements.

(2) The department shall approve an application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.

(d) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter; or

(B) has failed or refused to properly complete or submit required information or has knowingly presented false or misleading information in the application process.

(2) If the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application or appeal.

(3) The applicant whose application has been disapproved under paragraph (1) of this subsection shall be permitted to reapply and shall submit a current application satisfactory to the department, in compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48.

(4) An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(e) Application processing. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application has been approved or that the application is deficient and additional specific information is required.

(1) Notice of approval for certification - no more than 90 days.

(2) Notice of application deficiency - no more than 90 days.

(f) Changes of name and address. Sponsoring organizations shall notify the department of changes in organization name, contact information, mailing address, or physical location within 30 calendar days of such change(s).

(g) Certificate.

(1) Upon approval of the application, the department shall issue the sponsoring organization a certificate with an expiration date and a certificate number.

(2) Certificates shall be signed by the commissioner of the department and presiding officer of the advisory committee.

(3) Any certificate issued by the department remains the property of the department and shall be surrendered to the department on demand.

(4) A sponsoring organization shall display the original certificate at the primary training or educational site.

(5) No one shall make any alteration on any certificate issued by the department.

(6) The department shall replace a lost, damaged, or destroyed certificate upon written request.

(h) Standards for the approval of curricula.

(1) The purpose of this subsection is to establish the minimum standards for approval of curricula for programs to train persons to perform promotor(a) or community health worker services or to act as an instructor.

(2) All core curricula of at least 160 hours to be used to train individuals to perform promotor(a) or community health worker services or to serve as instructors must:

(A) assure that the eight core skill and knowledge competencies, identified in the National Community Health Advisor Study, June 1998 for promotores or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base on specific health issues are addressed;

(B) include at a minimum 20 clock hours of knowledge and skill-building per core competency for promotores or community health workers and include at a minimum 20 clock hours for instructor training in each of the core competencies that affect promotores or community health workers;

(C) include a component for hands-on learning, such as field practice, internship or practicum;

(D) include specific learner-centered objectives;

(E) include the name and organization of the curriculum developer or, if curriculum was developed by another entity, include public domain information or documentation of approval by the curriculum developer;

(F) include the participation of a certified instructor in the review or development of a curriculum.

(G) include appropriate citations and references documenting sources of information detailed in the curriculum;

(H) include activities and other strategies consistent with adult learning theory and principles;

(I) demonstrate cultural sensitivity and literacy level appropriate to the topic and target audience;

(J) include a translation of the curriculum if the curriculum will be provided in a language other than English;

(K) specify the method or methods by which training will be delivered, including classroom instruction and use of distance learning;

(L) include a method or process to evaluate and document the acquisition of knowledge and mastery of skills by the individual trained;

(M) include a method or process for the individual trained to evaluate the training experience;

(N) be certified by the department and if offered in person, be provided within the geographic limits of the State of Texas;

(O) be submitted to the department along with supporting materials in a format and timeframe specified by the department;

(P) report the names of individuals to the department who have successfully completed the training program within seven business days of program completion in a format specified by the department; and

(Q) maintain an accurate record of each person's attendance and participation for not less than three years.

(i) All continuing education curricula to be used to provide department-certified continuing education to certified promotores or community health workers or instructors must:

(1) assure that one or more of the eight core skill and knowledge competencies, identified in the National Community Health Advisor Study, June 1998 for promotores or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base are addressed;

(2) identify the title of the proposed continuing education curriculum, total contact hours, and hours per core competency;

(3) include specific learner-centered objectives;

(4) include the name and organization of the curriculum developer or, if curriculum was developed by another entity, include public domain information or documentation of approval by the curriculum developer;

(5) include the participation of a certified instructor in the review or development of a curriculum;

(6) include appropriate citations and references documenting sources of information detailed in the curriculum;

(7) include activities and other strategies consistent with adult learning theory and principles;

(8) demonstrate cultural sensitivity and literacy level appropriate to the topic and target audience;

(9) include a translation of the curriculum if the curriculum will be provided in a language other than English;

(10) specify the method or methods by which training will be delivered, including classroom instruction and use of distance learning;

(11) if applicable, include any pre or posttest or other process to be used to evaluate acquisition of knowledge by the individual trained;

(12) if applicable, include an evaluation by the individual trained of the training experience;

(13) be certified by the department and if in person, be offered within the geographic limits of the State of Texas;

(14) be submitted to the department along with supporting materials in a format specified by the department;

(15) report the names of individuals to the department who have successfully completed the training program within seven business days of program completion; and

(16) maintain an accurate record of each person's attendance and participation for not less than three years.

(j) Addenda to existing certified curriculum.

(1) A sponsoring organization may submit an addendum when making revisions to a current, certified curriculum.

(2) An addendum may be submitted in a format specified by the department and must be in compliance with standards listed in this section.

(3) Curricula shall be provided by a certified instructor, unless otherwise approved by the department.

(k) Certificate renewal.

(1) Certificate renewal for sponsoring organizations. Each sponsoring organization shall renew the certificate biennially (every two years).

(2) Each sponsoring organization is responsible for renewing the certificate before the expiration date. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal.

(3) Each sponsoring organization is responsible for completing a renewal application, which shall include a program plan to provide training for community health workers or instructors on at least an annual basis. A sponsoring organization shall include an explanation for failure to provide training for community health workers or instructors at least annually during the renewal period and include additional information regarding the program plan to assure that the minimum training requirement will be met.

(4) The department may not renew the certificate of a sponsoring organization that is in violation of Health and Safety Code, Chapter 48 or this chapter at the time of renewal.

(l) Late renewals.

(1) A sponsoring organization whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application. The sponsoring organization shall not provide training for community health workers or instructors until the certificate has been renewed.

(2) A certificate not renewed within one year after expiration cannot be renewed.

(3) A sponsoring organization whose certification has been expired for more than one year may apply for another certificate by meeting the then-current requirements of the Health and Safety Code, Chapter 48 and this chapter which apply to all new applicants.

(m) Expired certificates. The department, using the last address known, shall attempt to inform each sponsoring organization who has not timely renewed a certificate, after a period of more than ten days after the expiration of the certificate that the certificate has automatically expired.

(n) Right to inspect. The department reserves the right to inspect facilities and documentation and to monitor sponsoring organizations.

§146.5. Eligibility Requirements and Application Procedures for Community Health Worker Instructors.

(a) Minimum eligibility requirements for community health worker instructor certification. The following requirements apply to all individuals applying for certification:

(1) currently live in Texas.

(2) attainment of 18 years of age or an eligible and informed minor as determined by the department;

(3) freedom from physical or mental impairment, which in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served;

(4) achievement of core competencies in instruction or training related to communication skills, interpersonal skills, service coordination, capacity-building skills, advocacy, organizational skills, teaching, and knowledge base on specific health issues through completion of a certified competency-based instructor training program by an approved sponsoring institution or verification of related training experience; and

(5) submission of a complete application in a format specified by the department.

(b) Community health worker instructor based on experience. A person who has provided instruction or training for promotores or community health workers and other health care paraprofessionals and professionals in the previous six years may submit an application and required information for consideration of certification based on their training experience. The department shall verify the applicant's related training experience of not less than 1000 cumulative hours demonstrating competence in training in the eight core competencies (communication skills, interpersonal skills, service coordination, capacity-building skills, advocacy, organizational skills, teaching, and knowledge base on specific health issues). The department shall approve the application and issue a certificate of competence to a person with verified experience and competence in training who has provided instruction or training to individuals providing promotor(a) or community health work services for not less than 1000 cumulative hours in the previous six years starting from the date the application is signed.

(c) Community health worker instructor based on training. Individuals shall complete a certified competency-based instructor training program by an approved sponsoring organization.

(d) Application requirements and procedures.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation on current official department forms and submit the required information and documentation electronically or in hard copy as specified by the department.

(2) The department shall send a notice listing the additional materials or information required to an applicant whose application is incomplete, including a notice if a color photograph for an identification card was not submitted.

(e) Application approval. The department shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (f) of this section.

(f) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter;

(B) has failed or refused to properly complete or submit any required information or has knowingly presented false or misleading information in the application process.

(C) has engaged in unethical conduct as defined in §146.7 of this title (relating to Professional and Ethical Standards);

(D) has been convicted of a felony or misdemeanor directly related to the duties and responsibilities of a promotor(a) or community health worker or instructor as set out in §146.8 of this title (relating to Violations, Complaints and Subsequent Actions); or

(E) has developed an incapacity, which in accordance with the Americans with Disabilities Act, prevents the individual from practicing with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;

(2) If the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application or appeal;

(3) The applicant whose application has been disapproved under paragraph (1) of this subsection shall be permitted to reapply and may submit a current application satisfactory to the department, in compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48.

(4) An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(g) Application processing. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application has been approved or that the application is deficient and additional specific information is required.

(1) Notice of approval for certification - no more than 90 days.

(2) Notice of application deficiency - no more than 90 days.

(h) Changes of name and address.

(1) The department shall change the status of a certification to inactive upon receipt of notification that the certificate holder no longer lives in Texas.

(2) Before any certificate and identification cards will be issued by the department, notification of name changes must be submitted to the department and shall include a copy of a marriage certificate, court decree evidencing such change, Texas driver's license or identification card, or a social security card reflecting the new name.

(i) Certificate.

(1) Upon approval of the application, the department shall issue the community health worker instructor a certificate with an expiration date and a certificate number. An identification card shall be included for a community health worker instructor.

(2) Certificates shall be signed by the commissioner of the department and presiding officer of the advisory committee. The identification card issued to a community health worker instructor shall bear the signature of the commissioner and contain a photo of the community health worker instructor.

(3) Any certificate or identification card(s) issued by the department remains the property of the department and shall be surrendered to the department on demand.

(4) A community health worker instructor shall carry the original identification card. Photocopies shall not be carried or displayed.

(5) A person certified as a community health worker instructor shall only allow his or her certificate to be copied for the purpose of verification by employers, professional organizations, and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the department in writing or by phone or access the department online licensing services website to verify certification status.

(6) No one shall display, present, or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(7) No one shall make any alteration on any certificate or identification card issued by the department.

(8) The department shall replace a lost, damaged, or destroyed certificate or identification card upon written request.

(j) Certificate renewal.

(1) Each community health worker instructor shall renew the certificate biennially (every two years).

(2) Each community health worker instructor is responsible for renewing the certificate before the expiration date. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal.

(3) Each community health worker instructor is responsible for completing a renewal application.

(4) The department may not renew the certificate of a community health worker instructor who is in violation of Health and Safety Code, Chapter 48 or this chapter at the time of renewal.

(k) Late renewals.

(1) A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application. Community health worker instructors must also submit proof of compliance with continuing education requirements for renewal as set out in this section before the late renewal is effective. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.

(2) A certificate not renewed within one year after expiration cannot be renewed.

(3) A person may not use a title that implies certification while the certificate is expired as set out in §146.8 of this title (relating to Violations, Complaints and Subsequent Actions).

(4) A person whose certification has been expired for more than one year may apply for another certificate by meeting the then current requirements of the Health and Safety Code, Chapter 48 and this chapter, which apply to all new applicants.

(l) Expired certificates. The department, using the last address known, shall attempt to inform each community health worker instructor who has not timely renewed a certificate, after a period of more than ten days after the expiration of the certificate that the certificate has automatically expired.

(m) Continuing education requirements.

(1) Continuing education requirements for recertification shall be fulfilled during each biennial renewal period.

(2) An instructor must complete at a minimum 20 contact hours of continuing education related to the core competencies during each biennial renewal period.

(A) At least five hours shall be satisfied by participation in a department certified training program including a training program sponsored or provided by the department that provides continuing education credits for instructors.

(B) Up to five hours may be satisfied through:

(i) instruction in certified training programs which meet the department's criteria as set out in §146.4(h) and (i) of this title (relating to Application Requirements and Procedures for Sponsoring Organizations). One hour of credit shall be given for two clock hours actually taught, up to five hours. Continuing education credit will only be given once for teaching a particular course; or

(ii) continuing education counted toward the renewal of an instructor's Texas license/registration/certification in another health profession provided the hours meet all the requirements of this section.

(C) Up to 10 hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.

(3) A contact hour shall be defined as 50 minutes of participation. One-half contact hour shall be defined as 30 minutes of participation during a 30-minute period.

(n) All continuing education activities should provide for the professional growth of the community health worker instructor.

(o) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and is offered by an approved sponsoring organization.

(p) Reporting of continuing education. Each instructor is responsible for and shall complete and file with the department at the time of renewal a continuing education report form approved by the department listing the title, date, number of hours, and core competency(ies) covered for each activity for which credit is claimed.

(q) Failure to complete the required continuing education.

(1) A community health worker instructor may request one 120-day extension per certification period if needed in order to complete the continuing education requirement.

(2) A community health worker instructor who has not corrected the deficiency by the expiration date of the 120-day extension shall be considered as noncompliant with the renewal requirements and may no longer be certified under the expired certificate.

(3) A community health worker instructor may renew late under subsection (k) of this section after all the continuing education requirements have been met.

§146.6. Eligibility Requirements and Application Procedures for Promotores or Community Health Workers.

(a) Minimum eligibility requirements for promotor(a) or community health worker certification. The following requirements apply to all individuals applying for certification:

(1) currently live in Texas;

(2) attainment of 18 years of age or an eligible and informed minor as determined by the department;

(3) freedom from physical or mental impairment, which in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served;

(4) achievement of core competencies in communication skills, interpersonal skills, service coordination, capacity-building skills, advocacy, organizational skills, teaching, and knowledge base on specific health issues through completion of a certified competency-based training program by an approved sponsoring institution or verification of related experience; and

(5) submission of a complete application in a format specified by the department.

(b) Community health worker certification based on experience. A person who has performed related promotor(a) or community health worker services in the previous six years may submit an application and required information for consideration of certification based on their experience. The department shall verify the applicant's related experience of not less than 1000 cumulative hours demonstrating competence in eight core competencies (communication skills, interpersonal skills, service coordination, capacity-building skills, advocacy, organizational skills, teaching, and knowledge base on specific health issues). The department shall approve the application and issue a certificate to a person with verified experience and competence in performing promotor(a) or community health worker services for not less than 1000 cumulative hours in the previous six years starting from the date the application is signed, as documented on form(s) specified by the department.

(c) Community health worker certification. Individuals shall complete a certified competency-based training program by an approved sponsoring organization.

(d) Application requirements and procedures.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation on current official department forms and submit the required information and documentation electronically or in hard copy as specified by the department.

(2) The department shall send a notice listing the additional materials or information required to an applicant whose application is incomplete, including a notice if a color photograph for an identification card was not submitted.

(e) Application approval. The department shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (f) of this section.

(f) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter;

(B) has failed or refused to properly complete or submit any required information or has knowingly presented false or misleading information in the application process.

(C) has engaged in unethical conduct as defined in §146.7 of this title (relating to Professional and Ethical Standards);

(D) has been convicted of a felony or misdemeanor directly related to the duties and responsibilities of a promotor(a) or community health worker or instructor as set out in §146.8 of this title (relating to Violations, Complaints and Subsequent Actions); or

(E) has developed an incapacity, which in accordance with the Americans with Disabilities Act, prevents the individual from practicing with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;

(2) If the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application or appeal;

(3) The applicant whose application has been disapproved under paragraph (1) of this subsection shall be permitted to reapply

and may submit a current application satisfactory to the department, in compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48.

(4) An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(g) Application processing. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application has been approved or that the application is deficient and additional specific information is required.

(1) Notice of approval for certification - no more than 90 days.

(2) Notice of application deficiency - no more than 90 days.

(h) Changes of name and address.

(1) The department shall change the status of a certification to inactive upon receipt of notification that the certificate holder no longer lives in Texas.

(2) Before any certificate and identification cards will be issued by the department, notification of name changes must be submitted to the department and shall include a copy of a marriage certificate, court decree evidencing such change, Texas driver's license or identification card, or a social security card reflecting the new name.

(i) Certificate.

(1) Upon approval of the application, the department shall issue the promotor(a) or community health worker a certificate with an expiration date and a certificate number. An identification card shall be included for a promotor(a) or community health worker.

(2) Certificates shall be signed by the commissioner of the department and presiding officer of the advisory committee. The identification card issued to a promotor(a) or community health worker shall bear the signature of the commissioner and contain a photo of the promotor(a) or community health worker.

(3) Any certificate or identification card(s) issued by the department remains the property of the department and shall be surrendered to the department on demand.

(4) A promotor(a) or community health worker shall carry the original identification card. Photocopies shall not be carried or displayed.

(5) A person certified as a promotor(a) or community health worker shall only allow his or her certificate to be copied for the purpose of verification by employers, professional organizations, and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the department in writing or by phone or access the department online licensing services website to verify certification status.

(6) No one shall display, present, or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(7) No one shall make any alteration on any certificate or identification card issued by the department.

(8) The department shall replace a lost, damaged, or destroyed certificate or identification card upon written request.

(j) Certificate renewal.

(1) Each promotor(a) or community health worker shall renew the certificate biennially (every two years).

(2) Each promotor(a) or community health worker is responsible for renewing the certificate before the expiration date. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal.

(3) Each promotor(a) or community health worker is responsible for completing a renewal application.

(4) The department may not renew the certificate of a promotor(a) or community health worker who is in violation of Health and Safety Code, Chapter 48 or this chapter at the time of renewal.

(k) Late renewals.

(1) A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application. Promotores or community health workers must also submit proof of compliance with continuing education requirements for renewal as set out in this section before the late renewal is effective. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.

(2) A certificate not renewed within one year after expiration cannot be renewed.

(3) A person may not use a title that implies certification while the certificate is expired as set out in §146.8 of this title (relating to Violations, Complaints and Subsequent Actions).

(4) A person whose certification has been expired for more than one year may apply for another certificate by meeting the then-current requirements of the Health and Safety Code, Chapter 48 and this chapter which apply to all new applicants.

(l) Expired certificates. The department, using the last address known, shall attempt to inform each promotor(a) or community health worker who has not timely renewed a certificate, after a period of more than ten days after the expiration of the certificate that the certificate has automatically expired.

(m) Continuing education requirements. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period.

(1) A promotor(a) or community health worker must complete 20 contact hours of continuing education related to the core competencies acceptable to the department during each biennial renewal period.

(A) At least five hours shall be satisfied by participation in a department certified training program including a training program sponsored or provided by the department that provides continuing education credits for promotores or community health workers.

(B) Up to five hours may be satisfied through continuing education counted toward the renewal of a promotor(a) or community health worker's Texas license, registration, or certification in another health profession provided the hours meet all the requirements of this section.

(C) Up to 10 hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.

(2) A contact hour shall be defined as 50 minutes of participation. One-half contact hour shall be defined as 30 minutes of participation during a 30-minute period.

(n) All continuing education activities should provide for the professional growth of the community health worker or promotor(a).

(o) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and is offered by an approved sponsoring organization.

(p) Reporting of continuing education. Each promotor(a) or community health worker is responsible for and shall complete and file with the department at the time of renewal a continuing education report form approved by the department listing the title, date, number of hours, and core competency(ies) covered for each activity for which credit is claimed. The sponsoring organization must provide a list of instructors, promotores or community health workers who successfully complete continuing education contact hours within 30 days of the continuing education event in a format specified by the department.

(q) Failure to complete the required continuing education.

(1) A promotor(a) or community health worker may request one 120-day extension per certification period if needed in order to complete the continuing education requirement.

(2) A promotor(a), or community health worker who has not corrected the deficiency by the expiration date of the 120-day extension shall be considered as noncompliant with the renewal requirements and may no longer be certified under the expired certificate.

(3) A promotor(a) or community health worker may renew late under subsection (k) of this section after all the continuing education requirements have been met.

§146.7. Professional and Ethical Standards.

The purpose of this section shall be to establish the standards of professional and ethical conduct required of an instructor, training program, promotor(a) or community health worker pursuant to the Health and Safety Code, Chapter 48.

(1) Professional representation and responsibilities.

(A) An instructor, promotor(a) or community health worker shall not misrepresent any professional qualifications or credentials or provide any information that is false, deceptive, or misleading to the department, for employment or work assignment as an instructor, promotor(a) or community health worker, or fail to disclose any information that could affect the decision to employ or assign a task as an instructor, promotor(a) or community health worker.

(B) An instructor, promotor(a) or community health worker shall maintain knowledge and skills for continuing professional competence. An instructor, promotor(a) or community health worker shall participate in continuing education programs and activities as set out in §146.5(m) and §146.6(m) of this title concerning continuing education requirements.

(C) An instructor, promotor(a) or community health worker shall be responsible for competent and efficient performance of his or her assigned duties and shall report to the department incompetence and illegal or unethical conduct of members of the profession.

(D) An instructor, promotor(a) or community health worker shall not retaliate against any person who reported in good faith to the department alleged incompetence; illegal, unethical, or negligent conduct of any instructor, promotor(a) or community health worker; or alleged misrepresentation or any violation(s) of the Health and Safety Code, Chapter 48, or this chapter.

(E) An instructor, promotor(a) or community health worker shall keep his or her file updated by notifying the department of changes in preferred mailing address and telephone number, and email address, if applicable.

(F) An instructor, promotor(a) or community health worker shall not engage in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol.

(G) An instructor, promotor(a) or community health worker shall not discriminate on the basis of race, creed, gender, sexual orientation, religion, national origin, age, physical disability or economic status in the performance of community health work services or training.

(H) A sponsoring organization shall not make any misleading, deceptive, or false representations in connection with offering or obtaining approval of a certified curriculum.

(I) A sponsoring organization of a certified curriculum shall not discriminate in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, sexual orientation, religion, national origin, age, physical disability, or economic status.

(2) Relationships with patients/clients.

(A) An instructor, promotor(a) or community health worker shall not accept gratuities for preferential consideration of the patient/client. The instructor, promotor(a) or community health worker shall guard against conflicts of interest.

(B) An instructor, promotor(a) or community health worker shall not violate any provision of any federal or state statute relating to confidentiality of patient/client communication and/or records.

§146.8. Violations, Complaints and Subsequent Actions.

(a) This section establishes standards relating to:

(1) offenses or criminal convictions;

(2) violations which result in disciplinary actions;

(3) procedures for filing complaints alleging violations and prohibited actions under the Health and Safety Code, Chapter 48, or this chapter; and

(4) the department's investigation of complaints.

(b) Criminal convictions which directly relate to the profession as an instructor, promotor(a) or community health worker.

(1) The department may suspend or revoke any existing certificate, or disqualify a person from receiving any certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an instructor, promotor(a) or community health worker.

(2) In considering whether a criminal conviction directly relates to the occupation of an instructor, promotor(a) or community health worker, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification as an instructor, promotor(a) or community health worker. The following felonies and misdemeanors relate to any certificate of an instructor, promotor(a) or community health worker because these criminal offenses indicate an inability or a tendency to be unable to perform as an instructor, promotor(a) or community health worker:

(i) any misdemeanor and/or felony offense involving moral turpitude by statute or common law; and

(ii) a misdemeanor or felony offense under various titles of the Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);

(C) the extent to which any certificate might offer an opportunity to engage in further criminal history activity of the same type as that in which the person previously has been involved;

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of an instructor, promotor(a) or community health worker. In making this determination, the department will apply the criteria outlined in Occupations Code, Chapter 53, the legal authority for the provisions of this section; and

(E) the length of time since the date of the crime.

(3) The misdemeanors and felonies listed in paragraph (2)(B)(i) - (ii) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Health and Safety Code, Chapter 48, and this chapter.

(c) Types of violations:

(1) a person intentionally or knowingly represents oneself as a certified instructor, promotor(a) or community health worker without a certificate issued under the Health and Safety Code, Chapter 48;

(2) a person obtains or attempts to obtain a certificate issued under the Health and Safety Code, Chapter 48, by bribery or fraud;

(3) a person engages in unprofessional conduct, including the violation of the standards of practice for instructors, promotores or community health workers as established by the department;

(4) a person fails to report to the department the violation of the Health and Safety Code, Chapter 48, or any allegations of sexual misconduct by another person;

(5) a person violates a provision of the Health and Safety Code, Chapter 48, or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department; or

(6) a person has a certificate revoked, suspended or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory or country.

(d) Procedures for revoking, suspending, or denying a certificate to persons with criminal backgrounds.

(1) The department shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate after a hearing in accordance with the provisions of Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(2) If the department denies, suspends, or revokes a certificate under these sections after hearing, the department shall give the person written notice of the reasons for the decision.

(e) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has committed an offense or action prohibited under the Health and Safety Code, Chapter 48, or that a certificate holder has violated the Health and Safety Code, Chapter 48, or this chapter.

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against an instructor, promotor(a) or community health worker or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department. The department's mailing address is Office of Title V and Family Health, Promotor(a)/Community Health Worker Training and Certification Program, Mail Code 1922, P.O. Box 149347, Austin, Texas 78714-9347, physical address is 1100 West 49th Street, Austin, Texas 78756-3183, and telephone (512) 776-7373.

(3) Upon receipt of a complaint the department or the department's designee shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the department or the department's designee before action can be taken. If the complaint is made by a visit to the department, the form may be given to the complainant at that time; however, it must be completed and returned to the department or the department's designee before further action may be taken. Copies of the complaint form may be obtained from the department.

(4) Anonymous complaints shall be investigated by the department, provided sufficient information is submitted.

(f) Investigation of complaints. The department is responsible for investigating complaints.

(g) The department's action.

(1) The department shall take one or more actions described in this section.

(2) The department may determine that an allegation is groundless and dismiss the complaint.

(3) The department may determine that an instructor, promotor(a) or community health worker has violated the Health and Safety Code, Chapter 48, or this chapter and may institute disciplinary action in accordance with subsection (h) of this section.

(4) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory committee, the complainant, and the accused party.

(h) Disciplinary actions. The department may take action under this section as follows.

(1) The department may reprimand an instructor, promotor(a) or community health worker or initiate action to deny, suspend, not renew, or revoke a certificate.

(2) The department may take disciplinary action if it determines that a person who holds a certificate is in violation of §146.7 of this title (relating to Professional and Ethical Standards).

(3) The department shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

(A) the severity of the offense;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since the date of the violation;

(E) the number and type of previous disciplinary cases filed against the instructor, promotor(a) or community health worker;

(F) the length of time the instructor, promotor(a) or community health worker has performed community health work services or training;

(G) the actual damage, physical or otherwise, to the patient, if applicable;

(H) the deterrent effect of the penalty imposed;

(I) the effect of the penalty upon the livelihood of the instructor, promotor(a) or community health worker;

(J) any efforts for rehabilitation; and

(K) any other mitigating or aggravating circumstances.

(4) The department may take action for violation of the Health and Safety Code, Chapter 48, or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department.

(i) Fair hearing.

(1) The fair hearing shall be conducted according to the Chapter 1, Subchapter C of this title.

(2) Prior to making a final decision adverse to a certificate holder, the department shall give the certificate holder written notice of an opportunity for a hearing on the proposed action.

(3) The certificate holder has 20 days after receiving the notice to request a hearing on the proposed action. A request for a hearing shall be made in writing and mailed or hand-delivered to the department, unless the notice letter specifies an alternative method. If a person who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the person is deemed to have waived the hearing and the action may be taken.

(j) Final action.

(1) If the department suspends a certificate, the suspension remains in effect until the department determines that the reasons for suspension no longer exist. The instructor, promotor(a) or community health worker whose certificate has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the department determines that the reasons for suspension have been removed.

(4) A person whose application is denied or certificate is revoked, as a result of disciplinary action is ineligible for a certificate under Health and Safety Code, Chapter 48, for one year from the date of the denial or revocation or surrender.

(5) Upon revocation or nonrenewal, the former certificate holder shall return the certificate and any identification card(s) to the department.

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 June 4, 2015.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER B. CONTRACTS MANAGEMENT FOR TDMHMR FACILITIES AND CENTRAL OFFICE

25 TAC §§417.51 - 417.62, 417.64, 417.65

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §§417.51 - 417.62, 417.64, and 417.65, concerning contracting and procurement. The repeals are adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2380).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's

newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

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.

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

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 June 1, 2015.

TRD-201502014
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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CHAPTER 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER A. YOUTH EMPOWERMENT SERVICES (YES)

25 TAC §419.7

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §419.7, concerning contracting and procurement. The repeal is adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2382).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205,

444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted repeal is authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

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 June 1, 2015.

TRD-201502015
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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CHAPTER 444. CONTRACT ADMINISTRATIVE REQUIREMENTS

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §§444.101 - 444.103, 444.201 - 444.211, 444.301 - 444.306, 444.401 - 444.420, and 444.501 - 444.507, concerning contracting and procurement. The repeals are adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2383).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

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.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§444.101 - 444.103

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201502016
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER B. FUNDING

25 TAC §§444.201 - 444.211

STATUTORY AUTHORITY

The adopted repeals are authorized byGovernment Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of theHealth and Human Services Commission to adopt rules and policiesnecessary for the operation and provision of health and humanservices by the department and for the administration of Health andSafety Code, Chapter 1001.

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 June 1, 2015.

TRD-201502017
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER C. CONTRACT ORGANIZATION

25 TAC §§444.301 - 444.306

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201502018
Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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SUBCHAPTER D. CONTRACT ADMINISTRATION

25 TAC §§444.401 - 444.420

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER E. CONTRACT OVERSIGHT

25 TAC §§444.501 - 444.507

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

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 June 1, 2015.

TRD-201502020
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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CHAPTER 447. DEPARTMENT-FUNDED SUBSTANCE ABUSE PROGRAMS

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §§447.105, 447.204, and 447.304, concerning contracting and procurement. The repeals are adopted without changes to the proposal as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2386).

BACKGROUND AND PURPOSE

In 2003, the 78th (Regular) Texas Legislature enacted House Bill (HB) 2292, which established the Health and Human Services (HHS) system in its current configuration. In enacting this bill, the Legislature consolidated the HHS agencies under the direction of HHSC to strengthen accountability by streamlining programs and eliminating fragmentation.

In October of 2014, the Sunset Advisory Commission issued a report titled "Health and Human Services Commission and System Issues." One key recommendation that related to contracting and procurement requires "HHSC to better define and strengthen its role in both procurement and contract monitoring by completing and maintaining certain statutorily required elements; strengthening monitoring of contracts at HHSC; improving assistance to system agencies; and focusing high-level attention to system contracting."

In order to clarify the contract and procurement requirements for all HHS agencies, HHSC has adopted new rules in 1 TAC Chapter 391, and were published in the June 12, 2015, issue of the *Texas Register.* By direction of HHSC, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the department have repealed their specific contracting and procurement rules to further minimize confusion and increase efficiency. The department's repealed rules are described in the Section-by-Section Summary of this Preamble.

The changes to Chapter 391 are expected to ensure that procurement of goods and services effectively support HHSC's mission, operations, and programs of the HHS System. Exceptions to the general rules in Chapter 391 are contained in HHSC's newly adopted rules in 1 TAC Chapter 392, and were also published in the June 12, 2015 issue of the *Texas Register.* These exceptions will largely be comprised of HHS programs that cannot fit into the general framework of Chapter 391.

SECTION-BY-SECTION SUMMARY

Sections 37.13, 37.14, 83.8, 417.54, 417.58, 417.60, 417.61, 417.62, 417.64, and 417.65 are repealed because these rules are no longer utilized.

Sections 1.91, 1.181, 37.217, 37.536, 37.537, 56.17, and 419.7 are repealed in order to consolidate contract and procurement requirements, as the contents of these rules are otherwise captured in 1 TAC Chapter 391.

Sections 39.4, 49.11, 49.12, 61.6, 61.36, 417.51, 417.52, 417.53, 417.55, 417.56, 417.57, 417.59, 444.101, 444.102, 444.103, 444.201, 444.202, 444.203, 444.204, 444.205, 444.206, 444.207, 444.208, 444.209, 444.210, 444.211, 444.301, 444.302, 444.303, 444.304, 444.305, 444.306, 444.401, 444.402, 444.403, 444.404, 444.405, 444.406, 444.407, 444.408, 444.409, 444.410, 444.411, 444.412, 444.413, 444.414, 444.415, 444.416, 444.417, 444.418, 444.419, 444.420, 444.501, 444.502, 444.503, 444.504, 444.505, 444.506, 444.507, 447.105, 447.204, and 447.304 are repealed and located in new 1 TAC Chapter 392 in order to consolidate program-specific exceptions to the general rules listed in Chapter 391.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

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.

SUBCHAPTER A. PREVENTION

25 TAC §447.105

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

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 June 1, 2015.

TRD-201502021
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER B. INTERVENTION

25 TAC §447.204

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

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 June 1, 2015.

TRD-201502022
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER C. TREATMENT

25 TAC §447.304

STATUTORY AUTHORITY

The adopted repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorizes 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.

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 June 1, 2015.

TRD-201502023
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 21, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 776-6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE

SUBCHAPTER T. FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES AND AQUIFER RESTORATION

30 TAC §37.9045, §37.9050

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §37.9045 and §37.9050.

The amendments to §37.9045 and §37.9050 are adopted *without changes* to the proposed text as published in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9463) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking is to implement Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). The adopted amendments to Chapter 37 establish a new account, subject to appropriations, to fund an Environmental Radiation and Perpetual Care Account to replace the perpetual care account currently in rule.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 336, Radioactive Substance Rules.

Section by Section Discussion

§37.9045, Financial Assurance Requirements for Closure, Post Closure, and Corrective Action

The commission adopts amended §37.9045(a)(5) and (6) to reflect that upon such time that the Environmental Radiation and Perpetual Care Account is certified by legislation that all financial assurance proceeds that may be drawn upon shall be deposited to the Environmental Radiation and Perpetual Care Account rather than the perpetual care account.

§37.9050, Financial Assurance Mechanisms

The commission adopts the amendment to the insurance requirements under §37.9050(f)(4) and (11) by striking reference to the perpetual care account as the recipient of funds directly and instead adds a cross reference to §37.9045(a)(6) that acknowledges the Environmental Radiation and Perpetual Care Account upon certification by legislation.

Final Regulatory Impact Analysis Determination

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the 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 adopted rulemaking action implements legislative requirements in SB 347 regarding funding and subject to appropriation by the legislature of the Environmental Radiation and Perpetual Care Account. The adopted amendments to Chapter 37 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because financial assurance and this fund was already required for these licensing programs. The amendments only change the name for the fund as administered by the commission and the commission will only be implementing an appropriation of the state budget from the legislature and following an order from the Texas Comptroller of Public Accounts. While there could be new costs associated with obtaining a financial assurance mechanism that meets the requirements of the adopted rules, the commission does

not expect that the costs to adversely affect the economy, productivity, or competition in a material way.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The adopted rules are compatible with federal law.

The adopted rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 347.

The adopted rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The adopted rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

These rules are adopted under specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Takings Impact Assessment

The commission evaluated these adopted rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the Private Real Property Rights Preservation Act does not apply to these adopted rules because these adopted rules implement SB 1604, 80th Texas Legislature, 2007 transferring certain regulatory responsibilities from the Department of State Health Services to the commission and is an action reasonably taken to fulfill an obligation mandated by federal law. Financial assurance is required for these licensing programs under the NRC's requirements.

Nevertheless, the commission further evaluated these adopted rules and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these adopted rules is to implement changes to the TRCA required by SB 347 for the deposit of funds into the Environmental Radiation and Perpetual Care Account. The adopted amendments to Chapter 37 would fund, subject to pending appropriation, by renaming the former perpetual care account, the Environmental Radiation and Perpetual Care Account.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Public Comment

The commission held a public hearing on January 13, 2015, at 10:00 a.m. in Austin, Texas, at the commission's central office located at 12100 Park 35 Circle. The comment period closed on January 20, 2015. No comments were received regarding the amendments to Chapter 37.

Statutory Authority

The amendments are adopted under specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition to the specific provisions of the Texas Radiation Control Act (TRCA), the amendments are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105,

concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The adopted amendments implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 (also known as the TRCA).

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 June 5, 2015.

TRD-201502072
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: June 25, 2015
Proposal publication date: December 5, 2014
For further information, please call: (512) 239-6812

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CHAPTER 101. GENERAL AIR QUALITY RULES
SUBCHAPTER H. EMISSIONS BANKING AND TRADING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts 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 §101.358.

Sections 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, 101.393, 101.399, and 101.400 are adopted *with changes* to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10186). Sections 101.390 - 101.392, 101.394, and 101.396; and the repeal of §101.358 are adopted *without changes* to the proposed text and will not be republished. The repeal of §101.304 and §101.374 are not adopted and are withdrawn in this issue of the *Texas Register.*

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 Adopted 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 credit (EC) 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 credit (DEC) 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 EBT rules that have historically not been used. Specifically, there has been interest in generating credits by reducing emissions from area and mobile sources. In addition, there has been considerable interest from the regulated community for flexibility in the previous rules for the use of allowances to satisfy NNSR offset requirements. The adopted rulemaking leaves in place the generation of credits from mobile and area sources and revises the EBT Program rules in Chapter 101 to respond to 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 discrete emission reduction credits (DERCs) in the DFW 1997 eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) 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 prior 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, diminishing 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 these counties 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* adopted 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 adopted rulemaking does 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 intent to use and use 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 intent to use applications submitted by regulated entities from 2009 - 2014 requested the potential use of 3.2 to 11.4 tpd NO_x DERCs. However, the use applications submitted for this same time indicate that the actual NO_x DERC use ranged from 0.1 to 1.5 tpd.

The rulemaking replaces the previous annually-calculated NO_x DERC limit in §101.379(c) with a fixed limit of 17.0 tpd of NO_x DERC use. This limit applies only to NO_x DERCs generated and used in the nine-county DFW 1997 eight-hour ozone nonattainment area. The 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. In addition, the 17.0 tpd limit is consistent with the 16.3 tpd average of all of the NO_x DERC limits established from 2009 - 2015. The 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 from 2009 - 2014. The use of a fixed limit provides certainty to the affected regulated community and facilitates planning for the future use of NO_x DERCs. The limit also provides the affected regulated community with flexibility because it exceeds the amount of DERCs historically requested for use. The 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 adopted 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* adopted concurrently with this rulemaking provides details regarding the modeled ozone impacts of the new NO_x DERC limit in Section 3.7.4.2: *Discrete Emissions Reduction Credit (DERC) Sensitivity.*

Generating Credits from Area Sources

The previous rules allowed an area source to generate emission reduction credits (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 meet the EPA and Federal Clean Air Act (FCAA) requirements.

Under the 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 is 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 is required to submit detailed EIs annually and this facility-specific information is included in subsequent SIPs. To generate an ERC, an area source is also required to make the emission reductions permanent and 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 creates 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.

Based on these implementation issues, the commission proposed to remove the provisions for generating ERCs and DERCs from area sources. The commission received significant public comment opposing the removal of these area source credit provisions. Therefore, the commission is retaining the rules that allow an area source to generate credits. The commission emphasizes that significant issues remain with generating credits from area sources in a manner consistent with federal requirements. The commission will seek further input from interested parties on how this type of credit generation can be implemented so that area source credits meet FCAA requirements. As noted in the proposal preamble concerning the possibility of retaining these provisions, all of the proposed changes to the ERC and DERC Program rules in Chapter 101, Subchapter H, Divisions 1 and 4 also apply to area sources in the adopted rules.

Generating Credits from Mobile Sources

The previous rules allowed a mobile source to generate ECs from emission reductions that are demonstrated to be real, quan-

tifiable, permanent, enforceable, and surplus to the SIP and all applicable rules, and DECs 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 meet 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 ECs and DECs 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 of on-road vehicles is required in some areas.

Based on these implementation issues, the commission proposed to remove the provisions for generating credits from mobile sources. Similar to the provisions regarding area sources, the commission received significant public comment opposing the removal of these mobile source credit provisions. Therefore, as with the area source credit provisions, the commission is retaining the rules that allow a mobile source to generate credits. The commission emphasizes that significant issues remain with generating credits from mobile sources in a manner consistent with federal requirements. The commission invites input from interested parties on how this type of credit generation can be implemented so that mobile source credits meet FCAA requirements. Additionally, because the provisions for generating mobile credits (§101.304 and §101.374) were proposed to be repealed without any changes proposed but are being retained at adoption, the provisions in other rule sections that would affect mobile source credits are also not being adopted. In many parts of the rules, the language prior to proposal is being retained, but in places where changes are needed for credits generated by stationary sources, there will be separate provisions for mobile source and stationary source credits.

Using Allowances to Satisfy NNSR Offset Requirements

The rulemaking revises the MECT and HECT rules to provide clarity and additional flexibility for the use of allowances for NNSR offsets. The previous MECT rules limited 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 rulemaking expands 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 rulemaking also continues 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 previous MECT and HECT rules only addressed the use of allowances for the one-to-one portion of the offset requirement. The rulemaking expands the rules to provide for the use of allowances to satisfy any portion of the NNSR offset requirement. The revisions provide additional flexibility and do not adversely affect air quality because the amount of allowances in the MECT and HECT caps will not increase. The expansion of the rules to provide for the use of allowances to satisfy the environmental contribution portion of the NNSR offset requirement could 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 will be permanently retired, will not be used to simultaneously comply with the MECT or HECT Programs, and will 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 adopted amendments do not negatively affect the status of the state's progress towards attainment with the ozone NAAQS, do not interfere with control measures, and do not prevent reasonable further progress toward attainment of the ozone NAAQS.

General Revisions

The adopted rulemaking includes various administrative changes and other changes that are intended to provide flexibility in a manner consistent with the requirements in the SIP. The commission has determined that these rule changes will not increase emissions (and therefore, will not negatively affect the status of the state's progress towards attainment with the ozone NAAQS), will not interfere with control measures, and

will not prevent reasonable further progress toward attainment of the ozone NAAQS.

DERC Use in the DFW Area

The adopted rulemaking replaces the previous annually calculated NO_x DERC limit with a fixed limit of 17.0 tpd of NO_x DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. The prior methodology used to calculate the NO_x DERC limit incorporated 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 for the proposed rulemaking and indicated the 17.0 tpd limit does 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. However, on December 23, 2014, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) ruled on a lawsuit filed by the Natural Resources Defense Council, which resulted in vacatur of the EPA's December 31 attainment date for the 2008 ozone NAAQS. As part of the EPA's *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule* (2008 ozone standard SIP requirements rule), published in the *Federal Register* on March 6, 2015 (80 FR 12264), the EPA modified 40 Code of Federal Regulations (CFR) §51.1103 consistent with the D.C. Circuit Court decision to establish attainment dates that run from the effective date of designation, i.e., July 20, 2012, rather than the end of the 2012 calendar year. As a result, the attainment date for the DFW moderate nonattainment area has changed from December 31, 2018 to July 20, 2018. In addition, because the attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, the attainment year for the DFW moderate nonattainment area has changed from 2018 to 2017. While the modeling sensitivity run at proposal was for 2018, the results of that modeling run represent the best data available at this time concerning the effect of the 17.0 tpd limit on DERC use in the DFW 1997 eight-hour ozone nonattainment area. Details regarding the modeled ozone impacts of the new NO_x DERC limit are provided in Section 3.7.4.2: *DERC Sensitivity* of the *Attainment Demonstration SIP Revision for the DFW 2008 Eight-Hour Ozone Nonattainment Area* adopted concurrently with this rulemaking. Since this current modeling shows attainment with the 1997 eight-hour ozone NAAQS and that this limit does not substantively affect future design values in the DFW area for the 2008 eight-hour ozone NAAQS, the commission considers the 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 prior DERC limit and the results of the modeling sensitivity, the commission has determined that the rule change will not negatively affect the status of the state's progress towards attainment with the 1997 and 2008 ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the 1997 and 2008 ozone NAAQS.

Allowances Used for NNSR Offset Requirements

The adopted rulemaking revises the MECT and HECT rules to provide clarity and additional flexibility for the use of allowances for NNSR offsets. The rulemaking expands 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 rulemaking for the MECT and HECT Programs expands the rules to provide for the use of allowances to satisfy any portion of the NNSR offset requirement. The additional flexibility provided by the revisions does not adversely affect air quality because the amount of allowances in the MECT and HECT caps will not increase. Additionally, the use of allowances to satisfy the environmental contribution portion of the NNSR offset requirement will ultimately cause a permanent reduction in the overall MECT and HECT caps because these allowances will be permanently retired and not be returned when the facility shuts down. Therefore, the commission has determined that these adopted rule changes do not negatively affect the status of the state's progress towards attainment with the 1997 and 2008 ozone NAAQS, do not interfere with control measures, and do not prevent reasonable further progress toward attainment of the 1997 and 2008 ozone NAAQS.

Based on this analysis, the commission has determined that the adopted rulemaking will not negatively affect the status of the state's progress towards attainment with the 1997 and 2008 ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the 1997 and 2008 ozone NAAQS.

Section by Section Discussion

General Revisions

The commission proposed 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 adopted 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," and "Web site" to "website." However, these changes are not adopted in provisions relating to mobile source credits because these provisions were originally proposed for deletion.

In the 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 adopted rules, this use also means the staff in the EBT Program. Except in parts of the rule that were proposed for repeal but retained at adoption, for consistency, references to "owner" or "operator" are changed to "owner or operator" to indicate that these entities share the responsibility for certain actions in the rules. Throughout the parts of the rules not related to mobile source credits, the phrase "law, rule, regulation, or agreed order" in its entirety or in part is 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 or where the prior variations in wording are retained for mo-

bile source credits, 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 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. These changes are adopted even in provisions affecting mobile source credits because the original citation to 30 TAC §116.150 only applies to ozone nonattainment areas, so clarity that the provisions apply to nonattainment areas for other criteria pollutants that may be designated by the EPA are needed throughout the rules for credits that may be generated for other criteria pollutants to be available for offsetting purposes in the future. In some parts of the rules, the term "transfer" is changed to "trade" for consistency with the section titles; the use of "trade" is considered synonymous with "transfer" and is intended to include all types of transfers as well.

In the introductory paragraph of the definition section for each division, a sentence is 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 prior sentence in the introductory paragraph of each definition section is revised slightly for readability. The revisions are consistent with the definition sections in other subchapters in Chapter 101.

At adoption, the proposed revisions to replace the phrase "emission credit" with "emission reduction credit" or "ERC" and "discrete emission credit" with "discrete emission reduction credit" or "DERC" are not made because of the retention of credit generation by mobile sources. Additionally, the proposed revisions to update form names and form designations to include the program acronym are not made in these rules to avoid having outdated form names and designations in the rules; the wording is changed to generic phrasing such as "application," "form," etc. The use of these more generic application form names does not change the content of the required information.

Division 1: Emission Credit Program

Related to the retention of credit generation by mobile sources, the title of this division is changed from "Emission Credit Banking and Trading" to "Emission Credit Program" rather than the proposed change to "Emission Reduction Credit Program." In the rules, "emission credit" is used to refer to credits in general (i.e., from stationary and mobile sources), "emission reduction credit" or "ERC" for credits only from stationary sources, and "mobile emission reduction credit" or "MERC" for credits only from mobile sources. Throughout the division, the commission is removing requirements to submit EC certificates. The term "certificate" is not intended to mean a printed certificate but rather the record of the credit in the credit registry for consistency with current practice. This revision does not affect the way credits are generated, used, or traded. To ensure consistency with the retained provisions for mobile source credits, the commission is not adopting the proposed change of "certificate" to "identification number." Throughout the division, the commission is removing references to 30 TAC Chapter 114 because there are no longer any provisions therein for which credits can be used for compliance.

Section 101.300, Definitions

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any substantive proposed revisions to the following terms: "activity," "actual emissions," "curtailment," "emission reduction," "emission reduction strategy," "facility," "generator," "permanent," "protocol," "quantifiable," "real reduction," "shutdown," "strategic emissions," "surplus," and "user." The commission is not adopting the proposed revisions to avoid inconsistencies and confusion that may occur because of non-substantive differences between the definitions of the same term for facilities and mobile sources. These terms will continue to be defined as they were in the prior rules.

In addition, the commission is retaining the definitions that were proposed to be removed for the following terms: "emission credit," "mobile emission reduction credit," "mobile source," "mobile source baseline activity," "mobile source baseline emissions," and "mobile source baseline emission rate." The commission is not adopting the proposed removals because these definitions apply to mobile sources. These terms will continue to be defined as they were before proposal. The subsequent definitions are renumbered from proposal as needed.

As part of retaining provisions related to area sources, the definition of "area source" at §101.300(3) is not deleted, and the proposed numbering of subsequent definitions are revised. The definitions of "baseline activity" previously at §101.300(4) and "baseline emission rate" previously at §101.300(5) are deleted because they were not consistent with the calculation methodology used to generate ERCs and are redundant due to the adopted definition of "historical adjusted emissions."

The commission is amending the definition of "baseline emissions," renumbered as §101.300(4), 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) replace the phrase "the product of baseline activity and baseline emission rate not to exceed all limitations required by applicable local, state, and federal rules and regulations" with "the lowest of the facility's historical adjusted emissions or state implementation plan emissions" to better describe the values that limit baseline emissions. Because the definitions relevant to mobile sources are being retained, the commission notes that the definition of "baseline emissions" (i.e., for facilities) is adopted in a form that is significantly different than the definition of "mobile source baseline emissions," which reflects the differences in the provisions for generating credits from each of these types of sources.

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting the proposed definition of "compliance account" in §101.300(5) and the subsequent definitions are renumbered from proposal. This definition is not adopted to promote consistency between the rules for stationary and mobile sources and instead the commission will continue to generally refer to an account (also known as a portfolio) to specify where credits are held. The commission is not adopting the proposed removal of the definition of "emission credit," which will be renumbered as §101.300(7). At §101.300(8), a definition of "emission rate" is added to specify the facility's rate of

emissions per unit of activity. The definition is the same as the prior definition of "baseline emission rate" and is being renamed because the term is used to describe a facility's emission rate in contexts other than determining the two-year average baseline emissions. In renumbered §101.300(10), a change is made 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.

A definition of "historical adjusted emissions" is added as §101.300(14), and the subsequent definitions are renumbered. The definition specifies 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 definition contains the applicable portions of the previous definition of "baseline emissions" and the previous equation for calculating baseline emission in previous §101.303(c). Throughout the division, this term replaces other references to the facility's emissions before implementing the emission reduction strategy calculated as the average emissions during any two consecutive years. This term does not apply to ERCs generated from mobile sources, as it only applies to facilities.

The definition of "most stringent allowable emissions rate" previously at §101.300(20) is deleted because the term is not used in Division 1. Subsequent definitions are renumbered. The definition of "source" previously at §101.300(27) is deleted because it is not needed. The only use of the word "source" in Division 1 is in terms like "area source" or "mobile source" that are defined separately.

For conciseness throughout Division 1, the term "state implementation plan emissions" is added as §101.300(27), and subsequent definitions are renumbered. In response to comments, this term was revised from proposal to make updates for area sources, clarify which SIP revisions are applicable, and to provide an additional option for generating ERCs once the area is designated nonattainment. Throughout the division, the commission uses this new term to replace other references to the EI used in the SIP.

SIP emissions are based on the emissions data for a full year (rather than just for part of a year, such as ozone season or winter months for carbon monoxide) in the state's EI required under 40 CFR Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. However, these EI values are adjusted if necessary to ensure the SIP emissions used for the facility do not exceed any (i.e., the most stringent overall) applicable local, state, or federal requirement, regardless of whether the exceedances were included in the state's EI. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. For example, if an area were designated nonattainment for sulfur dioxide (SO_2) and ozone, the SO_2 SIP revision would not be used to determine the SIP emissions for a facility applying for NO_x ERCs emissions; rather the ozone SIP would be used because it includes NO_x emissions, which are precursors to that criteria pollutant.

Subparagraph (A) requires a facility's SIP emissions to be determined from the EI year that was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision for the current NAAQS, whichever was most recently submitted to the EPA. If neither of these SIP revisions has been submitted for the nonattainment area and the relevant pollutant, the applicable SIP revision listed in subparagraphs (B) - (D) must be used.

Subparagraph (B) requires a facility's SIP emissions to be determined from the EI year that was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS, whichever was most recently submitted to the EPA. The SIP revisions specified in subparagraph (B) only apply if the AD or maintenance SIP revisions identified in subparagraph (A) have not been submitted to the EPA. If neither of these SIP revisions has been submitted for the nonattainment area and the relevant pollutant, the applicable SIP revision listed in subparagraph (C) or (D) must be used.

Subparagraph (C) requires a facility's SIP emissions to be determined from the EI year that corresponds to the EI for the most recent EI SIP revision submitted to the EPA. For a new nonattainment area, an EI SIP revision is typically required to be submitted within two years after the effective date of the designation. The SIP emissions will no longer be determined from the EI SIP after an AD or maintenance plan SIP revision is submitted to the EPA for the current (or subsequent) NAAQS for the applicable criteria pollutant. The SIP revision specified in subparagraph (C) only applies if neither of the SIP revisions identified in subparagraphs (A) and (B) has been submitted to the EPA.

Subparagraph (D) requires a facility's SIP emissions to be determined from the EI year that corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA. Subparagraph (D) only applies if the SIP revisions identified in subparagraphs (A) - (C) have not been submitted to the EPA. This option is being added in response to comments to ensure that credits can be generated beginning on the effective date of the nonattainment designation as opposed to restricting credit generation until after an EI SIP revision is submitted to the EPA, which could be two years after the effective date of the designation. The commission anticipates that the executive director will have determined the inventory year for the EI SIP either when, or shortly after, an area is designated nonattainment as part of the SIP planning process because there is a limited amount of time before the EI SIP is required to be submitted to the EPA. The commission encourages anyone interested in generating credits in a newly designated nonattainment area to contact the EBT program to determine the appropriate year required to determine the SIP emissions.

An AD or maintenance plan SIP revision submitted for the previously issued NAAQS could be used even if this standard has been revoked, but only if it is for the same averaging time and form of the criteria pollutant. For example, the SIP emissions would be based on the EI year used in the AD or maintenance plan SIP revision most recently submitted to the EPA for the 1997 eight-hour ozone NAAQS until an AD or maintenance plan SIP is submitted for the 2008 (or any subsequent year) eight-hour ozone NAAQS for that area. However, if no AD or maintenance plan SIP has been submitted for any eight-hour ozone NAAQS, the SIP emissions would be based on the inventory year that was, or will be, used in the EI SIP submitted for that area even if an AD SIP revision was previously submitted for the one-hour ozone NAAQS in the area. If an AD or maintenance plan SIP has

been submitted for the 1997 eight-hour ozone NAAQS and an EI SIP was later submitted for the 2008 eight-hour ozone NAAQS, the SIP emissions would continue to be based on the AD or maintenance plan SIP submitted for the 1997 eight-hour ozone NAAQS. However, if an AD or maintenance plan SIP was submitted for the one-hour ozone NAAQS and an EI SIP was later submitted for the 2008 eight-hour ozone NAAQS, the SIP emissions would be based on the EI SIP for 2008 eight-hour ozone NAAQS.

Section 101.301, Purpose

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting the substantive proposed revisions to this section, except to remove the reference to the definition of facility in 30 TAC §116.10 since the term facility is already defined in this division; the word "another" is 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; and the phrasing "reducing emissions beyond the level required by any local, state, and federal regulation" is changed to "reducing emissions beyond the level required by any applicable local, state, or federal requirement." The commission retains the phrase "or mobile source" that was proposed for removal.

Section 101.302, General Provisions

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting many of the proposed revisions to this section to avoid inconsistencies and confusion that may occur because of non-substantive differences for facilities and mobile sources.

In §101.302(a)(1), proposed as §101.302(a), the commission changes wording for clarity and consistency and changes the provisions for the inter-pollutant use of ERCs to a citation of §101.306(d) where the provisions for inter-pollutant use are covered. The commission is also adopting §101.302(a)(2), which includes the prior rule language in §101.302(a) specific to mobile sources. The commission is keeping this language to ensure that the existing requirements for mobile sources are not affected by this rulemaking.

As part of retaining the provisions for mobile and area sources to generate credits, the commission is not adopting any of the proposed changes in §101.302(b) except that a citation to the federal conformity rules, 40 CFR Part 93, Subpart B, is added at adoption to §101.302(b)(3) (instead of to §101.302(b) as proposed) to replace the reference to §101.30, which no longer exists.

The commission is not adopting the proposed revision to the catch line in §101.302(c). At proposal, the commission requested comment on whether it was necessary to retain §101.302(c)(1)(D) or if the added definition of "SIP emissions" had made this subparagraph obsolete. Based on comments that it is not needed with the added definition of "SIP emissions," the commission is removing at adoption the proposed language in §101.302(c)(1)(D). As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting the proposed removal of §101.302(c)(2) or the proposed revisions to §101.302(c)(3), proposed as §101.302(c)(2), and these provisions will not be changed by this rulemaking.

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting the proposed changes to §101.302(d)(1). In §101.302(d)(1)(A) and (B), the phrase "the owner or operator of" is added to clarify that this person (rather than the facility) must quantify reductions. In §101.302(d)(1)(A), the citations of §117.210 and §117.1110 are deleted because these sections are in the process of being repealed from 30 TAC Chapter 117. At adoption, the commission is changing the phrase "the testing and monitoring methodologies identified" in the last sentence to "the testing and monitoring methodologies required under Chapter 117" because neither the provision nor the cited sections identify the testing and monitoring methodologies. The phrase "for that pollutant" is added to clarify that the testing and monitoring methodology in Chapter 117 must be for the same pollutant because there are different methodologies provided for different pollutants and the methodology for one pollutant is not appropriate for a different pollutant. Additionally, the commission notes that, in addition to the emission specifications for NO_x, there are emission specifications for carbon monoxide in some of the sections cited. The commission intends that this provision apply to both NO_x and carbon monoxide, as well as any other criteria pollutants if any emission specifications and testing requirements are adopted in the future. The commission recognizes that the emission specifications for carbon monoxide have not been submitted to the EPA for SIP approval, but the testing requirements that the provision requires to be used have been submitted.

In §101.302(d)(1)(B), a citation of 30 TAC Chapter 115 as a whole replaces the citations of specific sections to ensure that all monitoring and testing requirements are reflected. The clause "quantify volatile organic compound reductions using the testing and monitoring methodologies" is changed to "use the testing and monitoring methodologies" for conciseness and the word "identified" is changed at adoption to "required under Chapter 115" because §101.302(d)(1)(B) does not identify the testing and monitoring methodologies.

In response to an EPA comment about the protocol of any area source having to be submitted for EPA approval before use, the commission adds §101.302(d)(1)(C) at adoption, and the previous §101.302(d)(1)(C) is re-lettered as §101.302(d)(1)(D). Further, the commission intends adopted §101.302(d)(1)(C) to mean that the owner or operator of a facility (including an area source) that is not subject to any specific testing and monitoring requirements may use a protocol or EPA method that is approved by the executive director and submitted to the EPA for quantifying emissions from that source category, as long as it is the same specific type of facility. Therefore, the commission intends that only new protocols for facilities must be submitted for EPA approval, rather than requiring such review when there is already a protocol approved by the EPA for the same type of facility.

Because of the addition of §101.302(d)(1)(C), the commission adds at adoption to the start of re-lettered §101.302(d)(1)(D) the clause "except as specified in subparagraph (C) of this paragraph" for clarity but is not removing the reference to mobile sources as was proposed. Because of the retention of credit generation by mobile sources, the commission is not adopting any of the proposed changes to §101.302(d)(1)(D)(i) and (ii) and these clauses will not be affected by this rulemaking.

In re-lettered §101.302(d)(1)(D)(iii), the phrase "the owner or operator of" is added to clarify that this person (rather than the facility) must use continuous emission monitoring system data if available for the facility. In re-lettered §101.302(d)(1)(D)(iii), the word "actual" is removed before "emissions" for clarity because the use of a continuous emissions monitoring system or predictive emissions monitoring system is not consistent with how the

term "actual emissions" are defined. The commission is adopting the proposed non-substantive changes to §101.302(d)(1)(D)(iv) - (vi) to clarify the provisions.

In §101.302(d)(2), the phrase "required under" is changed to "specified in" because the referenced paragraph (1) does not itself require monitoring and testing data. At adoption, the commission is also adding "the facility" to clarify that these data substitution procedures only apply to facilities and not mobile sources, which is consistent with the prior rule. For clarity, the provision previously in §101.302(d)(3) requiring the use of the most conservative method is moved to paragraph (2). The word "conservative" is intended to mean the method that results 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 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" is 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 is used to determine the excess emissions to be covered. The provision in §101.302(d)(3) is changed to clarify that both a generator and user of ERCs who uses the alternative data allowed under §101.302(d)(2) must provide justification for not using the methods in §101.302(d)(1) and for the method used.

The provisions in §101.302(e)(2) are rewritten for clarity to specify that the executive director (i.e., program staff) must review an application. The changes also indicate that a number will be assigned to each ERC certified. Although not explicitly stated in the rule, the commission plans to continue the prior practice of assigning one number for multiple ERCs that are generated from the same site and expire on the same date. The changes also indicate that a new number will be assigned when an ERC is partly used or traded. Although not explicitly stated in the rule, this provision includes separate 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" is added after the word "creditable" in the last sentence. The phrase "upon completion of the public comment period" in §101.302(e)(5) is changed to "after the EPA's 45-day adequacy review of the protocol" because the prior language is not consistent with the requirements of §101.302(d)(1)(D)(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 will review the ERCs and make appropriate adjustments to the amount certified.

The commission revises §101.302(g) to make non-substantive wording changes to clarify that credit notices are submitted to the executive director rather than the credit registry. In §101.302(h) the word "immediately" is 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 revisions do 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 adopted in §101.302(j) to change the term "an organization" to "a person" in two locations. The term "person," as defined in §3.2(25), includes organizations, individuals, and other legal entities and is used in the adopted language to better describe all that can participate in the ERC Program. As part of retaining provisions for mobile sources, other proposed changes are not made to the subsection.

The commission had proposed to remove prior §101.302(l), but it is retained as part of retaining provisions for 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 101.303, Emission Reduction Credit Generation and Certification

In §101.303(a), the catch line "methods of generation" is changed to "emission reduction strategy" to have consistent use of the latter term throughout the division. In §101.303(a)(1), the word "methods" is changed to "strategies" to be consistent with the use of "emission reduction strategy" elsewhere in Division 1. In §101.303(a)(1)(B) and (C), the phrase "level required of the facility" is changed to "baseline emissions for the facility" for consistency with the defined term and to clarify that the level is any (i.e., the most stringent overall) applicable local, state, or federal requirement. In §101.303(a)(2)(A), extra wording regarding "site" that is in the definition of "site" is removed. In §101.303(a)(2)(C), the phrase "the shutdown of" is deleted and wording is clarified to say that reductions from a facility that does not qualify as having SIP emissions are not eligible because all emission reductions from stationary sources that generate ERCs (not just those from shutdowns) must be from facilities that have SIP emissions.

In §101.303(b)(1), language changes specify that the SIP emissions set one possible upper limit for the baseline emissions used in certifying an ERC. Language pertaining to 30 TAC §116.170(b) is removed from §101.303(b)(1) because the applicable deadlines specified in §116.170(b) have passed and the language is no longer relevant. The commission revises §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 limits 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 ensures 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 deleted because it is not needed and only recapitulates how the term "strategic emissions" is defined. The equation for calculating ERCs generated in Figure: 30 TAC §101.303(c) is changed. The prior equation has been incorporated into the definition of historical adjusted

emissions. The changes are intended to reflect the previous 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 adopted 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 extends the deadline to submit an application for ERCs in §101.303(d)(1) from 180 days to two years after the implementation of the emission reduction strategy. The commission notes that with the retention of §101.304 at adoption without changes, applications for mobile ERCs will still have a deadline of 180 days. Because the commission proposed to repeal §101.304, the commission did not propose to change the deadline for submitting an application to certify mobile ERCs and did not take comment on any change of the deadline for submitting applications to certify mobile ERCs. Therefore, the deadline in §101.304 for submitting an application to certify mobile ERCs remains at 180 days after implementation of the emission reduction strategy and will be different from the deadline for applications to certify ERCs from stationary sources. This change for stationary source ERCs does not alter the lifespan of an ERC, which continues to be five years after the implementation of the emission reduction strategy, but allows 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 application. The prior 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 adopted two-year period does 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 in §101.303(d)(1) will 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 will 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.

Non-substantive changes are made 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 specifically added to the list of required documentation. However, this change does not require the applicant to submit any information that is not currently required. Amendments in §101.303(d)(3)(F) 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, §101.303(d)(4)(C) is revised to cover the provisions previously in §101.303(d)(4)(D) and (E). The references to the Special Certification Form for Exemptions and Standard Permits (Form PI-8) are updated to the current Certification of Emission Limits (Form APD-CERT). Revisions to subparagraph (C) 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) could 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. Prior §101.303(d)(4)(D) and (E) are deleted because they are no longer needed.

Section 101.304, Mobile Emission Reduction Credit Generation and Certification

The proposed repeal of §101.304 is not adopted, and this section will remain in the rules unchanged. Because no changes were proposed, the public had no opportunity to provide public comment; therefore, no changes are made in this section to be consistent with the other changes adopted for this division.

Section 101.306, Emission Credit Use

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed changes in §101.306(a) except as follows. A citation to the federal conformity rules, 40 CFR Part 93, Subpart B, is added to §101.306(a)(2) to replace the reference to §101.30, which no longer exists. The reference to Chapter 114 in §101.306(a)(3) is deleted because there are no longer any provisions in Chapter 114 for which credits can be used for compliance. In §101.306(a)(4), the reference to §116.150 is changed to Chapter 116, Subchapter B, and at adoption the name of the chapter is referenced since the proposed mention of this chapter in a previous paragraph is not being adopted. Prior §101.306(a)(5) is deleted because the provisions for converting credits to allowances under the MECT Program have expired and the provisions for converting credits to allowances under the HECT Program are removed. Prior §101.306(a)(6) is deleted because the motor fleet requirements in §114.201 have been repealed. Because of the deletions, prior §101.306(a)(7) is renumbered as §101.306(a)(5), and rewording is made for conciseness.

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed changes in §101.306(b) except as follows. In §101.306(b)(1), the citation of §116.150 is changed to Chapter 116, Subchapter B. In §101.306(b)(2), references to Chapter 114 are removed because Chapter 114 no longer has any provisions for which credits can be used for compliance. The equations in Figure: 30 TAC §101.306(b)(2) and Figure: 30 TAC §101.306(b)(3) are updated to current figure format requirements. In §101.306(b)(3), references to §117.223 and §117.1120 are removed because these sections are repealed concurrent with this rulemaking.

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting many of the proposed revisions in §101.306(c). The catch line of §101.306(c) is not changed. The provision previously in §101.306(c)(1) is not being removed and is instead being renumbered at adoption as §101.306(c)(2). The requirement to identify the ERCs to be used as offsets before permit issuance is 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 catch line is being added to new paragraph (1) at adoption to clearly indicate that the provisions in this paragraph apply to applications to use ERCs. New paragraph (1) clarifies that the executive director will not accept an application to use ERCs until an ERC is available in the account (also known as a portfolio) for the site where the ERC will be used. Section 101.306(c)(1) also specifies that, if the ERC will be used for NNSR offsets, the executive director will not accept the use application before the applicable NNSR permit application is administratively complete.

Section 101.306(c)(1)(A), which was proposed as §101.306(c)(2)(A), is renumbered at adoption and requires the user to submit a completed application to use ERCs at least 90 days before the start of operation for an ERC used to satisfy NNSR offsets requirements. Adopted subparagraph (A) revises the requirement previously in §101.306(c)(1) to change the deadline for submitting the application 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, adopted subparagraph (A) also removes the requirement previously 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. Section 101.306(c)(1)(B), which was proposed as §101.306(c)(2)(B), is renumbered at adoption and requires the user to submit a completed application to use ERCs 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. Adopted subparagraph (B) revises the requirement previously in §101.306(c)(2) to remove the obsolete references to Chapter 114 and the original ERC certificate. Adopted subparagraph (B) also removes the redundant provision that users must keep records since this requirement is in §101.302(g). The provision that ERCs can only be used after executive director approval is deleted for consistency with the amendments made to §101.306(c)(1). Adopted §101.306(c)(1)(C), which was proposed as §101.306(c)(4), specifies that if the executive director approves the ERC use, the date the application is submitted will be considered the date the ERC is used.

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting the proposed removal of prior §101.306(c)(1) and is instead renumbering the provision as §101.306(c)(2)(A). A catch line is being added to paragraph (2) at adoption to clearly indicate that the provisions in this paragraph apply to applications to use MERCs. Adopted subparagraph (A) retains the prior requirements except that some wording changes are included to indicate that these provisions only apply to MERCs, to remove a reference to the title of Chapter 116, and to remove the requirement to submit the original credit certificate. The commission notes that unlike the new provisions for ERCs in §101.306(c)(1)(A), the rules will continue to require MERCs used as NNSR offsets to be identified prior to permit issuance and require the application to use MERCs to be submitted prior to construction. As part of retaining the provisions for mobile sources to generate credits, at adoption the commission is renumbering prior §101.306(c)(2) as §101.306(c)(2)(B). Adopted subparagraph (B) retains the prior requirements except that some wording changes are included to indicate that these provisions only apply to MERCs, to remove the reference to Chapter 114 because there are no longer any provisions in Chapter 114 for which credits can be used for compliance, and to remove the requirement to submit the original credit certificate. In §101.306(c)(3), the proposed removal of language is not adopted, except for the removal of the unnecessary phrase "by the executive director's decision" after "affected person" since affected persons are those affected by the executive director's decision.

The commission is moving 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 §101.306(d) because this is the section pertaining to ERC use. Adopted subsection (d) revises the language moved from §101.302(a) to limit inter-pollutant use to NO_x and VOC ERCs used as NNSR offsets. The changes are consistent with EBT guidance on inter-pollutant use of ERCs as offsets for NNSR permits. Adopted subsection (d) also revises the language moved from §101.302(a) to specify that NO_x and VOC ERCs may be used to meet the NNSR offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution. In response to comments, subsection (d) was revised to further clarify the requirements. The term "photochemical modeling" is used in place of the prior term "urban airshed modeling" because this older type of photochemical modeling software is no longer used extensively. The commission expects that any acceptable demonstration will use the photochemical modeling system used by the commission for the area's AD SIP. The language moved to §101.306(d) continues 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

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed revisions in §101.309(a) and (b)(1), except for a non-substantive substitution of "before" for "prior to" in §101.309(b)(1). All ERCs with a ten-year lifespan have been used or have expired so the obsolete language in §101.309(b)(2) is deleted, and the subsequent paragraphs renumbered, but the commission is not adopting any of the proposed revisions to the language in renumbered §101.309(b)(2). The language in renumbered §101.309(b)(3) is amended to remove the obsolete reference to paragraph (3) but none of the other proposed changes to this paragraph are being adopted. As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed revisions in §101.309(c), except changing the word "insure" to "ensure" for clarity and the phrasing "all current state and/or federal rules, regulations, or requirements which" to "all current local, state, and federal requirements that" for conciseness and consistency. In §101.309(d)(1), the proposed change to specify that a seller must submit the trade form is adopted, as well as substituting "before" for "prior to," but no other proposed changes are made. In §101.309(d)(2), the proposed wording changes for conciseness are adopted, but other proposed changes are not made. In §101.309(e), the proposed changes are not adopted, except that the reference to §116.150 is changed to Chapter 116, Subchapter B.

Division 3: Mass Emissions Cap and Trade Program

Section 101.350, Definitions

In §101.350(2), the commission defines 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 are renumbered. The definition of "banked allowance" at §101.350(4) is renamed as "vintage allowance" in adopted 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 moved and "while" added at the beginning to make it clear that allowances can be used for compliance after being transferred from a broker account. The definition of "compliance account" at §101.350(7) is 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. In the definition of "control period" at §101.350(8), the word "begins" is changed at adoption to "began" because the initial control period is in the past.

A change is made to the definition of "existing facility" at §101.350(9). The first letter of "facility" is not 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 changed from a citation of the definition in §101.1 to a list of the counties in that area. This change is made to allow for flexibility if it is needed by the commission.

The definition of "person" at §101.350(12) is deleted and the subsequent definitions are renumbered. The term "person" is defined somewhat more broadly in §3.2, and that definition does not cause any issue with the single use of this term in Division 3. The definition of "vintage allowance" is adopted 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 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 made for conciseness, and the phrase "one or more" is 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 added. In §101.351(a)(2), the word "ten" is 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 made to improve the readability of §101.351(b) and (c). Additionally, an error in §101.351(b) is 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, adopted subsection (d) clarifies that the requirements of this division also apply to brokers and broker accounts.

Section 101.352, General Provisions

Revisions in §101.352(a) 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 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) incorporate the newly defined term "affected facility" and to clarify that this provision only applies to generating NO_x ERCs. Revisions to §101.352(c)(1) 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 is updated to reflect the change made to the title.

The provisions for using allowances for offsets in §101.352(e) are substantially rewritten for clarity and completeness. The prior provision only addressed 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 is replaced with new provisions that are more complete and specify the requirements for using MECT allowances for offset purposes in NNSR permits. Subsection (e) specifies 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.

Adopted §101.352(e)(1) requires the owner or operator to use a permanent allowance allocation 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. Adopted §101.352(e)(1) clarifies 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 NO_x emission increase from the affected facilities must be offset at all times. The use of vintage allowances results 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. Adopted §101.352(e)(1) clarifies that an allowance used for offsets may not be banked, traded, or used for any other purpose other than simultaneous use for MECT compliance. Adopted §101.352(e)(1) also indicates 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 previous requirements in this subsection.

Adopted §101.352(e)(2) requires the owner or operator to permanently set aside allowances for offsets by submitting an application form at least 30 days before the start of operation of the affected facility. Adopted §101.352(e)(2)(A) specifies that the executive director will permanently set aside in the site's compliance account an allowance allocation equal to the amount specified to be used for the one-to-one portion of the offset ratio. Allowances that are no longer required to be "used" for the one-to-one portion of the offset ratio may be returned in accordance with paragraph (3) of this subsection. The permanent set-aside will help ensure that the total amount of allowances allocated to the compliance account is at least the amount required to be used for the one-to-one portion of the offset ratio because the owner will not be able to trade allowances that would cause the account to drop below that amount. Adopted subparagraph (A) specifies that if the allowances set aside for offsets devalue in accordance with §101.353(d), such that the total allocation balance in the compliance account falls below the amount required in the NNSR permit for offsets, the owner or operator is required to submit an application at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. The owner or operator can either obtain an additional permanent allocation of allowances sufficient to ensure the compliance account balance is equal to the amount of allowances required to be set aside for

the one-to-one portion of the offset ratio or, if the NNSR permit authorizes the use of credits for offsets, the owner or operator can revise the amount of allowances set aside for offsets. The owner or operator also needs 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 and for MECT compliance. Adopted subparagraph (A) also clarifies 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.

Adopted §101.352(e)(2)(B) specifies that the executive director will permanently retain an allowance used for the environmental contribution portion of the offset ratio. Adopted subparagraph (B) prohibits an allowance used for the environmental contribution portion of the offset ratio from being used for compliance with this division. Subparagraph (B) also specifies that allowances set aside for this purpose will not devalue due to regulatory changes because this portion of the offset requirement is 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 §101.352(e)(3)(A), the allowance could then be used for compliance with this division and would again be subject to any devaluation due to regulatory changes, including any devaluations that occurred while the allowances were being used for offsets.

Adopted §101.352(e)(3)(A) allows 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., credits) for the NO_x offset requirement. Adopted §101.352(e)(3)(B) allows 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, but not for allowances set aside for the environmental contribution portion of the offset requirement. If a request submitted under §101.352(e)(3)(A) or (B) is approved, the release becomes effective in the control period following the date that the alternative means of offsetting takes effect, and allowances will not be released retroactively for any previous control periods.

For consistency, non-substantive amendments are made 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" is 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 shorted to "the number of allowances will be rounded up to the nearest tenth of a ton when determining allowances used." An amendment is made 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 specifies that the executive director (rather than the commission) will maintain a registry of the allowances in both compliance and broker accounts.

Adopted §101.352(j) is 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 will hold accountable for MECT compliance and does not preclude the two parties from arranging for compliance as part of the sale of the site. Subsection (j) requires the new owner to contact the EBT Program to request a compliance account for the site. The provision ensures that the executive director has accurate information about the owner or operator that is responsible for demonstrating compliance with the MECT Program. Subsection (j) also clarifies 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 in §101.353(a) clarify that the executive director deposits allowances. The prior equation for allocating MECT allowances in Figure: 30 TAC §101.353(a) is replaced with a simpler equation and updated to current formatting standards. The obsolete factors B (baseline emission rate) and X (reduction factor) in the prior equation are removed because the deadlines have passed where these would affect the calculation. In the prior 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 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 in §101.353(b)(1) - (4) 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 provisions previously in §101.353(b)(5) are combined into §101.353(b)(4) by using the defined term "existing facility."

The requirements previously in §101.353(c) are moved to §101.354(h) because this section contains the provisions related to deducting allowances from a site's compliance account.

The obsolete provision previously in §101.353(d)(1) that the executive director will allocate allowances initially by January 1, 2002, is removed. The provision for subsequent allocations previously in §101.353(d)(2) is re-lettered as §101.353(c) and specifies that the executive director will allocate and deposit allowances into each compliance account by January 1 of each year. Prior §101.353(e) and (f) are re-lettered as §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" is 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 previously in §101.353(g)(1) has passed, so this obsolete provision is deleted, with §101.353(g)(2) and (3) redesignated as §101.353(f)(1) and (2), respectively. Revisions to redesignated §101.353(f)(1) include updating the citation for the variable related to allowances allocated based on permit allowable emissions. In prior §101.353(h), which is re-lettered as §101.353(g), the phrase "activity levels" is changed twice to "level of activity" for consistency with the defined term.

Section 101.354, Allowance Deductions

In §101.354(a), amendments specify that the deduction of allowances is the responsibility of the executive director and that the amount deducted is equal to the NO_x emissions from all affected facilities. The phrase "based upon" is changed to "quantified using" for clarity.

Amendments in §101.354(b) clarify that the substitute data will be used to quantify (rather than report) emissions. The provision to use the equation currently provided in Figure: 30 TAC §101.354(b) instead of the listed substitute data sources is 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 made 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 previously in §101.354(b) is moved with non-substantive changes to §101.354(b)(1) and requires 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 specifies 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 ensures 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 will 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) will 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 changed to "vintage" for consistency with the revisions to these terms in §101.350. 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 is updated to reflect the changes to the equation in Figure: 30 TAC §101.353(a), and the phrase "other facilities at the same site during the same control period" is 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 redundant provision in §101.354(g) is removed 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. Adopted §101.354(g) specifies 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) will be reduced by the amount of allowances deducted for the one-to-one portion of the NNSR offset requirement in accordance with §101.352(e)(2)(A). Consistent with the previous provisions in §101.352(e), adopted subsection (g) provides 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 §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 §101.352(e)(2)(A). If the amount of allowances deducted under §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 requirements previously in §101.353(c) are moved to §101.354(h) and (h)(2) because §101.354 contains provisions related to allowance deductions. Consistent with previous §101.353(c), §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%. Adopted §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 previous §101.353(c), §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 in §101.356(a) - (c) update the formatting. Changes in §101.356(a) also include the use of the new term vintage allowance. The provisions previously in §101.356(d) - (f) are consolidated to minimize repetition and shorten the rules. The provisions previously in §101.356(d)(2), (e)(2), and (f)(2) are combined in §101.356(d). Adopted subsection (d) requires 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 previously in §101.356(d)(1) and (3), (e)(1), and (f)(1) are combined into subsection (d)(1) - (3), respectively. Subsection (d)(1) requires the seller to submit an application 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. Subsection (d)(2) requires the seller to submit an application to permanently trade ownership of any portion of the allowances allocated annually to an individual facility. Subsection (d)(3) requires the seller to submit an application to trade any portion of the individual future year allowances to be allocated annually to an individual facility.

The provisions previously in §101.356(d)(4), (e)(3), and (f)(3) are combined in §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 revisions do 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 previously in §101.356(d)(5), (e)(4), and (f)(4) are combined in §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 previous provisions limiting trading are still needed until those allowances are recertified or voided. Therefore, the provision that allowable allowances cannot be banked or traded previously in §101.356(g)(1) is redesignated as §101.356(g). The provision previously in §101.356(g)(2) for allowances allocated before January 1, 2005 is no longer needed because these allowances have expired and is deleted.

Non-substantive changes are made to the provisions for using DECs for MECT compliance in §101.356(h) to update terminology and references. The provisions in §101.356(h)(2) - (4) are deleted because they are obsolete and subsequent paragraphs are renumbered. Prior §101.356(h)(5) and (6) are renumbered as §101.356(h)(2) and (3) with non-substantive changes to be clear that a ton-for-ton substitution is intended. At adoption, changes are made to §101.356(h), §101.356(h)(1), and renumbered §101.356(h)(5) to reinstate the use of "MDERCs" where this acronym was proposed for deletion, and in renumbered §101.356(h)(3), the proposed addition of "by a stationary source" is removed. In renumbered §101.356(h)(5) changes improve the grammar and specify that the owner or operator of the site must submit the required application and to remove the requirement to submit the DEC certificate(s). Prior §101.356(h)(7) and (10) are 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 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 clarify the meaning, and the word "ton" is added at adoption in the location where it was inadvertently left out at proposal. The obsolete provisions in §101.356(i) are removed 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 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 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. Revisions clarify that the owner or operator, rather than a facility, is required to file the annual compliance report. The phrase "by March 31 of each year" is deleted because it is not needed with the initial change made to the subsection. The word "detailing" is changed to the phrase "which must include" because the listed information is all required for an annual compliance report. In §101.359(a)(1) the phrase "from applicable facilities at the site" is added to clarify that only NO_x emissions subject to Division 3 are to be reported. The 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" is 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" is 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 report submitted.

The commission adopts §101.359(a)(5) to require 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 clarifies that the owner or operator of a site, rather than the site itself, is responsible for submitting an annual compliance report. Subsection (c) provides a mechanism to allow the owner or operator of a site that has been subject to Division 3 to stop filing an annual compliance report annually if the site no longer has any affected facilities. To do so, the owner or operator must 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 an annual compliance report. 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.

Section 101.360, Level of Activity Certification

The deadline of June 30, 2001, for certifying historical level of activity in §101.360(a) is deleted because it is obsolete; although the deadline for filing an application to certify the level of activity has passed, certain facilities could still certify activity if any provi-

sion in §101.360(a)(1) - (3) is met. For clarity, a new sentence is added to put "as follows" near "historical level of activity" rather than after the list of supporting documentation. For consistency, the revisions in §101.360(a)(2) use the term "existing facility" instead of including a description of this already defined term.

In §101.360(b)(1), the word "certify" is moved and the word "from" changed to "after" to improve the readability. In §101.360(c) "such" is changed to "the" because a specific certification is referenced. In the last sentence of §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 Program

Related to the retention of credit generation by mobile sources, the title of this division is changed from "Discrete Emission Credit Banking and Trading" to "Discrete Emission Credit Program" rather than the proposed change to "Discrete Emission Reduction Credit Program." Throughout the division, the commission removes requirements to submit DEC certificates but is not adopting the proposed revision to change the term "certificate" to "identification number" for consistency with the retained rules for mobile sources. This revision does not affect the way DERCs are generated, used, or traded. Throughout the division, the commission removes references to Chapter 114 because there are no longer any provisions therein for which DECs can be used for compliance.

Section 101.370, Definitions

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the substantive proposed revisions to the following terms: "activity," "actual emissions," "curtailment," "emission reduction," "emission reduction strategy," "facility," "generator," "protocol," "real reduction," strategy activity," "strategy emission rate," "surplus," "use period," and "user." The commission is not adopting the proposed substantive revisions to avoid inconsistencies and confusion that may occur because of non-substantive differences between the definitions of the same term for facilities and mobile sources, but some non-substantive revisions are adopted for conciseness and consistency. These terms will continue to be defined as they were in the prior rules.

In addition, the commission is retaining the definitions that were proposed to be removed for the following terms: "area source," "discrete emission credit," "mobile discrete emission reduction credit," "mobile source," "mobile source baseline activity," "mobile source baseline emissions," and "mobile source baseline emissions rate." The commission is not adopting the proposed deletion of these terms because these definitions apply to mobile and area sources. These terms will continue to be defined as they were before proposal. The definitions of "baseline activity" at §101.370(4) and "baseline emission rate" at §101.370(5) are deleted because the terms are not needed with revisions to the definition of baseline emissions. The subsequent definitions are renumbered.

The definition of "baseline emissions," renumbered as §101.370(4) is 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 (SIP) emissions" to describe the values that limit baseline emissions. In response to a comment from the EPA, wording is added at adoption to §101.370(4) to clarify that the SIP emissions are only considered for a facility in a nonattainment area (i.e., for a facility in an attainment area or unclassifiable area, the fact that there are no SIP emissions does not mean that the value for SIP emissions equals zero but instead that only the baseline emissions and regulatory limits are used to calculate the amount of reduction). However, if an attainment or unclassifiable area is redesignated nonattainment for a criteria pollutant, for generating DECs after the redesignation, SIP emissions are used in calculating any DECs for the criteria pollutant for which the area is designated nonattainment or its precursors. At adoption, the word "actual" is removed before "emissions" because it is inconsistent with the definitions of "historical adjusted emissions" and "state implementation plan emissions," which may be lower than actual emissions.

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting the proposed definition of "compliance account" in §101.370(5), and the subsequent definitions are renumbered. This definition is not adopted to promote consistency between the rules for stationary and mobile sources, and instead the commission will continue to generally refer to an account (also known as a portfolio) to specify where credits are held. The commission is not adopting proposed §101.370(7) to define the "Dallas-Fort Worth area" as the counties that have been designated by EPA as nonattainment for the 1997 eight-hour ozone NAAQS. Instead, the rules are revised to indicate the specific affected counties 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. The subsequent definitions are renumbered.

The definition of "emission rate" is added as §101.370(9), defining the term as the facility's rate per unit of activity, not to exceed regulatory limits. The definition is the same as the previous 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 definition of "historical adjusted emissions" is added as §101.370(15), and the subsequent definitions are renumbered. The definition specifies that a 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 uses this 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.

At adoption in the definition of "mobile discrete emission reduction credit" at §101.370(16), the commission removes the alternate term "discrete mobile credit" because it is not used in Division 4. The definition of "most stringent allowable emissions rate" previously at §101.370(21) is deleted because the term is not used in Division 4. The definition of "permanent" previously at §101.370(23) is deleted because this term is not relevant to DECs, which are normally certified from temporary emission reductions. The renumbering of subsequent definitions is revised.

Although the term "real reduction" is not used in Division 4, the proposed changes to the definition of the term at §101.370(25) are not made at adoption as part of retaining the provisions for mobile source credits. In the definition of "shutdown" at

§101.370(26), the word "permanent" is 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" previously at §101.370(29) is deleted because it is not needed because all terms using this word in Division 4 are defined separately.

For conciseness throughout Division 4, the term "state implementation plan emissions" is added as §101.370(29), and subsequent definitions are renumbered. In response to comments, this term was revised from proposal to make updates for area sources, clarify the applicable SIP revisions, and to provide an additional option for generating ERCs once the area is designated nonattainment. Throughout the division, the commission uses this new term to replace other references to the EI used in the SIP.

SIP emissions are based on the emissions data for a full year (rather than just for part of a year, such as ozone season or winter months for carbon monoxide) in the state's EI required under 40 CFR Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. However, these EI values are adjusted if necessary to ensure the SIP emissions used for the facility do not exceed any (i.e., the most stringent overall) applicable local, state, or federal requirement, regardless of whether the exceedances were included in the state's EI. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. For example, if an area is designated nonattainment for SO_2 and ozone, the SO_2 SIP revision would not be used to determine the SIP emissions for a facility applying for NO_x ERCs emissions; rather the applicable ozone SIP would be used because it includes NO_x emissions, which are precursors to that criteria pollutant.

Subparagraph (A) requires a facility's SIP emissions to be determined from the EI year that was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for the current NAAQS. If neither of these SIP revisions has been submitted for the nonattainment area and the relevant pollutant, the applicable SIP revision listed in subparagraphs (B) - (D) must be used.

The AD and maintenance SIP revisions specified in subparagraph (B) only apply if the AD and maintenance SIP revisions identified in subparagraph (A) have not been submitted to the EPA. Subparagraph (B) requires a facility's SIP emissions to be determined from the EI year that was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS. If neither of these SIP revisions has been submitted for the nonattainment area and the relevant pollutant, the applicable SIP revision listed in subparagraph (C) or (D) must be used.

The SIP revision specified in subparagraph (C) only applies if neither of the SIP revisions identified in subparagraphs (A) and (B) has been submitted to the EPA. Subparagraph (C) requires a facility's SIP emissions to be determined from the EI year that corresponds to the EI for the most recent EI SIP revision submitted to the EPA. For a new nonattainment area, an EI SIP revision is typically required to be submitted within two years after the effective date of the designation. The SIP emissions will no longer be determined from the EI SIP after an AD or maintenance plan SIP revision is submitted to the EPA for the current (or subsequent) NAAQS for the applicable criteria pollutant.

Subparagraph (D) only applies if the SIP revisions identified in subparagraphs (A) - (C) have not been submitted to the EPA. Subparagraph (D) requires a facility's SIP emissions to be determined from the EI year that corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA. This option is being added in response to comments to ensure that credits can be generated beginning on the effective date of the nonattainment designation as opposed to restricting credit generation until after an EI SIP revision is submitted to the EPA, which could be two years after the effective date of the designation. The commission anticipates that the executive director will have determined the inventory year for the EI SIP, either when or shortly after an area is designated nonattainment as part of the SIP planning process, because there is a limited amount of time before the EI SIP is required to be submitted to the EPA. The commission encourages anyone interested in generating credits in a newly designated nonattainment area to contact the EBT program to determine the appropriate year required to determine the SIP emissions.

An AD or maintenance plan SIP revision submitted for the previously issued relevant NAAQS could be used even if this standard has been revoked, but only if it is for the same averaging time and form of the criteria pollutant. For example, the SIP emissions would be based on the EI year used in the AD or maintenance plan SIP revision most recently submitted to the EPA for the 1997 eight-hour ozone NAAQS until an AD or maintenance plan SIP is submitted for the 2008 (or any subsequent year) eight-hour ozone NAAQS for that area. However, if no AD or maintenance plan SIP has been submitted for any eight-hour ozone NAAQS, the SIP emissions would be based on the inventory year that was, or will be, used in the EI SIP submitted for that area even if an AD SIP revision was previously submitted for the one-hour ozone NAAQS in the area. If an AD or maintenance plan SIP has been submitted for the 1997 eight-hour ozone NAAQS and an EI SIP was later submitted for the 2008 eight-hour ozone NAAQS, the SIP emissions would continue to be based on the AD or maintenance plan SIP submitted for the 1997 eight-hour ozone NAAQS. However, if an AD or maintenance plan SIP was submitted for the one-hour ozone NAAQS and an EI SIP was later submitted for the 2008 eight-hour ozone NAAQS, the SIP emissions would be based on the EI SIP for 2008 eight-hour ozone NAAQS.

Section 101.371, Purpose

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed substantive revisions to this section to avoid inconsistencies and confusion that may occur because of non-substantive differences for facilities and mobile sources. Two proposed non-substantive changes are adopted for consistency with other changes in the rules: the phrase "operator of a facility" is changed to "the owner or operator of a facility;" and the phrasing "reducing emissions beyond the level required by any local, state, and federal regulation" is changed to "reducing emissions beyond any applicable local, state, or federal requirement."

Section 101.372, General Provisions

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting many the proposed revisions to this section to avoid inconsistencies and confusion that may occur because of non-substantive differences for facilities and mobile sources. In some subsections, separate provisions are adopted for stationary and mobile sources; the differences between the provisions for each type of source are not intended to convey significant differences between the types of sources, but only reflect the differences in the prior and amended language.

For consistency with the corresponding provision in Division 1, revisions to §101.372(a) for stationary sources 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. This change allows for new federal criteria pollutants, such as particulate matter with an aerodynamic diameter of 2.5 micrometers or less. The provisions for the inter-pollutant use of DERCs is moved to §101.376 where the other provisions for use are already covered. For mobile sources, at adoption the commission is adding back the original language on the applicable pollutants.

For §101.372(b), the commission is retaining at adoption the original language as part of the retention of provisions for area and mobile source credits, except that the prior citation of §101.30, which no longer exists because it was made obsolete by 40 CFR Part 93, is replaced with a citation of 40 CFR Part 93, Subpart B.

At adoption, the proposed change to the catch line of §101.372(c) is not made so that the subsection will continue to apply to both DERCs and MDERCs. The revisions in §101.372(c)(1) remove unnecessary language for conciseness, update the language to reflect the 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. The proposed deletion of §101.372(c)(2) and proposed changes to §101.372(c)(3) are not adopted so that the provisions for mobile sources are retained at adoption.

As part of retaining the provisions for mobile source credits, the proposed changes to §101.372(d)(1) are not adopted, so the language remains unchanged in this specific part of the rule, but changes are made in the subparagraphs under this paragraph. In §101.372(d)(1)(A) and (B), which apply to stationary sources only, the addition of "the owner or operator of" clarifies that the person (rather than the facility) must quantify reductions, but the proposed addition of the pollutants covered in Chapters 115 and 117 is changed at adoption to a reference to the methodologies required by each chapter. The proposed deletion of two citations in §101.372(d)(1)(A) and the change of the listed citations in §101.372(d)(1)(B) to a citation of all of Chapter 115 are adopted as well as the proposed wording changes for conciseness. In response to comments from the EPA that all protocols for credits from area sources must be approved by the EPA, the commission is revising at adoption subparagraph (A) by adding "for that pollutant" at the end to help clarify that, while the state has only submitted the Chapter 117 emission specifications for NO_x to the EPA, the monitoring and testing protocols for other pollutants regulated under Chapter 117 have been submitted to the EPA for approval and therefore could be used to quantify emissions from affected facilities. A similar provision for other criteria pollutants was proposed as §101.372(d)(1)(C) to clarify that monitoring and testing required by commission rules must be used to quantify reductions, but based on the EPA comment, the commission is rewriting at adoption this provision to specify that the executive director can approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility or mobile source. Because the change at adoption in §101.372(d)(1)(C) is a case where the provision in §101.372(d)(1)(D) would not be followed, the clause "except as specified in subparagraph (C) of this paragraph" is added at adoption to the beginning of §101.372(d)(1)(D). In §101.372(d)(1)(D)(i), the proposed changes are not adopted as part of the retention of mobile source credits. In §101.372(d)(1)(D)(ii) - (vi), only the proposed non-substantive wording changes for clarity are adopted.

In §101.372(d)(2), the phrase "required under" is changed to "specified in" because the referenced paragraph (1) does not itself require monitoring and testing data. Based on EPA comment, the phrase "that period of time" is changed at adoption to "the period of time" for consistency with the similar provision for ERCs; additionally "the facility's" is added at adoption before "emissions" for clarity. For clarity, the provision previously in §101.372(d)(3) requiring the use of the most conservative method is moved to paragraph (2). In the last sentence of §101.372(d)(2), the phrase "the data is missing or unavailable" is inserted after the revised phrase "the 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 is used to determine the excess emissions to be covered. In §101.372(d)(3), the proposal to expand the provision to users as well as generators is adopted.

In §101.372(e) - (l), only the proposed non-substantive changes for clarity and consistency are adopted to avoid making any substantive changes that could affect provisions for mobile source credits, except that in §101.372(k), the proposed change of the word "company" to "person" in two locations is adopted for consistency with the definition of "person" in §3.2. For consistency, in §101.372(e)(4) the phrase "its allowable emission limit" is replaced with "any applicable local, state, or federal requirement." The commission had proposed to remove §101.372(m). However, as part of retaining the provisions for mobile sources to generate credits, previous §101.372(m) is being retained.

Section 101.373, Discrete Emission Reduction Credit Generation and Certification

In §101.373(a), the catch line "methods of generation" is 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 was proposed to clarify that the emissions "level required of the facility" is any applicable local, state, or federal requirement, but at adoption, the proposed wording "any applicable local, state, or federal requirement for the facility" is changed to "the baseline emissions for the facility" in both §101.373(a)(1)(A) and (B) for consistency with the definition of "baseline emissions." In §101.373(a)(1)(B), the phrase "other than a shutdown or curtailment" is 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 made throughout §101.373(a)(2) for clarity and to update terms. In §101.373(a)(2)(A), wording changes clarify that DERCs cannot be generated from temporary or permanent curtailments consistent with the EPA's *Improving Air Quality with Economic Incentive Programs,* January 2001. In §101.373(a)(2)(E), the term "emissions" is changed as proposed to "activity" and the wording "that occurred as a result of transferring activity to another facility" is changed at adoption to "from the shifting of activity from one facility to another facility" for increased clarity. 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 in §101.373(a)(2)(H) 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 adopted. The revision is consistent with current practice and the EPA's Economic Incentive Programs (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 deleted because the prohibition on shutdowns is already in subparagraph (A), the phrase "located in a nonattainment area" is added to clarify that the requirement for the facility to have SIP emissions only applies in nonattainment areas, and wording changes are made to be consistent with the defined term "state implementation plan emissions."

The catch line of §101.373(b) has "emissions" added for clarity and consistency with the ERC rules. In §101.373(b)(1), language changes specify that the SIP emissions set one possible upper limit for the baseline emissions used in certifying a DERC only for a facility in a nonattainment area. At adoption, the wording is changed to clarify that the pollutant being reduced must be the same criteria pollutant for which the area is designated nonattainment or a precursor of that criteria pollutant. Language pertaining to §116.170(b) is 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 revises §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 limits the period available for selecting the historical baseline years to the ten years before the emission reduction occurred. The change ensures 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. At adoption, "emissions rate" is changed to "emission rate" to be consistent with the definition of the term.

Non-substantive changes in §101.373(b)(3) clarify that it is the historical adjusted emissions that are being determined. At adoption, the wording changed to clarify that the pollutant being reduced may not be the same criteria pollutant for which the area is designated nonattainment or a precursor of that criteria pollutant. The commission revises §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 sentence clarifies that ongoing emission reduction strategies can only be used to generate DERCs until they are incorporated into a SIP.

Changes in §101.373(c) reformat the equation and update language. Because DERCs can no longer be generated from emission reductions from shutdowns, reference to shutdowns previously in §101.373(c)(1) is deleted, and prior §101.373(c)(3) and (4) are deleted. The previous 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 previous 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 previously in §101.373(c)(2) to determine the actual quantity of DERCs certified. At adoption, the commission is updating the definitions of the variables of the equation for consistency with definitions of the terms; this change is a non-substantive correction that was inadvertently not revised at proposal. At adoption, wording is added to §101.373(b)(1) and (3) and §101.373(c)(2) to clarify that the pollutant being reduced must be the same criteria pollutant for which the area is designated nonattainment or a precursor of that criteria pollutant (e.g., NO_x and VOC for ozone). In response to comments from the EPA, the commission adds at adoption §101.373(c)(3) to clarify that the pollutant being reduced must be the same criteria pollutant for which the area is designated nonattainment or a precursor of that criteria pollutant. The removal of prior §101.373(c)(3) and (4) is adopted because these paragraphs are not needed since DERCs can no longer be generated from shutdowns.

In §101.373(d)(1), the changes include substituting at adoption the generic wording "the application form designated by the executive director" in place of the specific form name and designation, as well as changing as proposed the word "or" to "and" to simplify the requirement to submit an application to use DERCs 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.

In §101.373(d)(3), the generic wording "application form" is substituted at adoption for the proposed form designation. The provision at §101.373(d)(3)(C) is deleted because generation from shutdowns has been prohibited for several years, and subsequent subparagraphs are re-lettered. Prior §101.373(d)(3)(D) is re-lettered as §101.373(d)(3)(C). Prior §101.373(d)(3)(F) and (G) are re-lettered as §101.373(d)(3)(E) and (F) respectively and amended to specifically add the newly defined terms "historical adjusted emissions" and "SIP emissions" to the list of required documentation. This change does not require the applicant to submit any information that is not currently required. The proposed revision to re-lettered §101.373(d)(3)(E) to change the word "strategy" to "strategic" is not made at adoption because the proposed changes to the definitions in §101.370 are not adopted. Amendments to re-lettered §101.373(d)(3)(G) remove the word "applicable" before the word "facility" because it is

not needed. Prior §101.373(d)(3)(I) and (J) are re-lettered as §101.373(d)(3)(H) and (I) respectively with non-substantive updates to terminology. The prior use of "discrete emission credits" in re-lettered §101.373(d)(3)(I) was not appropriate because §101.373 only applies to DERCs, not MDERCs.

Section 101.374, Mobile Discrete Emission Reduction Credit Generation and Certification

The proposed repeal of §101.374 is not adopted, and this section will remain in the rules unchanged. Because no changes were proposed, there was no opportunity for public comment; therefore, no changes are made in this section to be consistent with the other changes adopted for this division.

Section 101.376, Discrete Emission Credit Use

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed changes in §101.376(a) except as follows. In §101.374(a)(4), the proposed change of the phrase "facility or mobile source operators" to "the user" is adopted for clarity and conciseness. Because §101.376(a)(5) only applies to DERCs, for conciseness, this paragraph is rewritten and rule references are updated. The commission is adding at adoption new paragraph (6), which is based on the requirements in paragraphs (1) and (2) that DECs be in the user's account (also known as a portfolio) before and during the use period. New paragraph (6) specifies that a DERC may not be used unless it is available in the account for the site where it will be used. Because of the retention of provision for mobile sources, the proposed changes to §101.376(a)(1) and (2) are not made since the provisions therein will apply to all DECs, but this proposed provision is moved at adoption to the added §101.376(a)(6) and will only apply to DERCs but not MDERCs. Prior §101.376(a)(6) and (7) are deleted because these requirements are included in §101.376(f).

As part of retaining provisions for mobile source credits, the proposed revisions in §101.376(b) are not made at adoption. At adoption, the commission is adding language to the retained provisions for new source review permits in §101.376(b)(2)(C) to limit the requirements to applying only to MDERCs. At adoption, §101.376(b)(2)(D), proposed as §101.376(b)(2)(E) for using DERCs for NNSR offsets, requires the user to submit an application form specified by the executive director at least 90 days before the start of operation and before continuing operation for any subsequent period for which the offset requirement was not covered under the initial application. The commission will allow the user to submit one application to use DERCs for offsets to reduce the regulatory burden associated with the previous requirement to submit an application annually. The submission deadline is consistent with corresponding provisions in the ERC Program. In §101.376(b)(3), the prior 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 deleted.

In §101.376(c), proposed changes that would affect mobile source credits are not adopted except the following: 1) the proposed revision of the citation to the MECT rule in §101.376(c)(4) is retained because it was made for reformatting in the MECT rule and the insertion of the acronym "EPA" is also retained because it is used later in this section; and 2) the proposed changes in §101.376(c)(7) are adopted because they only apply to DERCs, with a change at adoption to remove a reference to flow control that was inadvertently not proposed for removal, which is non-substantive and helps ensure consistency with other changes made in this division.

As part of retaining provisions for mobile source credits, the commission is not adopting the proposed revision in §101.376(d) except as follows. The submittal deadline for the application in §101.376(d)(1)(B)(i) for NO_x DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties was 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). However, because of public comment that this change would not allow adequate time to find an alternative method of compliance if needed, this proposed change is not adopted and the August 1 deadline is substituted at adoption for October 1. In §101.376(d)(1)(B)(ii), the commission provides the submission date for using DERCs and MDERCs for MECT compliance that is currently in §101.356(h). At adoption, the commission is adding §101.376(d)(1)(B)(iii), which was proposed as §101.376(d)(6), to specify that the application to use DERCs for NNSR offsets is required to be submitted by the date in §101.376(b)(2)(E) (i.e., 90 days prior to the start of operation). The provisions currently in §101.376(d)(1)(B)(ii), which was proposed as clause (iii), is renumbered as clause (iv) at adoption but the proposed non-substantive changes are not adopted. In §101.376(d)(1)(D)(v), which was proposed to be renumbered §101.376(d)(1)(D)(iv), the proposed renumbering and removal of "or mobile source" are not adopted, but the proposed change of "applicable regulatory requirements" to "applicable local, state, and federal requirements" is adopted for consistency with the rest of the rules. At adoption, the commission is adding the word "number" in §101.376(d)(1)(D)(ix) to indicate that the certificate number, but not the certificate itself, is required to be included in the application.

The catch line for §101.376(d)(2) was for DERCs rather than DECs, although the provisions for this paragraph are for DECs; therefore, as part of retaining provisions for mobile source credits, the catch line is corrected at adoption. The language in §101.376(d)(2)(A) is modified to remove references to §117.223 and §117.1120 because these sections are repealed concurrent with this rulemaking. These citations are also deleted where they appear in the definitions of variables in the equations in this subparagraph. Revisions to the equations in clauses (i) and (ii) update Figure: 30 TAC §101.376(d)(2)(A)(i) and Figure: 30 TAC §101.376(d)(2)(A)(ii) to current formatting standards and define variables in the order that they appear in the equation. Revisions to the equations in §101.376(d)(2)(B) and (C) update Figure: 30 TAC §101.376(d)(2)(B) and Figure: 30 TAC §101.376(d)(2)(C) to current formatting standards and define variables in the order that they appear in the equation. At adoption, the first variable in the equations in Figure: 30 TAC §101.376(d)(2)(B) and Figure: 30 TAC §101.376(e)(2)(B) is changed to "DECs" for readability. At adoption, the commission moved the requirements proposed in §101.376(d)(6) to §101.376(d)(1)(B)(iii).

As part of retaining provisions for mobile source credits, the commission is not adopting the proposed revisions in §101.376(e) except as follows. The proposed paragraphs (1) - (3) in §101.376(e) are not adopted, and the proposed renumbering of subsequent paragraphs is not made at adoption. The citations in §101.376(e)(1)(A) and (B) are corrected to refer to the environmental contribution in §101.376(d)(2)(D). In adopted §101.376(e)(2), the acronym "DERC" had been used in error in the rule prior to proposal, as evidenced by the equations that indicate it applies to all DECs, so a change is made at adoption to correct. In the equation in Figure: 30 TAC §101.376(e)(2)(A)

and Figure: 30 TAC §101.376(e)(2)(B), the first variable in the equation is revised at adoption from "DERCs" to "DECs."

The form that was specified in §101.376(e)(3) is changed at adoption to "a form specified by the executive director for using credits."

The catch line for §101.376(f) is revised to "DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties" instead of "Dallas-Fort Worth area DERC use" as proposed. The NO_x DERC limits for these counties that are currently in §101.376(f) and §101.379(c) are combined in §101.376(f), with significant changes as discussed in the Background and Summary of the Factual Basis for the Adopted Rules section of this preamble. Because the rules establish a fixed 17.0 tpd limit on NO_x DERC use in these counties, the report provisions in §101.379(c) related to the prior calculation methodology are deleted. Adopted §101.376(f)(1) provides the limit of 42.8 tpd on NO_x DERC use in these counties for the 2015 calendar year, which was calculated using the existing methodology. Adopted §101.376(f)(2) provides the 17.0 tpd limit for Calendar Year 2016 and beyond. The prior §101.376(f)(1) is renumbered as §101.376(f)(3) and revised to remove the phrase "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." At adoption, the submittal date of August 1 is specified in §101.376(f)(3) and (4) for clarity after public comment indicated that the date should not change. Additionally, the phrase "control period" is changed to "calendar year" for clarity because the limit applies to annual DERC use. The requirement previously in §101.376(f)(3)(B) is removed as part of the fixed limit on DERC use in these counties. The prior §101.376(f)(3)(A) that the executive director consider the appropriate amount of DERCs allocated for each application submitted on a case-by-case basis is moved to §101.376(f)(3)(B). At adoption, the form designations in §101.376(f)(3) - (5) are made generic, and the word "limit" in §101.376(f)(3) is changed to the phrase "applicable limit in paragraph (1) or (2) of this subsection" for clarity. In renumbered §101.376(f)(4), wording is 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 an application and add subparagraphs (A) and (B). Subparagraph (A) contains the previous 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. Subparagraph (B) contains the previous portion of §101.379(c)(2)(C)(ii) that indicates the executive director may consider any late application 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 exceeds the limit. Paragraph (5) includes the requirement previously in §101.379(c)(2)(D) that specifies that, if the applications 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 is moving 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. Subsection (g) revises the language moved from §101.372(a) to limit inter-pollutant use to NO_x and VOC DERCs used as NNSR offsets. The changes are consistent with EBT guidance on inter-pollutant use of DERCs as offsets for NNSR permits. Adopted subsection (g) also revises the language moved from §101.372(a) to specify that NO_x and VOC DERCs may be used to meet the NNSR offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution. In response to comments, subsection (g) was revised to further clarify the requirements. The term "photochemical modeling" is used in place of the prior 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) continues 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

As part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed revisions in §101.378 except subsection (b)(1) and (2) are deleted because the provisions are obsolete and the prohibition on using a DERC from a shutdown is moved to the end of §101.378(b). This final provision is not made applicable for mobile credits it has only previously applied to stationary source credits. Additionally, in §101.378(b) and (c)(1) the proposed form name is changed at adoption to the generic "application form specified by the executive director."

Section 101.379, Program Audits and Reports

In §101.379, revisions are made for conciseness and conformity with other changes in Division 4. For §101.379(a), the language is changed to specify that an audit will be conducted every three years to clarify that the audit schedule will not be delayed by the new effective date of the amendment to §101.379. Because the limit on the use of NO_x DERCs in the DFW area are moved to §101.376(f), the reference in §101.379(b)(4) is updated, and all provisions previously in §101.379(c) are deleted.

Division 6: Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program

In the title and throughout the division, the hyphen is 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(21), 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

Adopted §101.390(1) defines the term "affected facility" as a facility subject to 30 TAC §115.720 or §115.760 that is located at a site subject to this division, and the subsequent definitions are renumbered. The definition of "banked allowance" at §101.390(3) is renamed as "vintage allowance" in paragraph (15) because this is the term commonly used. In §101.390(4), the words "calendar-year" are deleted from the definition of "baseline emissions period" because they are unneeded with the definition of "control period," and citations are updated to be consistent with reformatting of that section.

The definition of "broker" at §101.390(5) is 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 ac-

count" is 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 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 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 adopted as §101.390(9), which references 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 added as §101.390(10), which lists the counties as Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, and the subsequent definitions are renumbered. A typographic error is revised in the definition of "industry sector" renumbered §101.390(11) by changing "carbons" to "compound."

In the definition of "level of activity" renumbered §101.390(12), the reference to §115.10 is deleted because of the addition of a definition of the term "highly reactive volatile organic compound" that includes this citation. The definition of "site" is adopted as §101.390(13), which references the definition in 30 TAC §122.10 and is the same as the definition in the MECT Program, and the subsequent definitions are renumbered. The definition of "vintage allowance" is adopted as §101.390(15), which replaces the definition of "banked allowance" with wording changes for clarity and conciseness.

Section 101.391, Applicability

In §101.391, the prior provisions are designated as subsections (a) and (b) and one additional subsection is adopted. In §101.391(a), the citations for the terms "site" and "highly reactive volatile organic compound" are removed because they are no longer needed due to the new definitions of these terms. The phrase "with one or more affected facilities" is added after "nonattainment area" 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 definition of "affected facility" references the HRVOC provisions in Chapter 115, the references to Chapter 115 in this section are deleted. For consistency with the definition, the phrase "applicable facility" in the second sentence is 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) explains that the banking and trading provisions apply to brokers and broker accounts.

Section 101.392, Exemptions

Non-substantive changes in §101.392(a) update terms and correct rule references. The word "ten" is 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 in §101.392(b) to clarify the counties that qualify for the exemption, specify the owner or operator (rather than the site itself) is responsible for compliance, and remove the obsolete January 1, 2007 deadline.

Section 101.393, General Provisions

Revisions in §101.393(a) clarify that an allowance can only be used by an affected facility and can only be used for a purpose described in Division 6. Revisions in §101.393(b) remove language made obsolete by the 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 substantially rewritten for clarity and completeness. The prior provision only addressed using allowances for the one-to-one portion of the offset requirement. This language is 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 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. The Section by Section Discussion section included at proposal was consistent with the substantive requirements included in the proposed rule revisions; however, errors were made in describing the proposed format of the rule requirements. Those errors have been corrected.

Adopted §101.393(d)(1) requires the owner or operator to use a permanent allowance allocation 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. Adopted §101.393(d)(1) clarifies that a vintage allowance cannot be used as an offset. The commission is not adopting the proposed portion of paragraph (1) that indicated an allowance allocated based on permit allowable emissions, as described under §101.394, cannot be used as an offset because, unlike MECT allowances, HECT allowances were never issued based on permit allowable emissions. This provision was inadvertently included at proposal. 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. Paragraph (1) clarifies that an allowance used for offsets may not be banked or traded. Paragraph (1) also indicates 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 previous requirements in this subsection.

Adopted §101.393(d)(2) requires the user to permanently set aside allowances for offsets by submitting an application at least 30 days before the start of operation of the affected facility. Adopted §101.393(d)(2)(A) specifies that the executive director will permanently set aside in the site's compliance account an allowance allocation equal to the amount specified to be used for the one-to-one portion of the offset ratio. Allowances that are no longer required to be "used" for the one-to-one portion of the offset ratio may be returned in accordance with subsection (d)(3). The permanent set-aside will ensure that the total amount allowances allocated to the compliance account is at least the amount required to be used for the one-to-one portion of the offset ratio. Adopted subparagraph (A) specifies that if the allowances set aside for offsets devalue in accordance with §101.394(a)(1) or (f), such that the total allocation balance in the compliance account falls below the amount required in the NNSR permit for offsets, the owner or operator is required to submit an application at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. The

owner or operator can either obtain an additional permanent allocation of allowances sufficient to ensure the compliance account balance is equal to the amount of allowances required to be set aside for the one-to-one portion of the offset ratio or, if the NNSR permit authorizes the use of credits for offsets, the owner or operator can revise the amount of allowances set aside for offsets. The owner or operator also needs 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 HECT 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 §101.394(a)(1) or (f), 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 and for HECT compliance. Adopted subparagraph (A) also clarifies 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 HRVOC emissions from the affected facility are less than this amount.

Adopted §101.393(d)(2)(B) specifies that the executive director will permanently retain an allowance used for the environmental contribution portion of the offset ratio. Adopted subparagraph (B) prohibits an allowance used for the environmental contribution portion of the offset ratio from being used for compliance with this division. Subparagraph (B) also specifies that allowances set aside for this purpose will not devalue due to regulatory changes because this portion of the offset requirement is 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 §101.393(d)(3)(A), the allowance could then be used for compliance with this division and would again be subject to any devaluation due to regulatory changes, including any devaluations that occurred while the allowances were being used for offsets.

Adopted §101.393(d)(3) allows 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., credits) for the VOC offset requirement. Adopted §101.393(d)(3)(B) allows 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, but not for allowances set aside for the environmental contribution portion of the offset requirement. If a request submitted under §101.393(d)(3)(A) or (B) is approved, the release becomes effective in the control period following the date that the alternative means of offsetting takes effect, and allowances will not be released retroactively for any previous control periods.

In §101.393(f) the phrase "allocated, transferred, deducted, or used" is 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. Section 101.393(g) is 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 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.

Adopted §101.393(i) allows the owner or operator of a facility subject to the HECT Program to generate VOC ERCs from the reduction of HRVOC emissions if 1.0 tpy of HECT allowances is surrendered for each 1.0 tpy of ERCs generated from HRVOC emissions. At adoption, §101.393(i)(1) was revised to clarify the HECT allowances are only required to be surrendered for ERCs generated from HRVOC emission reductions, regardless of whether ERCs were simultaneously generated from other VOCs. The change is intended to provide greater flexibility to owners and operators in the generation of ERCs. An owner or operator will 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 will be transferred to the commission retirement account so that 1.0 tpy of HECT allowances are 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. At adoption, the reference to Division 1 of Subchapter H in §101.393(i)(2) is revised to be consistent with changes made at adoption to the name of Division 1.

Adopted §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. 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)(1), the citation to §115.10 for HRVOCs, which is added to the definition for HRVOCs in §101.390(9), is removed, and the reference to two equations is changed to a reference to the one equation retained. In the equation in §101.394(a)(1)(A), which is redesignated as §101.394(a)(1), the format is made consistent with other figures in the rules: the equation is put in a more accessible format; the spelled-out factors are changed to acronyms; and the factors are defined in the order that they appear in the equation. In the definition of factor AC^1, a citation is changed for re-lettering in the cited subsection, and the tons of HRVOC allowances for 2011 - 2013 are deleted because this information is obsolete (the value for 2014 is retained in case it is needed after the effective date of this rule for processing annual compliance reports for the 2014 control period). In §101.394(a)(1)(A), obsolete language for the allocation of allowances for the 2007 - 2010 control periods is deleted. The obsolete equation in Figure: 30 TAC §101.394(a)(1)(A) and paragraph (1)(B) are deleted.

Because of the restructuring of the rule, prior §101.394(a)(1)(C) is redesignated as §101.394(a)(2) and clauses (i) - (iii) as subparagraphs (A) - (C). The subsequent paragraphs are renumbered. The provision is 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 previ-

ously in §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 as §101.394(a)(3).

In renumbered §101.394(a)(4), the equation is changed to a more accessible format. Factor AC, which is currently shown as "AC_2" in the definitions under the current equation, is 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 used 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)(1) uses "AC_1" as the factor, this change is not expected to cause any confusion.

For consistency with the new definition, "applicable facility" is changed to "affected facility" in renumbered §101.394(a)(5) and (5)(D). In renumbered §101.394(a)(5)(E) the reference to §101.394(a)(1), which is deleted, is changed to "the previous allocation methodology." Additionally, the owner or operator is made responsible for the addition covered, rather than leaving the person doing the addition unspecified.

Because the allocation methodology previously in §101.394(a)(1)(A) is obsolete, the provision at §101.394(c) for augmenting allocations under that allocation methodology is also obsolete. Therefore, §101.394(c) is deleted, and the subsequent subsections re-lettered. The deletion of §101.394(a)(1)(A) leaves prior §101.394(a)(1)(B) as the only allocation methodology. Therefore, the two references to §101.394(a)(1)(B) in prior §101.394(d), which is re-lettered as §101.394(c), are no longer needed and are deleted. For clarity, a sentence is 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 5.0 tons could be raised to 5.0 tons.

The provisions from §101.394(e) are moved with changes to §101.396(e) and (f) because these provisions are more appropriate in the rule section covering allowance deductions. Subsequent subsections are re-lettered. The provision in prior §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 moved to §101.394(f), which is re-lettered as §101.394(d), and paragraphs (1) and (2) are deleted. For conciseness, the wording in relettered §101.394(d) is changed from "Allowances will be allocated by the executive director, who will deposit allowances into each compliance account: ... initially, by January 1, 2007; and ... subsequently, by January 1 of each following year" to "The executive director will deposit allowances into each compliance account by January 1 of each year."

Section 101.396, Allowance Deductions

In §101.396(a), amendments are made for clarity, grammar, and consistency. The deductions of allowances are specified as the responsibility of the executive director, and, consistent with prior §101.393(f), the amount is specified as being deducted in tenths of a ton. The first sentence is reformatted to improve the grammar and readability. In the second sentence, the HRVOC emissions are required to be based on monitoring and testing protocols in §115.725 and §115.764, but an introductory clause provides 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) (March 26, 2010, issue of the *Texas Register* (35 TexReg 2537)). The revision replaces the previous language in §101.396(b) with the version of the rule that existed before the prior revision.

In §101.396(c), amendments are made for clarity and consistency. In the first sentence "referenced in subsection (a)" is changed to "required under subsection (a)" because the subsection requires certain monitoring; the phrase "the owner or operator of" is added before "the site" to clarify that the owner or operator of the site is responsible for using the first available specified method in the order listed to determine emissions; and in the listed methods, "data from manufacturers" is 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 subsection (c) is deleted and moved to §101.396(c)(1) with changes to make the provision more similar to the comparable provision in §101.354(b) in the MECT rules, as well as the following changes: "determining" is changed to "reporting" because the submission is made with the annual compliance report; the owner or operator is specified as responsible for providing the justifications; and a requirement to provide justification of the method used is added for consistency with §101.354(b) and because explanation of why the method used is appropriate and will allow better evaluation of the emissions reported.

Adopted §101.396(c)(2) specifies that the executive director will 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 ensures 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 does not apply, and any applicable Chapter 115 data substitution provisions are 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) will be used to quantify the HRVOC emissions for the period of time the required data is missing.

Adopted §101.396(e) specifies that the amount of allowances deducted from a site's compliance account under §101.396(a) will be reduced by the amount of allowances deducted in accordance with §101.393(d)(2)(A). Consistent with the provisions previously in §101.393(d), subsection (e) provides for the simultaneous use of allowances for the one-to-one portion of the NNSR offset requirement and compliance with the HECT Program.

The provisions previously in §101.394(e) are moved to §101.396(f) because this section contains provisions related to allowance deductions. As in the prior rule, 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%. 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. 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 made in §101.399(a) and (b) to update the formatting. Changes in §101.399(a) also include the use of the new term "vintage allowance." The provisions previously in §101.399(b) - (d) are consolidated to minimize repetition and shorten the rules. The provisions previously in §101.399(b)(2), (c)(2), and (d)(2) are combined in §101.399(c). Subsection (c) requires 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 specifies 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 previously in §101.399(b)(1), (c)(1), and (d)(1) are combined into §101.399(c)(1) - (3) respectively. Paragraph (1) requires the seller to submit an application 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 prior rule did not specify a deadline for submitting the application, 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. Paragraph (2) requires the seller to submit an application to permanently trade ownership of any portion of the allowances allocated annually to an individual facility. Paragraph (3) requires the seller to submit an application to trade any portion of the individual future year allowances to be allocated to an individual facility.

The provisions previously in §101.399(b)(3), (c)(3), and (d)(3) are 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 revisions do 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 previously in §101.399(b)(4), (c)(4), and (d)(4) are 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 is 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 previously in §101.399(e) are re-lettered as §101.399(f). Non-substantive changes are made to the provisions in §101.399(f), (g), and (h), which are re-lettered as §101.399(g), (h), and (i) respectively.

Section 101.399(i) is deleted 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 did not receive public comment that this provision is needed for future flexibility in providing additional HECT allowances. The deletion also addresses 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 will 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).

Section 101.400, Reporting

In §101.400(a), revisions are made for clarity. The responsibility of filing an annual compliance report is made the responsibility of the owner or operator of a site, rather than the site itself. The annual compliance report is also required to have the listed information to be complete. Prior §101.400(a)(4) is deleted. It required 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 clarifies that the executive director may suspend the trading by an owner or operator of a site (rather than the site itself) if the report is not filed.

Adopted §101.400(c) allows 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 annual compliance report will not be required until a new affected facility is authorized at the site.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking 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 adopted rulemaking does not, however, meet any of the four applicability criteria for requiring a regulatory im-

pact 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 EC 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 DEC 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 from 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 adopting 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 NO_x 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 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 adopted rules make changes to the DERC limit provisions to replace the current equation for setting the limit with a hard cap of 17.0 tpd.

The adopted 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 adopted rulemaking will revise the EBT rules in Chapter 101, Subchapter H to respond to issues with flexibility and use of the rules, and to improve the workability and functionality of the rules. Additionally, the adopted 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 pre-

sumption 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 adopted rulemaking is to revise the EBT rules in Chapter 101, Subchapter H to respond to issues with flexibility and use of the rules and to improve the workability and functionality of the rules. Additionally, the adopted 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 adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because although the adopted 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 invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission 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 EBT Program rules in Chapter 101, Subchapter H to respond to issues with flexibility and use of the rules, and to improve the workability and functionality of the rules. Additionally, the adopted rulemaking includes changes to the technical basis of DERC limit 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 adopted 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 adopted rulemaking and found the adoption 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 (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the adopted 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.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

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 adopted rules.

Public Comment

The commission held public hearings on January 15, 2015 and January 20, 2015, and received oral comments from three individuals. The comment period closed on February 11, 2015. The commission received written comments from Baker Botts, LLP, on behalf of Texas Industry Project (TIP); Delek Refining, Ltd. (Delek); El Paso Electric Company (EPEC); the EPA; Linn Energy, LLC (LINN); Luminant; Sage Environmental Consulting, LP (Sage); The Law Office of C. William Smalling, PC (Smalling), which were later revised; Stolt-Nielsen USA, Inc. (Stolt); Super-All Environmental, LLC (SAE); Texas Chemical Council (TCC); Texas Pipeline Association (TPA); Total Petrochemicals & Refining USA, Inc. (Total); two comments from the Texas Oil & Gas Association (TXOGA); Western Refining, Inc. (Western); Wisdom Law, PLLC, on behalf of the Texas Association of Manufacturers (TAM); and one individual. Specific changes to the rules were suggested in five comments.

Response to Comment

General comments

Comment

TXOGA commented that the comment period on the proposal should be extended for an additional 60 days beyond the 12-day extension to February 11, 2015, to allow more time for its members to evaluate potential impacts from the proposal. TXOGA also asked that the EBT stakeholder group be expanded to include oil and gas operators who might be impacted by the new ozone standard proposed by the EPA. LINN supported these comments.

Response

For a rule revision to be adopted, it must be submitted to the *Texas Register* within six months of the date that the proposal was published. Providing more than half of this period for public comment and additional stakeholder input is not feasible. The EBT Stakeholder Group is an open-participation group, so any interested party is able to attend the meetings. The commission may request and consider additional input from stakeholders in the future when developing guidance under the adopted rules. All interested parties are encouraged to participate in any future stakeholder meetings or outreach. Information about the stakeholder group and links to sign up for notifications about the group are available at http://www.tceq.texas.gov/airquality/banking/air_banking_advisory.html. Notifications of any future meetings will be provided by e-mail to anyone who signs up to receive information.

Comments

TIP commented that the agency should not make changes to the existing SIP-approved rule language simply to make the rules consistent with guidance and historical practices. Existing guidance has been effective in settling issues at stake in the rule changes. The specific changes that TIP opposed were amendments to §101.302(e)(4) and §101.372(e)(4) providing that ERCs cannot be generated from emissions that exceed any local, state, or federal requirement, amendments to §101.352(e) and §101.373(g) that allow the use of MECT and HECT allowances for the full offset requirements in NNSR permits, and proposed §101.306(d) and §101.373(g) that condition the inter-pollutant use of ERCs and DERCs on a demonstration of no adverse impact on overall air quality or the regulatory design value in the nonattainment area of use. The benefit of greater clarity must be weighed against the risks of a gap between the rules and the approved SIP. TIP commented that it supports targeted changes to the rules for consistency with EPA regulations while preserving needed flexibility but oppose broader revisions that would change large portions of the rules such as provisions for area and mobile sources. An individual commented that the rule revisions perceived as positive for industry, such as extending the ERC application time to two years, are really unnecessary because many of the clarifications in the proposed rules have already been addressed in guidance or could be addressed through reinterpretation of the existing rules. The individual commented further that there is no need to reopen the rules, which have been approved by the EPA, because if implemented as written, the existing rules allow for the generation of ERCs that are or will be needed. TCC commented that the current EBT program rules are fully SIP-approved and stated that it would be difficult for Texas to reincorporate these options in the future.

Response

The commission does not generally agree that it is inappropriate to update rules to reflect current guidance and agency practices. Although many changes included at proposal are not adopted, there are some updates that are warranted to provide flexibility and clarification for certain issues. In regards to the specific example given by the individual, some stakeholders requested that the commission make adjustments to the deadline for submitting requests to certify ERCs, and the change to two years was made after careful consideration, including reviewing programs in other states. Such a change could not be accomplished through guidance or policy changes, as the rule previously had a specific deadline, which was extended with the adopted rule change. No change to the rules was made solely in response to these comments.

Comment

Sage commented that the ERC program was promulgated as a voluntary program but has since been made mandatory. Sage commented further that the ERC program is currently the only mechanism by which credits can be created for use as offsets.

Response

The EC program has been voluntary since promulgation and continues to be voluntary for both generators and users. The owner or operator of a facility chooses whether to make voluntary emission reductions and whether to certify them. An owner or operator also has options other than ECs to use for offsetting, including DECs, HECT and MECT allowances, and internal offsets. The commission recognizes that the EC program is the primary source of credits for offsets, but other parts of this rule package are specifically designed to increase the flexibility for using DECs and MECT and HECT allowances for offsetting. Therefore, the commission disagrees that the EC program is mandatory or that there is no other mechanism for creating credits for use as offsets.

Comments

One individual commented that the preamble for the proposed rules incorrectly implied that the term "surplus to the SIP" is the

same as the use of "surplus" as a required characteristic of ERCs and that the preamble discussion shows that these concepts are different with "surplus to the SIP" only applied to area source ERC applications. The individual commented further that the rule proposal should be withdrawn and all concepts therein fully defined so affected parties can comment on the full and complete impact of the proposal. Another individual agreed with these comments. Another individual commented that the proposal does not properly address the concept of "surplus to the SIP," stated that the term is not defined, and stated that the concept is used subjectively in the review of ERC applications.

Response

In §101.300(30) in the rule prior to proposal and §101.300(29) in the adopted rule, the term "surplus" is defined as meaning that a reduction is surplus to all legal requirements and has not been otherwise relied upon in the applicable SIP. Therefore, "surplus" will continue to mean that reductions are surplus to the applicable SIP and all legal requirements. This limitation applies equally to any emission reduction included in an application to generate ECs. Decisions on previous ERC generation applications are beyond the scope of this rulemaking.

Additionally, it is not accurate that surplus is different for area and point sources; however, point sources are specifically represented in the SIP through their reported emissions in the EI. Area sources are represented in the SIP in the aggregate because these sources are not required to report individual emissions to the EI. Therefore, determining that emissions from reductions at an area source are surplus to the emissions represented in the SIP is much more complicated than looking at the EI, as can be done for point sources. No change to the rules was made in response to these comments.

Comments

Sage commented that the agency is concerned about the lack of staff to handle increased applications to generate credits from mobile and area sources, but should be more concerned about the potential for significant growth in the number of nonattainment counties. Sage suggested that the commission could adopt a reasonable application fee in the future. Sage further recommended that the EBT program have pre-application meetings to discuss proposed projects at a high level and that staff provide pre-application guidance to help companies submit better applications. TCC commented that it understands the TCEQ's concerns that area and mobile sources must have quantifiable emissions in the inventory, and that quantifying and verifying them could drain resources at the agency and that there are numerous viable options for the TCEQ to consider, and therefore the TCEQ should retain this flexibility in the rule.

Response

The commission is aware of the current market price of and need for ECs and the impacts related to a lower NAAQS and additional areas becoming nonattainment. EBT staff has and will continue to provide advice to the regulated community both before and after applications are submitted. However, potential applicants must understand that staff can only evaluate the information provided so there is a potential for significant change in the number of credits that might ultimately be approved even after any pre-application meeting because of changes in the information available and regulatory changes. The evaluation of applications to generate credits is a very complicated and detailed process that cannot be accomplished within the scope of a meeting but rather through the review of complete and accurate applications. In response to this and other comments, the commission is currently retaining the options in the rules to generate ECs from area and mobile sources.

Comment

Sage commented that companies should be allowed to adjust the emissions reported to EI for years that will be used in a SIP if a facility was undergoing substantial turnaround or maintenance activities to emissions that more accurately reflect "normal operations." Sage stated that the use of actual emissions in such cases artificially reduces the site's SIP representation. Sage recommended that the agency notify companies several months in advance of SIP revisions to allow time to change the reported emissions.

Response

The commission understands the commenter's concerns. While some sites reported lower than "normal" emissions during the year chosen as the SIP baseline EI, other sites reported higher than normal emissions during that year. There is no definition of "normal" emissions; only actual emissions are reported. The TCEQ requires owners or operators to report actual emissions that occurred during the calendar year for which the EI is requested per §101.10(b). The commission expects companies to accurately report emissions data to the EI in accordance with the rules. The reported emissions cannot include adjustments to reflect "normal operations" that did not actually occur in the year reported. Under the FCAA, emission reductions used as offsets must reflect actual emissions. Since the primary use of ECs is for offsetting, it would be inappropriate to certify ECs based on emissions that were not real. Any change to this requirement is beyond the scope of this rulemaking.

The TCEQ accounts for the commenter's concern during calculation of the baseline emissions rate for ERCs. The baseline emissions rate is the highest two-year average of emissions in the last 10 years, not to exceed the quantity reported in the most recent SIP emissions. This two-year averaging approach normalizes actual emissions in the manner suggested by the commenter. These normalized emissions cannot exceed SIP EI values from the applicable SIP (as shown in the definition of "state implementation plan emissions") to ensure progress towards attainment of the NAAQS.

The commission does provide notice of SIP revisions in advance. For the most recent DFW AD SIP revision, on April 1, 2014, the commission notified potentially affected sites that 2012 was being used as the credit generation EI year for the 2008 10-county DFW eight-hour ozone nonattainment area. A month-long revision window was provided for sites to submit 2012 EI revisions, and EI revision instructions were provided on the point source EI webpage. Approved revisions were ultimately included in the SIP revision. In addition, the SIP, including EI and AD SIP revisions, are open for public comment, and we would appreciate being notified of EI concerns during that time period. No change to the rule was made in response to this comment.

Comment

TCC thanked the TCEQ for working on the rule proposal and stated its support of many of the program revisions.

Response

The commission appreciates the support.

Comment

TAM recommended that the agency should not go forward with this rulemaking at this time and conduct additional stakeholder meetings with industry partners, specifically those in the area source category to determine the best path forward for the submission of annual EIs and obtaining federal approval of the reductions credits.

Response

The commission has proceeded with this rulemaking to make other necessary changes but has retained the options to generate credits from area and mobile sources. At the start of this rulemaking, the commission held a series of stakeholder meetings on the changes that might be proposed. Stakeholders were asked to provide input on what changes might be made to make the generation of credits by area and mobile sources workable both at the stakeholder meetings and in the preamble of the proposed rules. Requests were made to keep the rules that allow for area and mobile credit generation, but stakeholders indicated that no rule changes were necessary to implement these programs and no viable ideas for potential revisions were submitted. For future information related to area and mobile source credit generation and other EBT activities, interested parties are encouraged to sign up to receive e-mail updates regarding the program (as outlined in the response to the first comment in this preamble) and to attend any future stakeholder meetings. In response to this and other comments, the commission is currently retaining the options in the rules to generate credits from area and mobile sources.

Area and mobile source credits

Comments

Western, Delek, Sage, and two individuals commented that the removal of the opportunity for mobile and area sources to generate ERCs would significantly reduce the number of ERCs that could be available at a time when federal regulatory changes are likely to increase the need for ERCs and that the rule changes could stifle economic development. TAM and LINN made similar comments in regards to removal of area sources only. Hamman commented that removing area source ERCs would remove incentives for small businesses to look for ways to voluntarily reduce emissions at a time that such reductions should be encouraged. One of the individuals further commented that area source ERCs have not been generated previously because there was little need for them but that increases in the price of ERCs demonstrates that the need now exists. Smalling commented that area sources should remain eligible to generate ERCs and DERCs to allow area sources to earn revenues. Smalling also commented that the EPA's proposed changes to the ozone NAAQS will significantly affect the value of ERCs. Smalling further commented that the timing of the rule proposal to eliminate area and mobile ERCs appears curious in relation to the EPA proposal to revise the ozone NAAQS. LINN commented that the removal of area sources from the ERC rules is shortsighted and arbitrary. Sage commented that area and mobile sources should continue to be allowed to generate ERCs. Sage commented that the provisions for area sources to certify ERCs should be retained in the rules because of the potential for increased need. TIP commented that provisions for area and mobile sources to generate ERCs and DERCs should be retained because the EPA may not approve reinstatement of this option, because credits from these sources may be needed in areas that may be designated as nonattainment under the federal rules that have been proposed for revision, because areas already designated as nonattainment may need credits from these sources, because credits have already been certified from mobile sources in Texas and elsewhere, because the commission's rules should be no less flexible than federal rules, and because there are some possible ways that credit programs for these types of sources could be implemented. SAE commented that the upstream oil and gas industry should be allowed to use emission reductions from area sources to generate ERCs because the agency already has substantial information related to these sources and they contribute significantly to the SIP EI for some parts of Texas. SAE commented further that the inability of area sources to generate ERCs will reduce incentives for the owners and operators to make voluntary emission reductions. One individual commented that the removal of provisions for area source ERCs would significantly impact the Texas economy and increase greenhouse gas emissions from the burning of natural gas instead of conversion to ethylene to be used as a raw material in chemical manufacturing. EPEC commented that credits from mobile sources should be retained because, although most reductions from Title II emission standards have already been incorporated into the SIP, additional mobile reductions might be generated from fleets outside of Title II and related programs. EPEC commented further that area source credits should be retained because it may be possible to certify some in the future. Total commented that the area source credits should be retained but only for a narrower universe of facilities with regulatory requirements similar to those for major sources and minor new source review permits. Stolt commented about retaining provisions for credits from mobile sources and especially for mobile DERCs, which Stolt has generated in the past under a protocol approved by the commission and the EPA. Stolt commented that these credits provide incentives for voluntary emission reductions and are needed for permit offsets. Stolt also commented that removal of the provisions for generating mobile DERCs may put the existing mobile DERCs in jeopardy. TPA opposed the removal of provisions for area and mobile sources to generate credits because its members would be impacted both for not being able to generate credits and by a reduced supply of credits for the members' offset needs. TPA commented that the need for more credits is already high and will rise if federal requirements are tightened, with economic consequences for Texas. TPA also commented trade associations are ready to help develop the guidance and revisions needed for area source programs. TPA disagreed that there would not be a fiscal impact from removal of these programs. TPA also commented that enforceability of reductions to generate area source ERCs, and ensuring that such reductions are and remain surplus to the SIP could be achieved through existing permitting, certification, and inspection mechanisms, while acknowledging TCEQ's concerns given past difficulties. Smalling commented that mobile sources should also remain in the banking rules and no changes are required. Mobile sources could be an important source of ERCs to the regulated community. The suggestions for mobile sources are contained in elements outlined by the EPA necessary for approval of trading programs that would be used within a SIP in guidance. The EPA guidance lists some reasonably simple steps that the state could take to obtain approval for mobile source credits if the TCEQ wanted to take a "belt and suspenders" approach to the issue. Western commented that the commission should develop guidance on how credits from area and mobile sources can be quantified and certified. TCC opposed the proposed repeal of mobile and area source ERCs and DERCs and suggested this flexibility be retained in the rule. TCC requested that TCEQ retain this flexibility as it will be needed in the future to address the EPA's recent proposal to lower the ozone NAAQS, potentially significantly. TCC added that it is im-

portant that Texas and the TCEQ retain as many tools as possible to address the significant restrictions that would be imposed on new and existing nonattainment areas. TCC requested the commission retain the option of using area and mobile source credits to maintain future flexibility in responding to the possibility of a lower ozone standard and stated that this program is essential to the progress of the state in maintaining our business climate as well as making steps toward better air quality. TXOGA commented that the commission should retain the provisions for area source and mobile source ERCs and DERCs and that its members will work with the commission to develop suitable strategies to implement programs consistent with EPA and FCAA requirements while minimizing the burden on applicants and the agency. TXOGA stated that the programs are critical to Texas' future economy and that areas designated nonattainment for ozone in the future may not have enough point sources with capacity for additional reductions to generate the emissions credits needed for growth. TAM expressed concern about the proposed repeal of provisions for area sources but understood the significant regulatory and financial responsibility for implementing a program consistent with federal requirements. TAM requested that the commission continue to work with industry partners to find a workable solution.

Response

In response to comments, the commission is not removing the language relating to area and mobile sources generating credits. For mobile sources, the commission is adding back at adoption all provisions in Divisions 1 and 4 that applied to mobile sources before this rulemaking. Retention of these provisions does not signify that the requirements are being lessened, but rather that the requirements are exactly as they had been. Mobile sources are therefore not subject to any of the proposed revisions for stationary sources. However, since area sources are a subset of facilities (i.e., stationary sources), the revisions adopted for facilities will also apply to area sources, as was noted in the proposal preamble discussion about the possibility of the changes for area sources not being adopted. The proposal of these rules was not related to and was developed prior to the EPA's proposal to reduce the ozone NAAQS, but retention of the provisions for area and mobile sources is based in part on the current uncertainty of the stringency of the ozone NAAQS revision and its impact on Texas. The commission continues to provide input to the EPA about the ozone NAAQS proposal and will maintain the current flexibility for further consideration to meet current market demands and any future demands associated with a potentially more stringent NAAQS. The commission will continue to evaluate ways in which the use of these provisions may be effectively implemented to generate credits and welcomes input from interested parties on the related issues.

The disposition of previous applications for ECs is beyond the scope of this rulemaking. The commission evaluated the fiscal impact of the repeal of these provisions based on conditions as they actually exist and confirms again that there would be little impact because generating credits from area or mobile sources has not historically been utilized or in most cases met all the applicable requirements. The commission notes that the purpose of the EC and DEC programs is not to generate revenue for sites making reductions, but to allow market-based flexibility in reducing emissions in a manner that is consistent with the FCAA and the SIP.

Comment

TPA commented that based on cyclical trends, 100 - 300 tons of ERCs may be available at one point in time in the HGB ozone nonattainment area and that it is not unusual for a single project to consume all the available supply of credits, thus limiting the next major project to a point in time when more credits become available.

Response

The commission understands that ERCs can be a scarce and valuable resource in an ozone nonattainment area, and that major sources may have to wait until credits become available before moving forward with major expansions or new construction. The reduction in the amounts of credits generated is mostly related to the fact that the easiest and most cost-efficient emissions reductions from point sources have already been done, such that costs for reducing emissions have increased at the same time that supply has not kept up with demand. The FCAA offset requirements are designed to allow growth to continue in a nonattainment area, while still improving air quality so that such an area can come into attainment. Real reductions in emissions are necessary for credits to be generated, as the credits will be used to offset new emissions in the airshed, with an additional environmental contribution that should still allow air quality to improve. No changes to the rules were made in response to this comment.

Comment

Smalling and Sage commented that removing area and mobile ERCs would increase prices for credits.

Response

At adoption, the commission is retaining the provisions for area and mobile sources to generate credits. The reduction in the amounts of credits generated and the increase in prices is mostly related to the fact that the easiest and most cost-efficient emissions reductions have already been done, such that costs for reducing emissions have increased at the same time that supply has not kept up with demand. No changes to the rules were made in response to this comment.

Comment

Sage commented that the commission should not be concerned about potential liability for certifying reductions from area sources and recommended adding a statement to correspondence that the agency is not liable if credits are later disallowed.

Response

The commission takes its responsibilities of reviewing and approving projects that generate and use credits very seriously. Staff ensures that all criteria are met, including that reductions and certified credits are surplus to the SIP and regulatory requirements, properly calculated, and compliant with all relevant rule requirements. The rules have and will continue to specify that credits are not a property right and can be reduced or cancelled as needed and appropriate. No change to the rules was made in response to this comment.

Comment

TPA and TIP commented that in new areas of the state that may become nonattainment for ozone under EPA's proposed 2015 ozone NAAQS, area and mobile sources are the source of the majority of NO_x and VOC emissions. TPA and Western commented that the ability to generate ERCs from area and mobile sources could be very important in these areas; otherwise new

major source construction could be largely eliminated. Western Refining added that if El Paso becomes designated as nonattainment under a future ozone standard, the options for generating ERCs from areas sources would be necessary to allow ERCs to be generated for further growth.

Response

The commission acknowledges that some areas that may become nonattainment for ozone in the future under a 2015 NAAQS may have few point sources available to generate ERCs. However, this does not negate the challenges associated with generating ECs from area and mobile sources. In response to this and other comments, the commission is not removing the language relating to area and mobile sources generating credits. Because input is desired to determine a more effective way to implement the generation of credits by area and mobile sources, the commission encourages interested parties to participate as outlined in the response to the first comment on this rulemaking.

Comments

TPA commented that Texas may be putting itself at a competitive disadvantage with Louisiana if it removes the area and mobile source options to generate credits from the rules. Smalling commented further that expanded domestic oil and gas production has increased the need for ERCs for use as offsets for new and expanded facilities in the HGB area and that not allowing area sources to generate ERCs would result in jobs, wages, and tax revenue leaving Texas.

Response

As previously discussed, the reduction in the amounts of credits generated in Texas ozone nonattainment areas is mostly related to the fact that the easiest and most cost-efficient emissions reductions have already been done, such that costs for reducing emissions have increased at the same time that supply has not kept up with demand. Although oil and gas production does not require offsets in most cases, the commission realizes that increased petroleum refining may require more credits for offsets. In response to this and other comments, the commission is not removing the language relating to area and mobile sources generating credits.

Comment

The EPA commented that it is not taking a formal position on the need to repeal the rules for generating credits from area and mobile sources. The EPA commented that it cannot provide specific guidance on generating credits from area sources, specifically in regards to future use as nonattainment NNSR offsets. The EPA indicated that if the provisions were repealed it would be willing to work with the TCEQ to develop viable area and mobile source strategies for future inclusion in the Texas SIP. The EPA expressed interest in taking part in any future discussions so that it can help address viability of area source credit generation. The EPA also noted that area source reduction strategies have been successfully used for AD purposes and encourage the TCEQ to consider this approach for area sources as well. The EPA added that if the existing SIP-approved flexibility is retained, area and mobile source credit generation generally requires the EPA's review on the generation protocol, through which the EPA could assist the TCEQ in determining whether the reduction strategy would be viable.

Response

The commission appreciates the EPA's willingness to work with the commission on these complex issues. However, the commission does not agree that generating credits from area and mobile sources would necessarily require additional EPA review of the generation protocol as long as the EPA approved rule requirements are followed. If a methodology that is substantively the same as a methodology that has been approved by the EPA is submitted to quantify emissions from the same type of facility or source as was represented in the approved protocol, it is not reasonable or necessary to expect the newly submitted protocol to be submitted for additional EPA review. In response to this comment, the commission is adding subparagraph (C) in §101.302(d)(1) and in §101.372(d)(1) to indicate that the executive director may approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility or mobile source. The commission intends that only new protocols for sources must be submitted for EPA approval, rather than requiring such review when there is already an approved protocol for the same type of facility or mobile source. The commission agrees that any unapproved protocols will need EPA review and approval under the provisions of §101.302(d), but any SIP-approved protocols can be used without further EPA review. The commission will continue working with the EPA on these issues.

Comment

EPA requested that the TCEQ provide a current inventory of banked MDERCs, including location and pollutant, and a demonstration of how the applicable SIP ADs have accounted for the use of these banked MDERCs.

Response

All credits that are available are included in the ERC and DERC registries website. All MDERCs to date have been generated in Harris County from NO_x reductions. The MDERC certificates currently remaining (totaling 235.5 tons) are the following: D-2077 (2.0 tons), D-2283 (1.5 tons), D-2316 (0.3 ton), D-2341 (10.0 tons), D-3029 (19.5 tons), D-3030 (22.6 tons), D-3031 (19.3 tons), D-3032 (23.8 tons), D-3033 (25.9 tons), D-3034 (29.4 tons), D-3035 (20.9 tons), D-3036 (23.1 tons), D-3037 (25.0 tons), D-3038 (9.2 tons), and D-3168 (3.0 tons).

The available MDERCs in the registry as of June 2013, banked in HGB, totaled 247.1 tons of NO_x. The commission added these to the maximum potential DERCs that could be used for MECT compliance (in lieu of allowances) in any one year of 1,000 tons. As documented in Appendix B, Section 2.3 of the *Attainment Demonstration SIP Revision for the DFW 2008 Eight-Hour Ozone Nonattainment Area* adopted concurrently with this rulemaking, the commission made a worst-case assumption that all of these DERCs and MDERCs could come back into the airshed (credits used) in the attainment year in its calculation of growth for modeling. Table 2-15, titled Banked Emissions as of June 2013, of Appendix B documents this total of 1,247.1 tpy (3.4 tpd) of NO_x as emissions growth for the HGB MECT sources that potentially can be modeled. The entire MECT cap was modeled, plus this 3.4 tpd of NO_x growth for MECT sources. The commission makes no changes in response to this comment.

Comment

Delek and Western commented that while there has been discussion of allowing oil and gas production facilities to generate ERCs and DERCs, this possibility would not help in their counties because there are few production facilities.

Response

The commission recognizes that there are different circumstances in the various counties of the state. These rules apply statewide and are designed to be as flexible and inclusive as possible for the benefit or all Texans. The commission makes no changes in response to this comment.

Comment

Smalling commented that the TCEQ staff has arbitrarily not approved any area source applications although the current rules clearly allow it.

Response

Any commission action on previous ERC applications is beyond the scope of the rulemaking.

Comment

Smalling commented that removal of area sources from the ERC rules is contrary to EPA guidance for EIP.

Response

The EIP guidance from the EPA allows states considerable latitude in determining the specific features of these programs. The EIP guidance does allow for the generation of credits by area sources, but only based on historical emissions levels. Emissions of area sources have been estimated rather than relying on requiring these sources to monitor or report source-specific emissions. However, in response to this and other comments, the commission is not removing the provisions for area and mobile sources to generate credits.

Comment

Smalling commented that removal of area source ERCs is not consistent with the SIP. The commenter stated that previous changes to the EBTP rules were made to address EPA comments, and that EI rules contain provisions allowing sources to file emissions data with the commission. Smalling stated that therefore a specific source could submit such data and be included in the SIP in both the area source inventory and as a line item within the inventory. Smalling stated that the commission can request specific sources file such information with the commission. The commenter also included additional information about the commission's EI reporting requirements.

Response

The commission's proposed removal of the area and mobile source credit provision was based on the significant implementation issues associated with these programs and ensuring the programs are consistent with FCAA requirements for the SIP. Removal of options that have not been used or that the commission has determined cannot be effectively implemented is consistent with how the commission implements SIP revisions. Although the commission has the authority to require specific sources to report emissions, even if they are below the normal EI reporting threshold, this does not solve the broader challenges associated with fully implementing area or mobile source credits. However, in response to this and other comments, the commission is not removing the language relating to area and mobile sources generating credits.

Deadline to Submit an Application to Generate ERCs

Comment

TCC and TPA supported extending the deadline to submit an Application to Generate ERCs from 180 days to two years after the implementation of an emissions reduction strategy. TPA commented that Pennsylvania allows applications to be submitted for two years after "initiating a reduction" and stated that TCEQ's rules would benefit from a similar provision.

TIP and Luminant suggested extending the application deadline to 54 months after implementation of the emission reduction strategy. Western and Delek recommended extending the application deadline to five years, adding that the suggested change is especially important for areas designated as nonattainment in the future. Sage recommended removing the deadline from the rule so that applications could be submitted up to the expiration date of the potential ERCs. TCC requested the commission consider allowing reductions in new nonattainment areas to be claimed anytime "before the next nonattainment SIP" consistent with a five-year ERC expiration and requested the change in deadline apply retroactively.

Response

In research done before drafting the proposal, the longest period found for applying for ERCs was the two-year period allowed by Pennsylvania (under 25 Pennsylvania Code §127.207), which in some cases requires additional documents to be submitted within one year of the reduction for the source to be eligible. In considering a revision to the time limit, the commission is trying to provide ample time for an applicant to submit the application while ensuring any ERCs generated are included in the modeling demonstration for an applicable SIP revision. The two-year period provides the applicant more time to submit an application to generate ERCs while still leaving a significant portion of the five-year lifespan of an ERC to provide the flexibility needed by users. The five-year lifespan of an ERC starts with the implementation of the emission reduction strategy rather than submittal of the application to certify the reductions or certification of the credits. The commission makes no changes in response to these comments.

Comment

Luminant commented that a company that achieves emission reductions before an area is designated as nonattainment or before a SIP revision is adopted in an existing nonattainment area should not lose use of the emission reductions.

Response

The commission agrees that credits may be needed for use soon after an area is designated as nonattainment. In response to this comment, the commission has revised the definition of "SIP emissions" to allow sources to use the EI data that will be used in the EI SIP revision required for that area until the EI SIP is submitted to the EPA, which is currently required within two years after the effective date of the nonattainment designation. Emission reductions achieved before a SIP is revised can only be certified if the reduction occurred after the year of EI used in the modeling for the revised SIP. Reductions before or during the year of EI used in the modeling for the revised SIP are not surplus to the SIP EI and are therefore not eligible to be certified.

Comment

One individual commented that the increased time for submitting an ERC application could be beneficial, but the agency has not defined or addressed what constitutes a final event in a company's implementation of an emission reduction strategy. The individual also commented that the agency is not consistent in

how this is used in ERC applications. The individual commented further that the agency should implement a policy, as opposed to rulemaking, in which implementation of the emission reduction strategy is not complete until the company has satisfied all criteria for emission banking and trading.

Response

The commission did not propose a definition for "final event" in this rulemaking, and is therefore precluded from introducing a new definition upon adoption of the rulemaking. Furthermore, discussion of future policymaking is beyond the scope of this rulemaking. Any commission action on previous ERC applications is also beyond the scope of this rulemaking. No change to the rules was made in response to this comment.

DERC Use in the DFW Area

Comments

The EPA supported the proposed revisions to the NO_x DERC limit in the DFW 1997 eight-hour ozone nonattainment area and stated that a flat limit would provide certainty to industry and easier implementation for the TCEQ. Luminant and TIP supported the replacement of the annually calculated NO_x DERC limits for the DFW area with a fixed limit of 17.0 tpd. Luminant stated that the annually calculated values could be unnecessarily restrictive in the future and the fixed limit is projected to provide flexibility while not harming air quality.

Luminant did not support the proposed change of the submittal deadline for the notice of intent to use DERCs from August 1 to October 1 and requested to retain the additional time provided by the deadline before proposal, which may be needed to arrange alternative compliance methods if the requested amounts of DERCs are not approved.

Response

The commission appreciates the support for establishing a fixed limit on NO_x DERC use in the DFW 1997 eight-hour ozone nonattainment area. In response to Luminant's comment, the commission is not adopting the proposed changes to the application deadline in §101.376(d)(1)(B)(i) to allow adequate time to arrange alternative compliance methods.

Comment

The EPA noted that the TCEQ has difficulty demonstrating that the DFW area will reach attainment for the 2008 standard by the FCAA deadline. The EPA recommended reducing the proposed 17.0 tpd NO_x DERC limit in the DFW 1997 eight-hour ozone nonattainment area to improve the possibility of reaching attainment for the 2008 standard by the FCAA deadline and stated historical DERC use indicates the lower limit could be reduced without any impact on actual usage rates.

Response

The *Attainment Demonstration SIP Revision for the DFW 2008 Eight-Hour Ozone Nonattainment Area* adopted concurrently with this rulemaking demonstrates attainment of the 2008 eight-hour ozone NAAQS by 2018 based on a photochemical modeling analysis of reductions in NO_x and VOC emissions from existing control strategies and a weight of evidence analysis. The support for this demonstration does not rely on emission reductions associated with the DERC limit; Appendix B of the DFW AD SIP revision explains that the growth projected by the Eastern Research Group, Inc. growth factors was actually the limiting factor. DERC use in the DFW 1997 eight-hour ozone nonattainment area is historically small, and further reduction below the 17.0 tpd limit is not necessary as part of the DFW AD SIP revision. The commission makes no changes in response to this comment.

Comment

The EPA supported the exclusion of Wise County from the DFW area NO_x DERC limit, under the assumption that DERCs generated in Wise County would not be used under the DFW limit unless the inter-area use restrictions are followed. The EPA added that the same would apply to DERCs generated from the DFW area but used in the Wise County area.

Response

The commission appreciates the support for not extending 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. Given the different classifications, NO_x DERCs generated in Wise County could only be approved for use in the nine-county DFW 1997 eight-hour ozone nonattainment area 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).

Comment

The EPA stated that the TCEQ adopted and submitted revisions to the DERC program to establish an exemption from the DFW DERC limit for ERCOT-declared emergencies in a SIP revision dated August 16, 2013. The EPA asked how the current revisions to the DFW AD for the 2008 ozone NAAQS accounted for the exemption or the ERCOT-declared emergencies. The EPA requested the commission provide a historical accounting of how the ERCOT-declared emergency exemption has been used in the DFW area and its impact on the AD.

Response

This exemption is outside the scope of the rulemaking. The commission did not propose to revise this provision but only moved it within the rule. The original provision was added to clarify that emergencies that threaten the stability of the grid would not be treated the same as other emergencies in regards to the DERC limit. The commission determined that the effects on air emissions from an electrical grid emergency and potential blackouts could be more significant than the use of DERCs above the limit. The commission notes that the provision has not been used in the past but may still be needed in the future. The commission makes no changes in response to this comment.

Use of credits as offsets

Comment

The EPA requested confirmation that proposed subparagraph (C) in §101.376(b)(2) still requires that a user of DERCs for NNSR offsets is required to obtain and retire an amount of DERCs equal to either the portion greater than 1:1 of the offset requirement or 10% of the amount of DERCs used as an environmental contribution. The EPA commented that as written, there is no requirement that this amount of DERCs be retired. The EPA added that if it is not the TCEQ's intent to require retirement of this environmental contribution, the TCEQ

should provide a demonstration under FCAA, §110(l) as to the justification for reducing the stringency of this provision.

Response

The proposed changes in §101.376(b)(2)(B) and (C), were only to indicate that it is the user's responsibility to obtain the amount of DECs specified as offsets in the NNSR permit. However, as part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed changes in §101.376 referenced by the commenter. This requirement will remain as it was in the prior SIP-approved rules.

Comment

TCC supported deletion of the requirement to identify the ERCs to be used as offsets before permit issuance to allow additional time to obtain the ERCs. TCC, TIP, and Luminant supported the proposed requirement for ERC users to submit a completed Application to Use ERCs at least 90 days before the start of operation for an ERC used as offsets in an NNSR permit.

Response

The commission appreciates the support for these provisions.

Comment

TIP offered a technical correction to §101.376(b)(2)(E), pointing out that an application to use DERCs for offsets should not be required to be submitted more than once.

Response

The commission agrees with this comment. The proposed revision was intended to allow the user to submit one application to use DERCs for NNSR offsets to reduce the regulatory burden associated with the previous requirement to submit applications annually. However, the commission also recognizes that there may be circumstances when the user may need to provide additional DERCs to continue operation beyond the initial period covered by the original application. Therefore, in response to this comment the commission is revising §101.376(b)(2)(D) to require the user to submit the application at least 90 days before the start of operation and before continuing operation for any subsequent period for which the offset requirement was not covered under the initial application.

Use of allowances as offsets

Comment

TCC expressed concerns regarding the impacts associated with the devaluation of MECT allowances used for the 1:1 portion of the offset ratio due to future regulatory changes because it creates too great of an uncertainty for projects. TCC suggested that during SIP development, new facilities that are built to Best Available Control Technology or Lowest Achievable Emission Rate requirements and utilize MECT allowances as ERCs should be kept "whole" and not be subject to adjustments in a future SIP process. TIP requested an option be added to the rule to allow a company to permanently retire MECT allowances used for the 1:1 portion of the offset requirement rather than using these allowances simultaneously for MECT compliance as provided in §101.352(e). This change would prevent the allowances used as offsets from devaluing.

Response

These suggested revisions are outside the scope of this rulemaking. The requirement for a new or modified major source to offset new emissions is a requirement of the FCAA. For a permit to continue to be valid, a source that uses allowances to meet this requirement on an on-going basis, instead of using credits for a one-time offset, must surrender enough allowances on a yearly basis to meet the full offset amount. If allowances are devalued though future regulatory actions, it will be necessary for a source using allowances to obtain enough allowances to continue to meet the full offset requirement. This is necessary because, although the allowances will no longer have the same emissions value, the offset requirement will not be decreased. The commission makes no changes in response to this comment.

Comment

TIP opposed the amendments to §101.352(e) and §101.393(d) that allow MECT and HECT allowances to be used for the full offset requirements in NNSR permits because these issues could be handled through guidance. TIP commented that the commission should not make changes to the existing SIP-approved rule language simply to make the rules consistent with guidance and historical practices. TIP stated that TCEQ's existing guidance has been effective in settling these issues.

Response

The commission does not agree that it is inappropriate to update rules to reflect current guidance and agency practices. No change to the rules was made in response to these comments.

Comment

The EPA supported the new provisions in §101.352(e) and §101.393(d) that clarify how allowances can be used for the 1:1 portion of the NNSR offset requirement, as well as the portion of the offset requirement that is greater than 1:1, which is referred to as the environmental contribution. TCC supported adding language to allow use of current MECT allowances (but not vintage MECT allowances) for offset purposes in NNSR permits for any part of the offset requirement (the 1:1 or the 0.3:1). TPA supported the proposed revisions to provide for 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 it would increase sources' access to the EBT program and would be beneficial.

Response

The commission appreciates the support.

Generating ERCs from facilities in the MECT and HECT Programs

Comment

TIP requested that §101.352(c) be revised to require that MECT allowances be retired when NO_x ERCs are generated by MECT-applicable facilities only when those facilities are existing facilities, as defined in §101.350, which were permitted and built before 2001.

Response

The prior requirements in §101.352(c) already require an owner or operator that generates ERCs from any facility subject to the MECT rules to make an enforceable and permanent reduction of annual allowances. The commenter's suggested revision would not require MECT-applicable sources without an annual allocation to retire a MECT allowance, but this change would require a demonstration of noninterference under FCAA, §110(l) showing why those amendments do not negatively affect the status of the state's progress towards attainment with the ozone NAAQS, do

not interfere with control measures, and do not prevent reasonable further progress toward attainment of the ozone NAAQS. The commission makes no changes in response to this comment.

Comment

TPA supported proposed §101.393(i), which 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 ton per year of HECT allowances is surrendered for each ton per year of ERCs generated from HRVOC emissions. TPA supported the proposal as it would add flexibility to the EBT program by enhancing a source's ability to generate VOC ERCs, which are currently in short supply.

Response

The commission appreciates the support.

Inter-pollutant use of credits

Comment

The EPA supported revisions to the inter-pollutant provisions for DERCs and ERCs to require photochemical modeling for each inter-pollutant request as opposed to the urban airshed modeling language. The EPA expressed concern that the new language creates a two-part test for approvability - the substitution could be approved if it is shown either not to adversely affect the overall air quality or not to adversely impact the regulatory design value - and suggested revising the proposed rules to either satisfy both parts or remove the design value test entirely. The EPA added that relying on the design value test could result in relatively large changes in an area's ozone levels being approved without the design value changing due to truncating to 1 ppb in the calculation of ozone DVs. Further, relying solely on the design value test would not be in keeping with the EIP Appendix 16.9, which focuses on ensuring that trades reduce or maintain ozone levels. The EPA noted that the revised provisions maintain the existing SIP requirement for prior approval from the EPA and TCEQ before substituting one ozone precursor for another ozone precursor. The EPA added that it should be consulted during the development of the protocol so that its concerns about the photochemical modeling could be incorporated at the beginning of the process.

Response

Based on the comments, the commission is revising the language in §101.306(d) and §101.376(g) to clarify that both parts of the modeling demonstration are required. The proposed rules state that a credit may be used to meet the NNSR offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

Comment

TIP opposed the proposed provisions in §101.306(d) and §101.373(g) that require a showing that inter-pollutant use of ERCs or DERCs will not adversely affect the overall air quality or regulatory design value in the nonattainment area of use.

Response

The commission considers this change necessary under the FCAA. The proposed provisions in §101.306(d) and §101.373(g) add specificity to the prior requirement that the user demonstrate that one ozone precursor may be substituted for another. Although the TCEQ has issued guidance on how to make the required demonstration, the commission considers this change necessary to establish the standard by which the executive director will base approval of the inter-pollutant use of credits. The proposed rules state that a credit may be used to meet the NNSR offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution. No changes are made in response to this comment.

Comment

TCC commented that revising the ERC inter-pollutant modeling requirements from the urban air shed model to photochemical modeling is consistent with TCEQ's current software usage and with TCEQ's existing inter-pollutant guidance document.

Response

The commission appreciates the comment.

Comment

TCC encouraged the agency to consider additional ways to calculate use of inter-pollutant ERCs in order to provide flexibility to the regulated community.

Response

The commission developed the method for calculating the use of inter-pollutant ERCs to be consistent with federal and state requirements. Based on comments from the EPA on this provision, the method, as clarified at adoption, appears to be consistent with EPA requirements. Since both commission and EPA approval of the inter-pollutant use of ERCs is required, no changes to the rule were made in response to this comment.

Comment

TCC commented that companies should be able to adjust the EI to evaluate emissions based on recent, actual performance testing in lieu of emission factors if such factors were used in the baseline emission inventory.

Response

The EI requires actual emissions to be reported using the best available method during the reported calendar year. When revised or updated emissions factor data become available for a particular emissions unit, owners or operators can use that data to determine emissions from that point in time forward.

The TCEQ reviews EI revisions on a case-by-case basis. The TCEQ might approve test data to revise an EI if the test was conducted during the calendar year for which the inventory was requested. However, the TCEQ's processing of such a revision will not necessarily change the baseline inventory amount for credit generation, since the revision must be represented in the EI used in the most recent AD SIP revision.

Additionally, the TCEQ does not allow retroactive emissions revisions using test data; for example, a performance test conducted during 2014 cannot be used to revise EIs for calendar years prior to 2014. The TCEQ does not allow retroactive revisions because the emissions unit did not necessarily operate in the same manner in the past as it did during testing. Additionally, if EI revisions were required every time a unit was tested or emissions factors were updated, additional permitting requirements (such as NNSR), emissions fee requirements, SIP revisions, and other air quality-related program requirements could be triggered and

would need to be reviewed and reassessed on a case-by-case basis.

Comment

TIP opposed amendments to §101.302(e)(4) and §101.372(e)(4) that provide that ERCs and DERCs cannot be certified from emissions that exceed any local, state, or federal requirement.

Response

The revisions noted by TIP were proposed as clarifications rather than substantive changes to the rules. The definition of "surplus" has and continues to require that emission reductions certified as ERCs and DERCs cannot have been relied upon in the SIP and cannot be mandated by any local, state, and federal requirement. Because the provisions had only included one requirement, allowable emissions, the commission proposed to clarify that the rest of what is needed to be surplus also applies to these provisions. However, as part of retaining the provisions for mobile sources to generate credits, the commission is not adopting any of the proposed changes to §101.302(e)(4) and §101.372(e)(4) referenced by the commenter. This requirement will remain as it was in the prior SIP-approved rules.

SIP emissions

Comment

The EPA requested clarification on and examples of how the new definitions of "SIP emissions" in the ERC and DERC rules would apply to the generation and use of credits as currently approved in the Texas SIP. The EPA questioned if the definition expanded the ERC program to attainment areas. The EPA stated that it interprets the proposed definition of SIP emissions to allow credits to be generated before an area is designated nonattainment, such that credit would be available for use as offsets when an area becomes nonattainment. The EPA added that it is unable at this time to identify what set of regulations would be approvable or allow for the generation of credits in an attainment area that could be used for NNSR offsets if the same area becomes nonattainment in the future.

Response

The commission does not agree with the assumption that the proposed definition of SIP emissions expands ERC generation to areas that are not designated nonattainment. As noted by the EPA, the SIP-approved ERC rules clearly only apply in nonattainment areas and therefore the requirements of that division (including the definition of SIP emissions) do not apply to sources located in an area that has not been designated nonattainment. The SIP emissions definition is intended to provide a mechanism for the generation of ERCs and DERCs upon the effective date of the area's nonattainment designation, which is consistent with when new or modified facilities become subject to the NNSR offset requirements.

While the SIP-approved DERC rules currently allow DERCs to be generated in any county, the commission only intends the definition of SIP emissions to apply to credits generated in an area designated nonattainment by the EPA. It is not clear to the commission that the FCAA necessarily prohibits DERCs certified prior to a nonattainment designation from being used in the same county where they were certified after a nonattainment designation. In response to this comment, the commission has revised the definition to clearly indicate that SIP emissions are only considered for a facility located in a nonattainment area.

In response to comments, the commission is expanding the definition to ensure that credits can be generated between the effective date of the designation and the date the EI SIP is required to be submitted to the EPA. The expanded definitions indicate that in absence of any of the other specified SIP revisions, the SIP emissions may be determined from the calendar year of the EI that will be used in the EI SIP revision that will be submitted to the EPA. This option is being added in response to comments, to ensure that credits can be generated beginning on the effective date of the nonattainment designation as opposed to restricting credit generation until after an EI SIP revision is submitted to the EPA, which could be two years after the effective date of the designation. The commission anticipates that the executive director will have determined the inventory year for the EI SIP at approximately the same time an area is designated nonattainment as part of the SIP planning process since there is a limited amount of time before the EI SIP is required to be submitted to the EPA.

An AD or maintenance plan SIP revision submitted for the previously issued NAAQS could be used even if this standard has been revoked. For example, the SIP emissions would be based on the inventory year used in the AD SIP revision most recently submitted to the EPA for the 1997 eight-hour ozone NAAQS until an AD or maintenance plan SIP is submitted for the 2008 (or any subsequent year) eight-hour ozone NAAQS for that area. However, if no AD or maintenance plan SIP has been submitted for either the 1997 or 2008 eight-hour ozone NAAQS, the SIP emissions would be based on the inventory year that was, or will be, used in the EI SIP submitted for that area even if an AD SIP revision was previously submitted for the one-hour ozone NAAQS in the area. If an AD or maintenance plan SIP has been submitted for the 1997 eight-hour ozone NAAQS and an EI SIP was later submitted for the 2008 eight-hour ozone NAAQS, the SIP emissions would continue to be based on the AD or maintenance plan SIP submitted for the 1997 eight-hour ozone NAAQS. However, if an AD or maintenance plan SIP was submitted for the one-hour ozone NAAQS and an EI SIP was later submitted for the 2008 eight-hour ozone NAAQS, the SIP emissions would be based on the EI SIP for the 2008 eight-hour ozone NAAQS.

Comment

TIP offered two technical corrections for the new definition of "state implementation plan emissions" at §101.300(21). TIP requested that the proposed definition of "state implementation plan emissions" be made the same as the term used to implement the new definition at §101.303(b)(1) to limit baseline emissions. This could be done by changing §101.300(21) to define "SIP emissions" or by changing §101.303(b)(1) to refer to "state implementation plan emissions."

Response

The commission rules are drafted in accordance with current *Texas Register* style and format requirements, which include a requirement to define acronyms the first time the term is used in each section of the rules. In response to this comment, the commission has revised the defined term to also include the SIP acronym in an effort to improve readability and ensure that it is clear that "state implementation plan" and "SIP" have the same meaning.

Comment

Sage commented that, for counties newly designated as nonattainment, the rule change related to using an EI or maintenance SIP instead of only the AD SIP should be expanded to keep the emissions used in the EI or maintenance SIP available after an

AD SIP is adopted if they have not already been used for an offset.

Response

When an AD SIP is developed or revised, the prior emission reductions are incorporated into the modeling used to demonstrate attainment. Therefore, allowing credits to be generated from reductions that are no longer surplus to the SIP would be inappropriate and could have a negative impact on air quality. As discussed in the Section by Section Discussion section of this preamble, the need to avoid this occurrence was the basis for the prior 180-day deadline for submitting applications to certify ERCs and will also limit some applications submitted under the new two-year deadline. However, changing the SIP used when generating credits does not affect credits that were previously issued, only credits that are issued afterwards. Any banked credits generated based on the EI or maintenance SIP revisions would be included in the AD SIP and therefore available for use as long as all other requirements are met. No change to the rules was made in response to this comment.

Comment

TCC expressed concern that the proposed definition of SIP emissions would reset the baseline year in the HGB area and requested further discussion on this point. TIP suggested revising the definition of SIP emissions at §101.300(21) to prevent an unintended resetting of the baseline-limiting year for areas such as HGB for which an EI SIP revision, but not an AD or maintenance plan SIP revision, has been submitted for the current NAAQS. TIP suggested this change could be implemented by adding "if an attainment demonstration or maintenance plan SIP revision for the current NAAQS" to §101.300(21)(B). TIP stated that such a change would also be consistent with federal rules.

Response

The definition of "SIP emissions" does not reset the baseline year in the HGB area. However, the year used as the baseline year in the HGB SIP will change upon the next revisions to the AD SIP for the HGB area. As discussed in the response to an EPA comment on this issue, the other provisions for this definition in Division 1 and Division 4 are intended to provide a mechanism to certify credits soon after an area is designated nonattainment rather than affecting areas that are already designated nonattainment. No changes were made in response to this comment.

Miscellaneous

Comment

TCC and TIP opposed the proposed 10% allowance penalty for MECT sources because the standard for "non-compliance" is unclear and tightens the MECT cap without improving emissions quantification. TIP commented further that it would be inappropriate to impose a MECT penalty for circumstances where the alleged noncompliance results from generality in the rules, especially if the owner or operator has used the best available method to quantify the emissions. TCC stated that if the commission moves forward with the proposed penalty then the rules should allow 60 days to respond to the Notice of Deficiency.

Response

The additional 10% of allowances will only be assessed in cases where there is a clear requirement for monitoring or testing in Chapter 117 but the owner of operator of the facility has failed to meet that requirement. By providing a greater incentive for companies to meet the Chapter 117 requirements, which provide more accurate data than the alternative data sources, this provision should improve emission quantification over time. The use of this provision does not in itself constitute enforcement and will not be reflected in a company's compliance history, although the provision also does not preclude an enforcement action from being taken for the Chapter 117 violation. Therefore, this issue for MECT allowances will be addressed in the annual compliance letter for a site rather than a Notice of Deficiency. The commission will continue to allow an owner or operator to provide revisions to an annual compliance report within 90 days of the issuance of an annual compliance letter, and if the owner or operator demonstrates that the noncompliance with Chapter 117 has been addressed within that period, the additional allowance assessment will be voided.

Comments

Western and Delek supported the commission's decision to not make any changes to provisions allowing credits be generated for reductions in Mexico.

Response

The commission appreciates the support for leaving these provisions the same.

Comment

Sage commented that the second sentence of the proposed revision to the definition of "real" at §101.300(17) is not necessary and may be confusing. Sage suggested as alternate language "An emission reduction based solely on reducing a facility's allowable emissions which is not related to and part of an approved method of generation described in 30 T.A.C. § 101.303(a) of this rule, is not considered real."

Response

Based on inquiries on the issue of generating ERCs solely from reducing permit limits for emissions, the commission added at proposal the second sentence to the definition of "real" (now renumbered as §101.300(23) because of changes made at adoption) to provide additional clarity on this specific issue. Sage's suggested language appears to allow the reduction of only allowable emissions as long as this is related to a method of generation, which is not consistent with FCAA requirements. No change to the rules was made in response to this comment. However, as part of retaining the provisions for mobile sources to generate credits, the commission is not adopting the proposed revisions to this term.

Comment

The EPA commented that it is not necessary to include proposed §101.302(c)(1)(D) because it is redundant given the proposed new definition of "SIP emissions" in §101.300(21).

Response

The commission agrees that the provision is not needed with the definition of SIP emissions. Revised §101.302(c)(1)(C) requires that the emission reductions occur after the year used to determine the SIP emissions, and the definition of SIP emissions applies only to a facility that reported emissions used in the appropriate SIP. Therefore, saying in §101.302(c)(1)(D) that the facility must have reported emissions used in the SIP is not needed. In response to this comment, the commission is removing the requirement in §101.302(c)(1)(D).

Comment

The EPA agreed with the proposed deletion of the ERC and DERC "ownership" provisions in §101.302(l) and §101.372(m), respectively. The EPA also agreed that the revised general ERC and DERC provisions in §101.302(b) and §101.372(b) were clear that the owner or operator of a stationary source is the owner of the credit. The EPA noted that upon a trade, the ownership would transfer to whoever has purchased the EC.

Response

The commission appreciates the support. However, as part of retaining the provisions for mobile sources to generate credits, the commission is not adopting the proposed repeal of the provisions in §101.302(l) and §101.372(m).

Comment

The EPA noted inconsistency between the protocol provisions for the ERC and DERC programs. The EPA provided an example of the noted inconsistencies in §101.302(d)(1)(A) and §101.372(d)(1)(A) and added that it preferred the language in §101.372(d)(1)(A) because it assists the reader in understanding these are the protocols to use for NO_x. The EPA encouraged the commission to review both sections and to identify common language for use, as consistency between the ERC and DERC rules was a driving factor in the proposed revisions.

Response

The commission agrees and has reviewed these sections of the ERC and DERC rules to identify non-substantive changes to promote consistency between these rules. In response to this and other comments, the commission revised §101.302(d)(1)(A) and §101.372(d)(1)(A) but did not incorporate the EPA's preferred language because the SIP-approved monitoring and testing requirements in Chapter 117 include quantification protocols for NO_x, carbon monoxide, and ammonia.

Comment

The EPA supported the repeal of the Emission Monitoring and Compliance Demonstration in §101.358 and agreed that the provisions in §101.354 provide more detailed requirements regarding emissions monitoring and compliance demonstration.

Response

The commission appreciates the support.

Comment

The EPA noted that under the proposed revisions to §101.372(c), the DERC requirements could only be satisfied for a facility that was included in a nonattainment area SIP. The EPA recommended revising §101.372(c) since the DERC program applies statewide in both attainment and nonattainment areas.

Response

The proposed revisions to §101.372(c)(1)(B) and (C) were intended to clarify that subparagraphs (B) and (C) only apply to facilities in a nonattainment area. Proposed §101.372(c)(1)(B) and (C) were revised in response to this comment to further clarify that these subparagraphs will only apply if the emission reduction is made at a facility that is located in an area designated as nonattainment for the pollutant for which the DERC will be generated. New §101.372(c)(1)(B) and (C) do not apply to a facility that is outside an area designated as nonattainment for the pollutant for which the DERC will be generated.

Comment

The EPA commented that the proposed new provisions at §101.372(d)(1)(C) are intended to provide certainty on how DERC generation and use is calculated for carbon monoxide, sulfur dioxide, PM_{10}, and $PM_{2.5}$ by using "commission rules" for the calculations. The EPA questioned if the TCEQ intended to submit these "commission rules" to the EPA for SIP approval. The EPA noted that the NO_x methodologies in §101.372(d)(1)(A) and the VOC methodologies in §101.372(d)(1)(B) have all been submitted to the EPA for SIP approval. The EPA added that other criteria pollutant methodologies should also be submitted to the EPA for SIP approval or the individual methodologies should be developed under the existing SIP requirements for EPA review and approval of protocols at §101.372(d)(1)(D).

Response

The commission agrees that the DERC rules require the use of an approved quantification protocol to determine the amount of DERCs generated or used; the proposed phrase "commission rules" was intended to reference rules submitted as part of the SIP. However, the commission does not agree that only the monitoring methods in Chapters 115 and 117 have been submitted to the EPA for approval. The commission has approved protocols from the EPA for quantifying carbon monoxide and particulate matter in Chapters 117 and 111, respectively. In addition, quantification protocols have also been submitted to the EPA as part of the NNSR and Title V permitting programs. In response to comments related to quantification protocols, the commission is not adopting the proposed provision to ensure the rules clearly require the use of an EPA-approved quantification protocol. The commission is instead adopting subparagraph (C) in §101.302(d)(1) and in §101.372(d)(1) to specify that, in cases where a protocol has not been submitted to the EPA for the applicable facility, the executive director can approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility or mobile source.

Comment

The EPA noted what it considered a typographical error in §101.372(d)(1)(A) and suggested using "as a criteria pollutant" instead of "or a criteria pollutant."

Response

The commission disagrees that the noted word is a typographical error. In addition to the emission specifications for NO_x, there are emission specifications for carbon monoxide in some of the sections cited. The commission intended that this provision apply to both NO_x and carbon monoxide, as well as any other criteria pollutants if any emission specifications and testing requirements are adopted in the future. The commission recognizes that the emission specification for carbon monoxide has not been submitted to the EPA for SIP approval, but the testing requirements that the provision requires to be used have been approved by the EPA as part of the SIP.

Comment

The EPA noted a typographical error in §101.372(h) and suggested revising the first sentence to read "date the DERC is generated" instead of "date of the DERC is generated".

Response

The commission agrees that there was a typographic error in the proposed language. However, as part of retaining the provisions for mobile sources to generate credits, the commission is not

adopting the proposed revision to §101.372(h) that contained the error.

Comment

TCC commented that the proposed revisions to the ERC rule would redefine "baseline emissions" to include the facility's emissions before implementation of an emission reduction strategy calculated as the lowest of the facility's historical adjusted emissions or SIP emissions. TCC expressed concern that the language seems to imply that any source shutdown after the SIP baseline year is not creditable, and would unnecessarily penalize point sources. TCC added that credit should be available for sources that were shut down, even when those sources were not included in the SIP baseline year.

Response

No changes were made in response to this comment. The revisions to the definition of "baseline emissions" in §101.300 were proposed to ensure that the definition of this term was consistent with other portions of this division but did not impose any new requirements or restrictions on ERC generation. The revised definition of "baseline emissions" does not prevent a source that is shut down after the SIP year from generating ERCs. In addition, §101.302(c) limits ERCs to emission reductions that occur after the year used to determine the SIP emissions for the facility. The commission does not agree that ERCs should be generated from sources that were not included in the SIP baseline year.

Comment

TCC commented that the proposal notes an ERC cannot be generated from shutdown of a facility that is not in the SIP, and requested confirmation that emissions covered by Permits by Rule are "in the SIP."

Response

As discussed in regards to provisions for area sources to certify ERCs and DERCs, some facilities authorized under a permit by rule are represented in the EI data used for modeling for the SIP, and others are not but may be included in the modeling in a general way under an area source category. If emissions from a facility were reported to EI for the year of EI data used in the SIP modeling, then the facility is included in the SIP modeling. If the emissions were not reported, then the facility would only potentially be eligible for certifying credits as determined for the specific area source category in which it is represented in the SIP modeling.

DIVISION 1. EMISSION CREDIT PROGRAM

30 TAC §§101.300 - 101.303, 101.306, 101.309

Statutory Authority

The amended sections are adopted 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 adopted 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 adopted 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 adopted 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 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, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the 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 emissions--The facility's emissions, in tons per year, occurring before implementation of an emission reduction strategy calculated as the lowest of the facility's historical adjusted emissions or state implementation plan emissions.

(5) Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(6) Curtailment--A reduction in activity level at any facility or mobile source.

(7) Emission credit--An emission reduction credit or mobile emission reduction credit.

(8) Emission rate--The facility's rate of emissions per unit of activity.

(9) Emission reduction--An actual reduction in emissions from a facility or mobile source.

(10) Emission reduction credit--A certified emission reduction, expressed in tenths of a ton 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.

(11) Emission reduction strategy--The method implemented to reduce the facility's or mobile source's emissions beyond that required by state or federal law, regulation, or agreed order.

(12) Facility--As defined in §116.10 of this title (relating to General Definitions).

(13) Generator--The owner or operator of a facility or mobile source that creates an emission reduction.

(14) 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(14)

(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 mobile 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) 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.

(21) Protocol--A replicable and workable method of estimating emission rate or activity level used to calculate the amount of emission reduction generated or credits required for facilities or mobile sources.

(22) Quantifiable--An emission reduction that can be measured or estimated with confidence using replicable methodology.

(23) Real reduction--A reduction in which actual emissions are reduced.

(24) Shutdown--The permanent cessation of an activity producing emissions at a facility or mobile source.

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

(26) 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.

(27) State implementation plan (SIP) emissions--The emissions data in the state's emissions inventory (EI) required under 40 Code of Federal Regulations Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The SIP emissions may not exceed any applicable local, state, or federal requirement. A facility's SIP emissions are determined from the EI year that:

(A) was used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the United States Environmental Protection Agency (EPA) for the current National Ambient Air Quality Standard (NAAQS);

(B) if the SIP revisions identified in subparagraph (A) of this paragraph have not been submitted to the EPA, was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS;

(C) if the SIP revisions identified in subparagraphs (A) and (B) of this paragraph have not been submitted to the EPA, corresponds to the EI for the most recent EI SIP revision submitted to the EPA; or

(D) if the SIP revisions identified in subparagraphs (A) - (C) of this paragraph have not been submitted to the EPA, corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA.

(28) Strategic emissions--A facility's or mobile source's new allowable emission limit, in tons per year, following implementation of an emission reduction strategy.

(29) Surplus--An emission reduction that is not otherwise required of a facility or mobile source by any applicable local, state, or federal requirement and has not been otherwise relied upon in the state implementation plan.

(30) User--The owner or operator of a facility or mobile source that acquires and uses emission 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 or mobile source to generate emission credits by reducing emissions beyond the level required by any applicable local, state, or federal requirement and to allow the owner or operator of a facility or mobile source to use these credits. Participation under this division is strictly voluntary.

§101.302. General Provisions.

(a) Applicable pollutants.

(1) An emission reduction credit (ERC) may be generated from a reduction of a criteria pollutant, excluding lead, or a precursor of a criteria pollutant for which an area is designated nonattainment. An

ERC 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 by §101.306(d) of this title (relating to Emission Credit Use).

(2) Reductions of criteria pollutants, excluding lead, or precursors of criteria pollutants for which an area is designated nonattainment, may qualify as mobile emission reduction credits (MERCs). MERCs generated from reductions of one pollutant may not be used to meet the requirements for another pollutant, 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 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 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(c) Emission credit requirements.

(1) An ERC is a certified emission reduction that:

(A) must be enforceable, permanent, quantifiable, real, and surplus;

(B) must be surplus at the time it is created, as well as when it is used; and

(C) must occur after the year used to determine the state implementation plan (SIP) emissions for the facility.

(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.

(3) Emission reductions from a facility or mobile source that are certified as emission credits under this division cannot be re-certified in whole or in part as credits under another division within this subchapter.

(d) Protocol.

(1) All generators or users of emission credits shall use a protocol that has been submitted by the executive director to the 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, EPA approval is required before the protocol can be used. Protocols must be used as follows.

(A) The owner or operator of a facility subject to the emission specifications under §§117.110, 117.310, 117.410, 117.1010, 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 the testing and monitoring methodologies required under Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) to show compliance with the emission specification for that pollutant.

(B) The owner or operator of a facility subject to the requirements under Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) shall use the testing and monitoring methodologies required under Chapter 115 of this title to show compliance with the applicable requirements.

(C) The executive director may approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility or mobile source.

(D) Except as specified in subparagraph (C) of this paragraph, 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 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 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 with a continuous emissions monitoring system or predictive emissions monitoring system in place shall use this data in quantifying 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;

(v) the chosen quantification protocol and any comments received during the public comment period must be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols may 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 the monitoring and testing data specified in paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine the facility's emissions for the 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:

(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 submit the justification for not using the methods in paragraph (1) of this subsection and submit the justification for the method used.

(e) Credit certification.

(1) The amount of 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 for certification to determine the credibility of the reductions. Each ERC certified will be assigned a certificate 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 emission credit application. The applicant may submit a revised application in accordance with the requirements of this division. If a facility's or mobile source's actual emissions exceed any applicable local, state, or federal requirement, reductions of emissions exceeding the requirement may not be certified as emission credits. An application for certification of emission credit 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 §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 notices and backup information submitted to the executive director for a minimum of five years. The user shall maintain a copy of all notices and backup information submitted to the executive director from the beginning of the use period and for at least five years after. The user shall make the 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 emission credits;

(2) the amount of emission credits being used by each facility or mobile source; and

(3) the certificate number of 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 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 emission credit application. All nonconfidential information will be made available to the public as soon as practicable.

(i) Authorization to emit. An 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 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 from participating in emission credit trading either as a generator or user, if the executive director determines that the person has violated the requirements of the program or abused the privileges provided by the program.

(k) Compliance burden. A user may not transfer their compliance burden and legal responsibilities to a third-party participant. A third-party participant may only act in an advisory capacity to the user.

(l) Credit ownership. The owner of the initial emission credit 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.

(1) An emission reduction credit (ERC) may be generated using one of the following strategies 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 facility;

(C) a change in a manufacturing process that reduces emissions below baseline emissions for the facility;

(D) a 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 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;

(B) that portion of reductions funded through state or federal programs, unless specifically allowed under that program; or

(C) reductions from a facility without state implementation plan (SIP) emissions.

(b) ERC baseline emissions.

(1) The baseline emissions may not exceed the facility's SIP emissions.

(2) The activity and emission rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years selected from the ten consecutive years immediately before the emission reduction is achieved.

(3) For a facility in existence less than 24 months or not having two complete calendar years of activity data, a shorter 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.
Figure: 30 TAC §101.303(c)

(d) ERC certification.

(1) The owner or operator of a facility with potential ERCs shall submit to the executive director an application for ERCs no more than two years after 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 will be issued to the owner.

(2) ERCs must 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 application form specified by the executive director 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 generated;

(C) for volatile organic compound reductions, a list of the specific compounds reduced;

(D) documentation supporting the activity, emission rate, historical adjusted emissions, SIP emissions, baseline emissions, and strategic emissions;

(E) emissions inventory data for each of the years used to determine the SIP emissions and historical adjusted emissions;

(F) the most stringent emission rate and the most stringent emission level, considering all applicable local, state, and federal 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 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 rule, certifying the emission reduction and the new maximum emission limit on a Certification of Emission Limits (Form APD-CERT) or other form considered equivalent by the executive director or an agreed order.

§101.306. Emission Credit Use.

(a) Uses for emission credits. Unless precluded by a commission order or a condition or conditions within an authorization under the same commission account number, emission credits may be used as the following:

(1) offsets for a new source, as defined in §101.1 of this title (relating 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;

(3) an alternative means of compliance with volatile organic compound and nitrogen oxides reduction requirements to the extent allowed in Chapters 115 and 117 of this title (relating to 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 not used, sold, reserved for use, or otherwise relied upon, as provided by Chapter 116, Subchapter B of this title (relating to New Source Review Permits); or

(5) compliance with other requirements as allowed in any applicable local, state, and federal requirement.

(b) Credit use calculation.

(1) The number of emission credits needed by the user for offsets shall be determined as provided by Chapter 116, Subchapter B of this title.

(2) For emission credits used in compliance with Chapter 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)

(3) For emission credits used to comply with §§117.123, 117.320, 117.323, 117.423, 117.1020, 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)

(4) 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 10% extra to be retired as an environmental contribution, unless otherwise specified by that program.

(c) Notice of intent to use emission credits.

(1) Application to use ERCs. The executive director will not accept an application to use ERCs before the ERC is available in the compliance account for the site where it will be used. If the ERC will be used for offsets, the executive director will not accept the ERC application before the applicable permit application is administratively complete.

(A) The user shall submit a completed application at least 90 days before the start of operation for an ERC used as offsets in a permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(B) The user shall submit a completed application at least 90 days before the planned use of an ERC for compliance with the requirements of Chapter 115 or 117 of this title or other programs.

(C) If the executive director approves the ERC use, the date the application is submitted will be considered the date the ERC is used.

(2) Application to use mobile emission reduction credits (MERCs).

(A) For MERCs which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title, the MERCs must be identified prior to permit issuance. Prior to construction, the offsets must be provided through submittal of a completed application form specified by the executive director.

(B) For emission credits that are to be used for compliance with the requirements of Chapter 115 or 117 of this title or other programs, the user must submit a completed application at least 90 days prior to the planned use of the MERC. MERCs 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 notice and all backup in accordance with §101.302(g) of this title (relating to General Provisions).

(3) If the executive director denies the facility or mobile source's use of emission credits, any affected person 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.

(d) Inter-pollutant use of ERCs. 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 offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

§101.309. Emission Credit Banking and Trading.

(a) The credit registry. All emission credit generators, users, and holders will be included in the commission's credit registry.

(1) All notices of generation, use, and transfer will be posted to the credit registry.

(2) The credit registry will assign a unique number to each certificate which will include the amount of emission reductions generated.

(3) The credit registry will maintain a listing of all credits available for each ozone nonattainment area.

(b) Life of an emission credit.

(1) If an emission credit is used before its expiration date, the emission credit is effective for the life of the applicable user facility or mobile source.

(2) Emission credits certified as part of an administratively complete application received after January 2, 2001 shall be available for use for 60 months from the date of the emission reduction.

(3) Notwithstanding paragraph (2) of this subsection, the executive director may invalidate a certificate or portion of a certificate if local, state, or federal regulatory changes occur after the certification of the emission credit which would or would have affected the generating facility or mobile source.

(c) Creditability review of emission credits. Emission credits may be reviewed for creditability at any time during their banked life to ensure the reductions generating the emission credit are surplus to all current local, state, and federal requirements that would have affected the generating facility or mobile source.

(1) A request for a creditability review may be made by any interested party through the submittal of a completed application form specified by the executive director.

(2) If a creditability review identifies a regulatory change invalidating a certificate or portion of a certificate, the executive director shall void the emission credit certificate and, issue a new certificate with a unique number to the certificate owner in the amount of remaining surplus credit.

(d) Trading. Emission credits are freely transferable in whole or in part, and may be traded or sold to a new owner any time before the expiration date of the emission credit in accordance with the following.

(1) Before the transfer, the seller shall submit a completed application form specified by the executive director.

(2) The executive director will issue a new certificate number to the purchaser reflecting the emission credits purchased, and a new certificate number to the seller reflecting any remaining emission credits available to the original owner. A trade is considered final only after the executive director grants approval of the transaction.

(3) The trading of 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) Emission credit voidance. 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. Reductions certified as emission credits may still be used by the original owner as an emission reduction for netting purposes after the emission credits have expired, as provided by Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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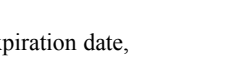

DIVISION 3. MASS EMISSIONS CAP AND TRADE PROGRAM

30 TAC §§101.350 - 101.354, 101.356, 101.359, 101.360

Statutory Authority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§101.351. Applicability.

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

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

(2) is not a major source, as defined in §117.10 of this title, and has one or more affected facilities subject to §117.2010 of this title (relating to Emission Specifications) with a collective uncontrolled design capacity to emit from these facilities of 10.0 tons or more per year of nitrogen oxides.

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

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

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

§101.352. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§101.353. Allocation of Allowances.

(a) The executive director shall deposit allowances into a compliance account according to the following equation except as provided by subsection (b) or (g) of this section.
Figure: 30 TAC §101.353(a)

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

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

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

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

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

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

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

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

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

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

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

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

§101.354. Allowance Deductions.

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

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

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

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

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

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

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

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

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

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

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

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

§101.356. Allowance Banking and Trading.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) To use DERCs or MDERCs for the purpose of compliance with this division, the required application must be submitted to the executive director on or before October 1 of the control period for which the DERCs or MDERCs will be used. In addition, the required application must be submitted by March 31 with the site's annual compliance report.

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

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

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

§101.359. Reporting.

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

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

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

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

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

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

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

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

§101.360. Level of Activity Certification.

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

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

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

(3) for a new or modified facility not in operation before January 1, 1997, that is subject to an emission specification under §§117.310, 117.1210, or 117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) first adopted after April 1, 2001, and either has submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) an application determined by the executive director to be administratively complete within 90 days of the effective date of this emission specification, or has qualified for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and commenced construction within 90 days of the effective date of the emission specification, the level of activity authorized by the executive director.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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30 TAC §101.358

Statutory Authority

The repealed section is adopted 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 adopted 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 adopted 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 adopted 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.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. DISCRETE EMISSION CREDIT PROGRAM

30 TAC §§101.370 - 101.373, 101.376, 101.378, 101.379

Statutory Authority

The amended sections are adopted 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 adopted 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 adopted 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 adopted 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 com-

mission have the meanings commonly ascribed to them in the field of air pollution control. In addition, the following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise.

(1) Activity--The amount of activity at a facility or mobile source measured in terms of production, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the 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 emissions--The facility's emissions, in tons per year, occurring before implementation of an emission reduction strategy and calculated as the lowest of the facility's historical adjusted emissions or state implementation plan (SIP) emissions, except that the SIP emissions value is only considered for a facility in a nonattainment area.

(5) Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(6) Curtailment--A reduction in activity level at any facility or mobile source.

(7) Discrete emission credit--A discrete emission reduction credit or mobile discrete emission reduction credit.

(8) 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, and expressed in tenths of a ton.

(9) Emission rate--The facility's rate of emissions per unit of activity.

(10) Emission reduction--An actual reduction in emissions from a facility or mobile source.

(11) Emission reduction strategy--The method implemented to reduce the facility's or mobile source's emissions beyond that required by state or federal law, regulation, or agreed order.

(12) Facility--As defined in §116.10 of this title (relating to General Definitions).

(13) Generation period--The discrete period of time, not exceeding 12 months, over which a discrete emission reduction credit is created.

(14) 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--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.

(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) Protocol--A replicable and workable method of estimating emission rates or activity levels used to calculate the amount of emission reduction generated or credits required for facilities or mobile sources.

(24) Quantifiable--An emission reduction that can be measured or estimated with confidence using replicable methodology.

(25) Real reduction--A reduction in which actual emissions are reduced.

(26) Shutdown--The cessation of an activity producing emissions at a facility or mobile source.

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

(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.

(29) State implementation plan (SIP) emissions--The emissions data in the state's emissions inventory (EI) required under 40 Code of Federal Regulations Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The SIP emissions may not exceed any applicable local, state, or federal requirement. A facility's SIP emissions are determined from the EI year that:

(A) was used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the United States Environmental Protection Agency (EPA) for the current National Ambient Air Quality Standard (NAAQS);

(B) if the SIP revisions identified in subparagraph (A) of this paragraph have not been submitted to the EPA, was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS;

(C) if the SIP revisions identified in subparagraphs (A) and (B) of this paragraph have not been submitted to the EPA, corresponds to the EI for the most recent EI SIP revision submitted to the EPA; or

(D) if the SIP revisions identified in subparagraphs (A) - (C) of this paragraph have not been submitted to the EPA, corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA.

(30) Strategy activity--The facility's or mobile source's level of activity during the discrete emission reduction credit generation period.

(31) Strategy emission rate--The facility's or mobile source's emission rate during the discrete emission reduction credit generation period.

(32) Surplus--An emission reduction that is not otherwise required of a facility or mobile source by any applicable local, state, or federal requirement and has not been otherwise relied upon in the state implementation plan.

(33) Use period--The period of time over which the user applies discrete emission credits to an applicable emission reduction requirement.

(34) User--The owner or operator of a facility or mobile source that acquires and uses discrete emission reduction credits to meet a regulatory requirement, demonstrate compliance, or offset an emission increase.

(35) Use strategy--The compliance requirement for which discrete emission 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 discrete emission credits by reducing emissions beyond any applicable local, state, or federal requirement and to allow the owner or operator of another source to use these credits. Participation under this division is strictly voluntary.

§101.372. General Provisions.

(a) Applicable pollutants.

(1) 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).

(2) 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 mobile discrete emission reduction credits (MDERCs) 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 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 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(c) Discrete emission credit requirements.

(1) A DERC is a certified emission reduction that:

(A) must be real, quantifiable, and surplus at the time the DERC is generated;

(B) must occur after the year used to determine the state implementation plan (SIP) emissions for a facility in a nonattainment area; and

(C) must occur at a facility with SIP emissions reported before implementation of the emission reduction strategy for a facility in a nonattainment area.

(2) To be creditable as an 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.

(3) Emission reductions from a facility or mobile source which are certified as discrete emission credits under this division cannot be recertified in whole or in part as emission credits under another division within this subchapter.

(d) Protocol.

(1) All generators or users of discrete emission credits must use a protocol which has been submitted by the executive director to the 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, EPA approval is required before the protocol can be used. Protocols shall be used as follows.

(A) The owner or operator of a facility subject to the emission specifications under §§117.110, 117.310, 117.410, 117.1010, 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 the testing and monitoring methodologies required under Chapter 117 of this title (relating to Control of Air Pollution for Nitrogen Compounds) to show compliance with the emission specification for that pollutant.

(B) The owner or operator of a facility subject to the control requirements or emission specifications under Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) shall use the testing and monitoring methodologies required under Chapter 115 of this title to show compliance with the applicable requirements.

(C) The executive director may approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility.

(D) Except as specified in subparagraph (C) of this paragraph, 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 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 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 with a continuous emissions monitoring system or predictive emissions monitoring system in place shall use this data in quantifying 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;

(v) the chosen quantification protocol and any comments received during the public comment period must, upon approval by the executive director, be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols may 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 proposes disapproval of the protocol in the *Federal Register*.

(2) If the monitoring and testing data specified in paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine the facility's emissions for the 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:

(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 submit the justification for not using the methods in paragraph (1) of this subsection and submit the justification for the method used.

(e) Credit certification.

(1) The amount of discrete emission credits must be rounded down to the nearest tenth of a ton when generated and must be rounded up to the nearest tenth of a ton when used.

(2) The executive director shall review an application for certification to determine the credibility of the reductions and may certify reductions. Each DERC certified will be assigned a certificate 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 discrete emission credit notification. The applicant may submit a revised application 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 of emissions exceeding the requirement may not be certified as discrete emission credits.

(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 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) VOC and NO_x discrete emission credits generated outside the ozone season may not be used during the ozone season.

(h) Recordkeeping. The generator must maintain a copy of all forms and backup information submitted to the executive director for a minimum of five years, following the completion of the generation period. The user shall maintain a copy of all forms and backup information submitted to the executive director 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 participat-

ing facilities or mobile sources. 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 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 discrete emission credits;

(2) the amount of discrete emission credits being used by each facility or mobile source; and

(3) the certificate number of each discrete emission credit used by 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 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 discrete emission reduction application. All nonconfidential notices and information regarding the generation, use, and availability of discrete emission credits may be obtained from the registry.

(j) Authorization to emit. A 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 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 from participating in discrete emission credit trading either as a generator or user, if the executive director determines that the person 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 discrete emission credits are acquired to cover the applicable 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 discrete emission credits to cover the compliance need for the use period. If the user possesses an insufficient quantity of 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 may not transfer its compliance burden and legal responsibilities to a third-party participant. A third-party participant 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 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 mobile source incurred the cost of the emission reduction strategy; or

(2) whether the owner or operator of the 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.

(1) A discrete emission reduction credit (DERC) may be generated using one of the following strategies or any other method that is approved by the executive director:

(A) the installation and operation of pollution control equipment that reduces emissions below the baseline emissions for the facility; or

(B) a change in the manufacturing process, other than a shutdown or curtailment, that reduces emissions below the baseline emissions for the facility.

(2) A DERC may not be generated using the following strategies:

(A) a shutdown or 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;

(C) an emission reduction 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 of hazardous air pollutants, as defined in 42 USC, §7412, from application of a standard promulgated under 42 USC, §7412;

(E) an emission reduction from the shifting of activity from one facility to another facility at the same site;

(F) an emission reduction credited or used under any other emissions trading program;

(G) an emission reduction 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 a flexible permit, unless the reduction is permanent and enforceable or the generator can demonstrate that the emission reduction was not used to satisfy the conditions for the facilities under the flexible permit;

(I) that portion of an emission reduction funded through a state or federal program, unless specifically allowed under that program;

(J) an emission reduction from a facility subject to Division 2, 3, or 6 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 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 designated as nonattainment for a criteria pollutant, and the pollutant being reduced is either the same criteria pollutant or a precursor of that criteria pollutant, the baseline emissions may not exceed the facility's SIP emissions. If the pollutant being reduced is not the same criteria pollutant for which the area is designated nonattainment or a precursor of that criteria pollu-

tant, then baseline emissions are limited as specified in paragraph (3) of this subsection.

(2) The activity and emission rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years, selected from the ten consecutive years immediately before the emission reduction is achieved.

(3) For a facility located in an area that is not designated nonattainment for the criteria pollutant being reduced, or the pollutant being reduced is not a precursor of that criteria pollutant, the historical adjusted emissions must be determined from two consecutive calendar years that include or follow the 1990 emission inventory.

(4) For emission reduction strategies that exceed 12 months, the baseline emissions are established after the first year of generation and are fixed for the life of 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 in existence less than 24 months or not having two complete calendar years of activity data, a shorter period of not less than 12 months may be considered by the executive director.

(c) DERC calculation.

(1) DERCs are calculated according to the following equation.

Figure: 30 TAC §101.373(c)(1)

(2) For a facility located in an area designated nonattainment for a criteria pollutant, and the pollutant being reduced is either the same criteria pollutant or a precursor of that criteria pollutant, 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, whichever is less.

(3) For a facility located in an area that is not designated nonattainment for the criteria pollutant being reduced, or the pollutant being reduced is not a precursor of that criteria pollutant, 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.

(d) DERC certification.

(1) The application form designated by the executive director must be submitted to the executive director no later than 90 days after the end of the generation period and no later than 90 days after completing each 12 months of generation.

(2) A DERC 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 application 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) the amount of DERCs generated;

(D) for volatile organic compound reductions, a list of the specific compounds reduced;

(E) documentation supporting the activity, emission rate, historical adjusted emissions, SIP emissions, strategy emission rate, and strategy activity;

(F) emissions inventory data for each of the years used to determine the SIP emissions and historical adjusted emissions;

(G) the most stringent emission rate for the facility, considering all applicable local, state, and federal requirements;

(H) a complete description of the protocol used to calculate the DERC generated; and

(I) the actual calculations performed by the generator to determine the amount of DERCs generated.

§101.376. Discrete Emission Credit Use.

(a) Requirements to use discrete emission credits. Discrete emission credits may be used if the following requirements are met.

(1) The user shall have ownership of a sufficient amount of discrete emission credits before the use period for which the specific discrete emission credits are to be used.

(2) The user shall hold sufficient discrete emission credits to cover the user's compliance obligation at all times.

(3) The user shall acquire additional discrete emission credits during the use period if it is determined the user does not possess enough discrete emission credits to cover the entire use period. The user shall acquire additional credits as allowed under this section prior to the shortfall, or be in violation of this section.

(4) The user may acquire and use only discrete emission credits listed in the registry.

(5) The user shall obtain executive director approval to use nitrogen oxides (NO_x) discrete emission reduction credits (DERCs) in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties as provided by subsection (f) of this section.

(6) A DERC may not be used unless it is available in the account for the site where it will be used.

(b) 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, 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 allowable emission level, if the following conditions are met:

(A) in ozone nonattainment areas, permitted facilities may use discrete emission credits to exceed permit allowables by no more than 10 tons for 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) at permitted facilities in counties or portions of counties designated as attainment or, attainment/unclassifiable, or unclassifiable, 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 use. 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;

(2) as new source review (NSR) permit offsets, if the following requirements are met:

(A) the user shall obtain the executive director's approval prior to the use of specific discrete emission credits to cover, at a minimum, one year of operation of the new or modified facility in the NSR permit;

(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) for the use of mobile discrete emission reduction credits, the NSR permit must meet the following requirements:

(i) the permit must contain an enforceable requirement that the facility obtain at least one additional year of offsets before continuing operation in each subsequent year;

(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 application form specified by the executive director;

(D) for the use of DERCs, the user shall submit a completed application form specified by the executive director at least 90 days before the start of operation and at least 90 days before continuing operation for any period in which DERCs not included in a prior application will be used as offsets;

(3) to comply with the Mass Emissions Cap and Trade Program requirements as provided by §101.356(h) of this title (relating to Allowance Banking and Trading); or

(4) to comply with 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), as allowed.

(c) Discrete emission credit use prohibitions. A discrete emission credit may not be used under this division:

(1) before it has been acquired by the user;

(2) for netting to avoid the applicability of federal and state 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 DERC or mobile DERC in lieu of allowances under §101.356 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 Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, if the NO_x DERC usage requested exceeds the limit specified in subsection (f) of this section.

(d) Notice of intent to use.

(1) A completed application form specified by the executive director, signed by an authorized representative of the applicant, must be submitted to the executive director in accordance with the following requirements.

(A) Discrete emission credits may be used only after the applicant has submitted the notice and received executive director approval.

(B) The application must be submitted:

(i) except as provided in subsection (f)(4) of this section, for NO_x DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, by August 1 before the beginning of the calendar year in which the DERCs are intended for use;

(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) for DERC use for NSR offsets, as required by subsection (b)(2)(D) of this section; or

(iv) for all other discrete emission credit use, at least 45 days before 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) 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 application must include, but is not limited to, the following information for each use:

(i) the applicable state and federal requirements that the discrete emission credits will be used to comply with and the intended use period;

(ii) the amount of discrete emission credits needed;

(iii) the 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;

(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 requirements;

(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 discrete emission credits needed;

(vii) the actual calculations performed by the user to determine the amount of discrete emission credits needed;

(viii) the date that the discrete emission credits were acquired or will be acquired;

(ix) the discrete emission credit generator and the original certificate number 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;

(xi) a statement that due diligence was taken to verify that the discrete emission credits were not previously used, the discrete emission credits were not generated as a result of actions prohibited under this regulation, and the discrete emission credits will not be used in a manner prohibited under this regulation; and

(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) Discrete emission credit use calculation.

(A) To calculate the amount of discrete emission credits necessary to comply with §§117.123, 117.320, 117.323, 117.423, 117.1020, 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)

(ii) For maximum daily cap:
Figure: 30 TAC §101.376(d)(2)(A)(ii)

(B) The amount of discrete emission credits needed to demonstrate compliance or meet a regulatory requirement is calculated as follows.
Figure: 30 TAC §101.376(d)(2)(B)

(C) The amount of discrete emission credits needed to exceed an allowable emissions level is calculated as follows.
Figure: 30 TAC §101.376(d)(2)(C)

(D) The user shall retire 10% more 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 discrete emission credits needed to meet a regulatory requirement or to demonstrate compliance is greater than 10 tons, 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 application in the case of an emergency, or other exigent circumstances, but the notice must be submitted before the discrete emission credits can be used. The user shall include a complete description of the situation in the notice of intent to use. All other notices submitted less than 45 days prior to use, or 90 days prior to use for a mobile source, will be considered late and in violation.

(4) The user is responsible for determining the credits it will purchase and notifying the executive director of the selected generating facility or mobile source in the application. If the generator's credits are rejected or the application is incomplete, the use of discrete emission credits by the user may be delayed by the executive director. The user cannot use any discrete emission credits that have not been certified by the executive director. The executive director may reject the use of discrete emission credits by a facility or mobile source if the credit and use 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 discrete emission credits needed for the ozone season separately from the non-ozone season.

(e) Notice of use.

(1) The user shall calculate:

(A) the amount of discrete emission credits used, including the amount of discrete emission credits retired to cover the environmental contribution, as described in subsection (d)(2)(D) of this section, associated with actual use; and

(B) the amount of 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) of this section, but not associated with the actual use, and available for future use.

(2) Discrete emission credit use is calculated by the following equations.

(A) The amount of discrete emission credits used to demonstrate compliance or meet a regulatory requirement is calculated as follows.
Figure: 30 TAC §101.376(e)(2)(A)

(B) The amount of discrete emission credits used to comply with permit allowables is calculated as follows.
Figure: 30 TAC §101.376(e)(2)(B)

(3) A form specified by the executive director for using 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.

(4) Discrete emission credits that are not used during the use period are surplus and remain available for transfer or use by the holder. In addition, any portion of the calculated environmental contribution not attributed to actual use is also available.

(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) DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(1) For the 2015 calendar year, the use of NO_x DERCs in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties may not exceed 42.8 tons per day.

(2) Beginning in the 2016 calendar year, the use of NO_x DERCs in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties may not exceed 17.0 tons per day.

(3) If the total number of DERCs submitted for the upcoming calendar year in all applications received by the August 1 deadline in subsection (d)(1)(B)(i) of this section is greater than the applicable limit in paragraph (1) or (2) of this subsection, the executive director shall apportion the number of DERCs for use.

(A) In determining the amount of DERC use to approve for each 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 application submitted on a case-by-case basis.

(4) If the total number of DERCs submitted for use during the upcoming calendar year in all applications received by the August 1 deadline in subsection (d)(1)(B)(i) of this section is less than the limit, 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 application 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 applications 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 of DERCs. 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 overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

§101.378. Discrete Emission Credit Banking and Trading.

(a) The credit registry. All discrete emission credit generators, users, and holders will be included in the commission's credit registry.

(1) 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 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. One combined listing for all the counties or portions of counties designated as attainment or unclassifiable will be provided by the credit registry.

(4) The registry shall not contain proprietary information.

(b) Life of a discrete emission credit. A discrete emission credit is available for use after the application form specified by the executive director 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 used or withdrawn. A DERC generated from a shutdown may not be used.

(c) Trading. 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.

(1) Before the transfer, the seller shall submit to the executive director a completed application form specified by the executive director.

(2) The executive director will issue a new certificate number to the purchaser reflecting the discrete emission credits purchased, and a new certificate number to the seller reflecting any remaining discrete emission credits available. A trade is considered final only after the executive director grants approval of the transaction.

(3) The trading of 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.

(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 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 a report that includes the following information for the previous calendar year:

(1) the amount of each pollutant emission credits generated under this division;

(2) the amount of each pollutant emission credits used under this division;

(3) a summary of all trades completed under this division; and

(4) the amount of discrete emission reduction credits approved for use under §101.376(f) of this title (relating to Discrete Emission Credit Use).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
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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 adopted 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 adopted 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 adopted 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 adopted 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.*

§101.393. General Provisions.

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

(b) No later than March 1 after each control period, the quantity of allowances in a site's compliance account must be equal to or greater than the total highly reactive volatile organic compound (HRVOC) emissions from each affected facility at the site during the control period.

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

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

(1) The owner or operator shall use a permanent allowance allocation stream equal to the amount specified in the NNSR permit to offset VOC emissions from an affected facility. A vintage allowance cannot be used as an offset. An allowance used for offsets may not be banked, traded, or used for any other purpose except as allowed in §101.396(e) of this title (relating to Allowance Deductions).

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

(A) Except as provided in paragraph (3) of this subsection, the executive director shall permanently set aside in the site's compliance account an allowance used for the one-to-one portion of the offset ratio. If an allowance set aside for offsets devalues in accordance with §101.394(a)(1) or (f) of this title (relating to Allocation of Allowances), the owner or operator shall submit the application at least 30 days before the shortfall to revise the amount of allowances set aside for offsets. At the end of each control period, the executive director shall deduct from the site's compliance account all allowances set aside as offsets.

(B) The executive director shall permanently retain an allowance used for the environmental contribution portion of the offset ratio. An allowance used for this purpose cannot be used for compliance with this division or devalued due to future regulatory changes except as required in §101.394(a)(1) of this title.

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

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

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

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

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

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

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

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

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

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

(j) If there is a change in ownership of a site subject to this division, the new owner of the site is responsible for complying with the requirements of this division beginning with the control period during which the site was purchased. The new owner shall contact the executive director to request a compliance account for the site. The new owner must acquire allowances in accordance with §101.399 of this title (relating to Allowance Banking and Trading).

§101.399. Allowance Banking and Trading.

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

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

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

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

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

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

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

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

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

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

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

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

§101.400. Reporting.

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: December 26, 2014
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) adopts the repeal of §115.417; new §115.410; and amendments to §§115.110 - 115.112, 115.115, 115.117, 115.118, 115.121, 115.122, 115.125 - 115.127, 115.215, 115.415, 115.416, 115.422, 115.423, 115.425, 115.427, 115.442, 115.446, 115.450, 115.451, 115.460, 115.461, and 115.471 *without changes* to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10246) and will not be republished. The commission adopts the amendments to §§115.10, 115.114, 115.119, 115.129, 115.139, 115.219, 115.229, 115.239, 115.359, 115.419, 115.420, 115.421, 115.426, 115.429, 115.440, 115.441, 115.449, 115.453, 115.459, 115.469, 115.473, 115.479, and 115.519; and new §115.411 *with changes* to the proposed text as published.

The adopted 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 Adopted 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 with a December 31, 2018 attainment deadline (77 FR 30088). On December 23, 2014, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) ruled on a lawsuit filed by the Natural Resources Defense Council, which resulted in vacatur of the EPA's December 31 attainment date for the 2008 0zone NAAQS. As part of the EPA's Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule, published in the *Federal Register* (FR) on March 6, 2015 (80 FR 12264), the EPA modified 40 Code of Federal Regulations (CFR) §51.1103 consistent with the D.C. Circuit Court decision to establish attainment dates that run from the effective date of designation, i.e., July 20, 2012, rather than the end of the 2012 calendar year. As a result, the attainment date for the DFW moderate nonattainment area has changed from December 31, 2018 to July 20, 2018. In addition, because the attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, the attainment year for the DFW moderate nonattainment area has changed from 2018 to 2017. The change in attainment date will not impact this rulemaking because the compliance date for implementing reasonably available control technology (RACT) remains January 1, 2017, as required by the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

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 (RACM), including 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 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 (80 FR 12264, March 6, 2015). 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. 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 Nos. 2010-016-115-EN and 2010-025-115-EN, respectively). On September 9, 2014, the EPA approved the non-CTG major source storage tanks rulemaking for the DFW as meeting VOC RACT requirements (79 FR 53299), and on January 21, 2015, the EPA proposed approval of the VOC CTG RACT rulemaking (80 FR 2846).

The purpose of this adopted rulemaking is 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 adopts 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 is not adopting 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 providing 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 revised 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 Appendix F: *"Reasonably Available Control Technology Analysis"* of the DFW 2008 Eight-Hour Ozone Attainment Demonstration SIP Revision (2013-015-SIP-NR) being adopted concurrently with this rulemaking.

This rulemaking includes 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 D.C. Circuit Court. 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 adopting 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 eight-hour ozone nonattainment area after the adoption of these rules, the adopted rules will 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 state has previously adopted Chapter 115 VOC 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 adopted as part of this rulemaking fulfill the state's obligations by ensuring all major sources and non-major sources operating in the DFW area are subject to RACT, as required under the FCAA, §172(c)(1) and §182(b)(2). As part of this rulemaking, the commission is also adopting 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 with CTG recommendations. Non-substantive revisions are also being adopted 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 adopted for the rules that are simultaneously being revised to implement RACT. The commission has determined that the adopted 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 adopting rules to implement RACT in the DFW area, the commission adopts 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 adopted rulemaking will change references throughout the division to the CFR by adding "Part" or the section symbol before numerical references, whichever is appropriate. Adopted revisions will 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 revising 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 adopts changes that will 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 solicited comment on different portions of the proposed revisions. The comments received pertaining to this rulemaking are listed in the Response to Comments section of this preamble.

The commission adopts 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 adopts replacing 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

Adopted revisions 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 adopts deleting 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 is adopting to simply delete the word "ozone" to maintain consistency. In the event Wise County is no longer designated as nonattainment under the 2008 eight-hour ozone NAAQS, the commission adopts revisions to this definition to accommodate the transition of Wise County as a DFW area county to a covered attainment county. The adopted revision states that upon the date the commission publishes notice in the *Texas Register* that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone NAAQS is no longer legally effective, Wise County is covered under this definition of covered attainment counties as it was prior to January 1, 2017. As discussed elsewhere in this preamble discussion, the change in designation status for Wise County is dependent on decisions not yet made by the D.C. Circuit Court.

The commission adopts the amendment to the definition in paragraph (11) to incorporate Wise County into the "Dallas-Fort Worth area" for the specific divisions that apply to Wise County. However, not all Chapter 115 rules are adopted to be applied in Wise County. For some source categories, the commission is making a negative declaration for RACT purposes, 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 applying the Chapter 115 rules to Wise County that are necessary to fulfill FCAA RACT requirements. Therefore, the revisions to the definition of "Dallas-Fort Worth area" will restructure the definition into three separate subparagraphs to delineate which Chapter 115 divisions apply in which counties of the 10-county DFW 2008 eight-hour ozone nonattainment area.

Paragraph (11)(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 §115.540(a)(2) and §115.559(a), only apply to those rules to Collin, Dallas, Denton, and Tarrant Counties. Therefore, the commission is adopting to include Subchapter F, Divisions 3 and 4 under subparagraph (A) to be consistent with the actual rule requirements in those divisions.

Subparagraph (11)(B) lists those Chapter 115 rules that 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 (11)(C) specifies 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 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. In response to comments received, the commission is adding language to clarify that Wise County is no longer included in the definition of the DFW area upon the commission's publication in the *Texas Register* that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone NAAQS is no longer legally effective. This action would cease compliance obligations for sources subject to the divisions covered under this subparagraph in Wise County. This change is made to clarify the commission's intended applicability of this subparagraph for Wise County in the event Wise County is excluded from the 2008 DFW eight-hour ozone nonattainment area, as discussed elsewhere in this preamble.

The existing definition, "El Paso," in paragraph (13) is being adopted 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 area," the commission simply adds the word "area" to maintain consistency.

The commission adds "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 included in 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 adopted rulemaking changes "Internal floating cover" to "Internal floating roof" in each instance it is referenced throughout the division. As part of this rulemaking, the commission is updating 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 revised to more appropriately align with terminology used by industry. The adopted 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 adopted rulemaking adds a definition in subsection (b), "Closure device" as paragraph (1). As a result of the adopted definition, the commission is renumbering existing paragraphs (1) - (13) as (2) - (14), respectively.

The adopted definition of "Closure device" in paragraph (1) refers 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 adopted definition is used in §§115.112, 115.114, and 115.118.

Section 115.111, Exemptions

The commission adopts the amendment to subsection (a)(4), (6), and (7) that revokes exemptions for certain floating roof storage tanks in the DFW area constructed or modified prior to 1983. To reflect that these exemptions no longer apply in the DFW area, the adopted exemption is revised to explicitly state that the Beaumont-Port Arthur, El Paso, and HGB areas are affected. Staff analyzed information in the commission's 2011 and 2012 Point Source Emissions Inventory and found no tanks to which these exemptions would apply. Adopted subsection (a)(4) revokes the exemption for tanks with a shoe-mounted secondary seal installed or scheduled for installation before August 22, 1980. Adopted subsection (a)(6) revokes 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. Adopted subsection (a)(7) revokes 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 adopted rulemaking amends 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 will 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.

The commission is adopting the amendment to exclude Wise County from the existing exemptions in subsection (a)(10) and (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 does not share the same serious nonattainment classification as the other DFW counties under the 2008 eight-hour ozone NAAQS. A similar exemption is provided in adopted subsection (a)(12) for storage tanks in Wise County at the moderate nonattainment major source level.

The commission adopts the 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 adopted rulemaking amends 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 adopted rulemaking adds 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 adopts 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 adopted change clarifies 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 adopted 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.

Adopted subsection (e)(7) requires 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 adopted §115.110(b)(1), that close all openings not routed to a control device. The amendment 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 adopted rulemaking also sets 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 adopts subsection (e)(7)(A), requiring 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. Inspection requirements in §115.114(a)(5) being adopted as part of this rulemaking will assure compliance with this provision.

Adopted subsection (e)(7)(B) requires that all closure devices be properly sealed to minimize vapor loss when closed. This requirement sets a performance criterion for a typical failure point of the device.

In adopted subsection (e)(7)(C), the commission requires 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. Adopted subsection (e)(7)(A) will 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.

Adopted subsection (e)(7)(D) requires repair of leaking closure devices by setting a 15-day limit for repairs. The adopted rule defines 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 adopts using the typical audio/visual/olfactory monitoring methods to determine a leak. The adopted 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.

Section 115.114, Inspection Requirements

The adopted rulemaking will add "and Repair" to the title of this section to better describe the existing and adopted repair requirements.

The commission adopts subsection (a)(5), which will 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 adopted paragraph.

In adopted subsection (a)(5)(A), the commission will 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 adopted §115.112(e)(7)(A). The inspection will 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 will 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 will provide sufficient data to determine if the device is open. Since the inspection will 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, adopted subsection (a)(5)(A) will require an attempt to close it. If the attempt fails, the device would be leaking, as defined in adopted §115.112(e)(7)(D) and will 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 adopted rulemaking also includes a more detailed inspection in subsection (a)(5)(B). This inspection will 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 will determine if the devices are properly sealed to minimize vapor loss, as required in adopted §115.112(e)(7)(B). This inspection will also be an audio/visual/olfactory inspection; however, in many cases it will 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 adopted §115.112(e)(7) for the affected devices, which will 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.

Adopted subparagraph (B) will 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 unless delay of repair is allowed under specified conditions. This requirement will assure timely repairs and continued routing of VOC vapors to the required control device. The adopted rulemaking will also state that a repair is complete if the device no longer exudes process gasses based on sight, smell, or sound. The adopted 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. In response to comments received on this rulemaking, the commission revises subparagraph (B) to explicitly include the same delay of repair options stated in §115.112(e)(7)(D) that allows delayed repair for lack of available parts or a repair that will generate more emissions than a shutdown.

Section 115.115, Monitoring Requirements

The commission adopts the amendment to subsection (a)(3)(A) and (B) for carbon adsorbers and carbon adsorption systems. These two adopted revisions will apply to the BPA, DFW, El Paso, and HGB areas and are intended to clarify the existing rule requirements.

The adopted amendment to subsection (a)(3)(A) will 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 adopted amendment to subsection (a)(3)(B) will specify that switching the vent gas flow to fresh carbon at a regular predetermined 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.

Section 115.117, Approved Test Methods

In adopted amended subsection (a)(8), the commission adds 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 adopts 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 adopted §115.112(e)(7) requires them to follow. It is necessary to maintain these records to ensure enforceability of the adopted control requirement.

The commission adopts subsection (a)(6)(E) to prescribe recordkeeping requirements for the inspection and repair of affected condensate storage tanks in the DFW area covered under adopted §115.114(a)(5). The adopted regulations in subparagraph (E) will require records of each inspection; adopted clause (i) will require the inspection date; and adopted clause (ii) will require the status of the device during inspection. Adopted clause (iii) requires the length of time a closure device was open for reasons not allowed by §115.112(e)(7)(A) since the last inspection. Adopted clause (iv) will require the date of repair attempts and repair completion. Adopted clause (v) will require a list of closure devices awaiting repair. The adopted 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 adopted §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 adopts excluding 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 adopted subsection (b)(3), the commission specifies that affected storage tank owners or operators in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties will 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 is the same date specified in subsection (f) by which compliance is required 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. In response to comments received on this rulemaking, the commission deletes the reference to the DFW area as written at proposal and instead lists the counties that comprise this area. Because the DFW area has been defined as a four-county area, a nine-county area, and now a 10-county area, the commission makes this change to clearly indicate which counties in the DFW area are intended to be covered in this instance. This change is made to clarify the commission's intended applicability of this subsection.

Adopted subsection (f) requires 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264). 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 adopted rulemaking re-letters existing subsection (f) as subsection (g) to accommodate the compliance schedule adopted as subsection (f) for affected owners and operators in Wise County.

Adopted subsection (h) will 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 will not be required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented, then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER B, GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 2, VENT GAS CONTROL

Section 115.121, Emission Specifications

In the adopted amendment to subsection (a)(1), the commission clarifies that emissions from compressor rod packing that are contained and routed through a vent are a vent gas stream potentially requiring control. The adopted rulemaking also notes that a glycol dehydrator still vent is a vent gas stream potentially requiring control. This adopted clarification to paragraph (1) applies to affected owners and operators in the BPA, DFW, El Paso, and HGB areas.

The formal interpretation regarding compressor emissions, 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 formal interpretation regarding glycol dehydrators, 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 adopted in this section are intended to clarify certain existing requirements that affect the BPA, DFW, and HGB areas. The adopted rulemaking specifies that flares used as control devices must be lit at all times when VOC vapors are routed to the flare. The changes are made in subsections (a)(1)(B) and (2)(A), (b)(2), and (c)(1)(B) and (4)(A). The commission adopts this requirement 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 adopted rulemaking also specifies 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 adopted in subsection (a)(3)(E) changes the title of the division referencing Chapter 101, Subchapter H, Division 1 to "Emission Credit Program." In a separate rulemaking (Rule No. 2014-007-101-AI), the commission is adopting this change to the name of this division.

The commission excludes 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 Adopted 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

Adopted 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 adopted rulemaking removes an outdated statement in the introductory paragraph of §115.126 that records generated prior to December 31, 2000 do not need to be kept for a full five years. This adopted change affects Aransas, Bexar, Calhoun, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties and the BPA, DFW, El Paso, and HGB areas.

The commission adopts renumbering existing paragraph (1)(A)(iv) as paragraph (1)(A)(iii) and replacing the contents of existing clause (iv) with requirements for a carbon adsorption system or carbon adsorber, while maintaining consistent sentence structure. This adopted change affects the BPA, DFW, El Paso, and HGB and Victoria County.

Adopted paragraph (1)(A)(iv) specifies 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 replaces 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 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 adopted rulemaking clarifies 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 adds this language to subsections (a) - (c) to be consistent with a published rule interpretation made in 1998. In the formal 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

Adopted subsection (e) requires 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

The adopted rulemaking also adds subsection (f) to provide 60 days for owners and operators of vent gas streams in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties that become subject to the division after the appropriate compliance date to comply with the requirements in the division. In response to comments received on this rulemaking, the commission deletes the reference to the DFW area as written at proposal and instead lists the counties that comprise this area. Because the DFW area has been defined as a four-county area, a nine-county area, and now a 10-county area, the commission makes this change to clearly indicate which counties in the DFW area are intended to be covered in this instance. This change is made to clarify the commission's intended applicability of this subsection.

Adopted subsection (g) specifies 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 will not be required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER B, GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 3, WATER SEPARATION

Section 115.139, Counties and Compliance Schedules

Adopted subsection (c) specifies 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

The commission adopts subsection (d) to provide 60 days for owners and operators of facilities in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties 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 rule no later than 60 days after the separator no longer qualifies for the exemption.

In response to comments received on this rulemaking, the commission deletes the reference to the DFW area as written at proposal and instead lists the counties that comprise this area. Because the DFW area has been defined as a four-county area, a nine-county area, and now a 10-county area, the commission makes this change to clearly indicate which counties in the DFW area are intended to be covered in this instance. This change is made to clarify the commission's intended applicability of this subsection.

Adopted subsection (g) specifies 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 will not be required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER C, VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 1, LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

The commission is replacing 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 establishes consistency and improves 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 revises 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, adopted paragraph (4) states 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.

Adopted paragraph (10) deletes 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 ensures the latest version of the test method is used at all times.

Section 115.219, Counties and Compliance Schedules

Adopted subsection (d) deletes 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.

Adopted subsection (e) specifies that the owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation in Wise County must 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

Adopted subsection (e) also specifies that the owner or operator of each gasoline terminal and gasoline bulk plant in Wise County must 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). Upon the rule effective date, Wise County will no longer be defined as a covered attainment county; 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 currently applicable requirements in §§115.211(2), 115.212(b), and 115.214(b) until the January 1, 2017 compliance date, at which time §§115.211(1), 115.212(a), and 115.214(a) will apply.

Adopted subsection (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 or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation will not be required to comply with the requirements in §§115.211(1), 115.212(a), and 115.214(a) and will be required to continue to comply with the requirements in §§115.211(2), 115.2112(b), and 115.214(b). The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* An owner or operator in Wise County will not be required to comply with any of the requirements applicable to the nine-county DFW area, but will continue to be subject to the same requirements applicable to Wise County while defined as a covered attainment county, as was required prior to this rulemaking.

Adopted subsection (f) requires that 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. Adopted subsection (f) is 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 adopted rule no later than 60 days after the gasoline terminal, gasoline bulk plant, and VOC transfer operation no longer qualifies for the exemption.

In response to comments received on this rulemaking, the commission deletes the reference to the DFW area as written at proposal and instead lists the counties that comprise this area. Because the DFW area has been defined as a four-county area, a nine-county area, and now a 10-county area, the commission makes this change to clearly indicate which counties in the DFW area are intended to be covered in this instance. This change is made to clarify the commission's intended applicability of this subsection.

The addition of subsection (g) is adopted 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

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 adopted amendment adds subsection (e) to specify that the owner or operator of a gasoline dispensing facility (GDF) in Wise County is required to continue to comply with the requirements applicable to covered attainment counties, as defined in §115.10, until compliance with the requirements applicable to the DFW area is achieved. Compliance with the requirements applicable to the DFW area is required as soon as practicable, but no later than January 1, 2017. Proposed subsection (e) did not clearly address compliance requirements for Wise County as it transitions from a covered attainment county to a DFW area county; therefore, the adopted rule adds clarifying language. The January 1, 2017 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 January 1, 2017, the mandatory RACT compliance deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

Adopted subsection (f) specifies 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 will be required to continue to comply with the requirements in this division applicable to the covered attainment counties. The requirements in the DFW area will no longer apply to GDFs in Wise County. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* An owner or operator in Wise County will not be required to comply with any of the requirements applicable to the nine-county DFW area, but will continue to be subject to the same requirements applicable to Wise County while classified as a covered attainment county, defined in §115.10, as was required prior to this rulemaking.

The addition of subsection (f) is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality

Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

In other divisions of this rulemaking, the commission adopts adding 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.

SUBCHATPER C, VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 3, CONTROL OF VOLATILE ORGANIC COMPOUND LEAKS FROM TRANSPORT VESSELS

Section 115.239, Counties and Compliance Schedules

Adopted subsection (c) deletes 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 adopts subsection (d) to specify that the owner or operator of each non-gasoline VOC tank-truck tank in Wise County must 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264). Gasoline tank-truck tanks in Wise County are currently subject to the inspection requirements specified for covered attainment counties. The adopted rule requires 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.

Adopted subsection (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 or operator of each tank-truck tank will not be required to comply with the requirements in §115.234(a) and §115.235(a) and will be required to continue to comply with the requirements in §115.234(b) and §115.235(b). The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* An owner or operator in Wise County will not be required to comply with any of the requirements applicable to the nine-county DFW area, but will continue to be subject to the same requirements applicable to Wise County while classified as a covered attainment county, as was required prior to this rulemaking. At proposal, the commission referenced "gasoline terminal, gasoline bulk plant, or volatile organic compound transfer operations" as the affected operations; however, "tank-truck tank" should be cited since this is the only source-type affected by this division. Adopted revisions to subsection (e) specify tank-truck tanks as affected by the compliance schedule.

The addition of subsection (e) is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

In other divisions of this rulemaking, the commission is adding 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 take 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 adopted rulemaking adds subsection (c) requiring compliance with the division for owners and operators in Wise County 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

Adopted subsection (d) also adds a requirement for the owners or operators of sources in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties that become subject to the division to comply with the division within 60 days of becoming subject. Adopted subsection (d) is 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 adopted 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. In response to comments received on this rulemaking, the commission deletes the reference to the DFW area as written at proposal and instead lists the counties that comprise this area. Because the DFW area

has been defined as a four-county area, a nine-county area, and now a 10-county area, the commission makes this change to clearly indicate which counties in the DFW area are intended to be covered in this instance. This change is made to clarify the commission's intended applicability of this subsection.

Adopted subsection (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 or operator of each affected source will not be required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 1, DEGREASING PROCESSES

Section 115.410, Applicability and Definitions

The commission adopts 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.

New subsection (a) establishes 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. Adopted new subsection (a) is not intended to alter the existing applicability for any area or county.

Adopted 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 degreasing processes using materials other than those containing VOC is not necessary since there would be no resulting VOC emitted.

The commission adopts 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 subsection (b) will simply reference §§3.2, 101.1, and 115.10.

Section 115.411, Exemptions

The commission adopts 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 made to the existing language currently located in §115.417, which is currently being repealed.

Section 115.415, Testing Requirements

The adopted changes to paragraph (1)(B) specify that the test methods to which minor modifications can be made are in paragraph (1)(A). The adopted revisions in paragraph (1)(B) accommodate the addition of the testing option adopted in paragraph (1)(C) since subparagraph (B) does not apply to adopted paragraph (1)(C) and (D). The adopted testing requirements in paragraph (1)(C) and (D) apply to all areas currently affected by paragraph (1).

The adopted rulemaking adds 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) in lieu 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.

Similarly, the adopted changes add paragraph (1)(D) allowing 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 adopted 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 rulemaking updates the exemption section reference from §115.417(5) to §115.411(5) reflecting the relocation of the existing exemptions to new §115.411. These changes are not intended to change the meaning or applicability of paragraph (3).

Adopted paragraph (4) requires 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 adopted requirement is not intended to impose a burden on owners and operators and the commission anticipates the adopted recordkeeping minimizes the impact to affected sources and ensures 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 in subparagraphs (A) and (B) are required to be maintained for two years. The adopted requirement only applies to the DFW area and not to any of the other areas listed in this rule.

Adopted paragraph (4)(A) imposes 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.

Adopted paragraph (4)(B) imposes recordkeeping for degreasing processes in the DFW area sufficient to demonstrate compliance with the applicable exemptions in adopted new §115.411.

§115.417, Exemptions

The commission adopts the repeal of this section and relocates the existing exemptions to adopted new §115.411.

Section 115.419, Counties and Compliance Schedules

The commission adopts adding subsection (d) to specify that compliance with the division for owners and operators in Wise County is required 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

The commission adopts adding subsection (e) requiring an owner or operator in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties 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. Adopted subsection (e) is 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 adopted subsection (e) include those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption. In response to comments received on this rulemaking, the commission deletes the reference to the DFW area as written at proposal and instead lists the counties that comprise this area. Because the DFW area has been defined as a four-county area, a nine-county area, and now a 10-county area, the commission makes this change to clearly indicate which counties in the DFW area are intended to be covered in this instance. This change is made to clarify the commission's intended applicability of this subsection.

Adopted subsection (f) specifies 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 is not required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 2, SURFACE COATING PROCESSES

For certain surface coating categories regulated under this division, the applicability will 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 do not affect Wise County.

In some instances, the commission adds 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 adopted 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 adopted 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 to the content of the tables and equations are discussed.

Section 115.420, Surface Coating Definitions

The adopted rulemaking changes 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 ensures that internal and external users are able to easily ac-

cess the information necessary to determine how each surface coating process is affected by the division.

The commission adopts reorganizational changes to this section to accommodate the inclusion of the applicability for the rules in this division. Adopted subsection (a) states 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 adopted §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 adopted subsection (a) is not intended to change the current applicability of these rules. Any changes to the applicability are separate 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.

Adopted subsection (a)(1) states 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.

Adopted subsection (a)(2) states 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 adopts 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.

Adopted subsection (a)(4) states 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 is determined by the VOC emissions from each individual paper coating line. Adopted subparagraph (A) specifies that each paper coating line in the DFW and HGB areas that has the PTE less than 25 tpy of VOC is subject to this division. Adopted 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 is subject to the requirements in Subchapter, E, Division 5.

Adopted subsection (a)(5) states 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. Adopted subsection (a)(6) states 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. Adopted subsection (a)(7) states 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.

Adopted subsection (a)(8) states 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.

Adopted subsection (a)(9) states 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 expanding 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 Adopted 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.

Adopted subsection (a)(10) states 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 is also including 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), adopted as §115.427(8).

Adopted subsection (a)(11) states 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 including 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).

Adopted subsection (a)(12) states 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. Adopted subsection (a)(13) states 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 mirror backing 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).

Adopted subsection (a)(14) states 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 including 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).

Adopted subsection (a)(15) states 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 providing 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).

Adopted subsection (a)(16) states 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 adopted applicability in subsection (a), the commission is re-lettering existing subsections (a) and (b) as subsections (b) and (c), respectively. The commission is deleting 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. Adopted paragraph (12) contains the definitions for automobile and light-duty truck manufacturing coating. Similarly, existing subsection (b)(12)(B) is adopted as subsection (c)(13), and subsection (b)(12)(B)(i) - (ix) is adopted as subsection (c)(13)(A) - (I), respectively. Adopted 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 adopted changes allow users to more easily navigate through the definitions and more appropriately mirrors the formatting scheme of the other coating categories in this section and in the Subchapter E, Division 5 surface coating definitions section.

Existing subsection (b)(13) is being adopted 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 adopts the deletion of the "Wood parts and products coating" catchline in existing subsection (b)(14). Existing subsection (b)(14)(A) is adopted as subsection (c)(15), and existing clauses (i) - (xi) are adopted as subparagraphs (A) - (K). Adopted subsection (c)(15) contains the definitions for wood parts and products coating facilities that are subject to adopted §115.421(14). Similarly, existing subsection (b)(14)(B) is adopted as subsection (c)(16), and existing clauses (i) - (xix) are adopted as subparagraphs (A) - (S). Adopted subsection (c)(16) contains definitions for wood furniture manufacturing facilities subject to adopted §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 adopted changes 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.

The commission adopts changing subsection (c)(1)(EEEE) to state "Volatile organic compound" instead of "VOC." Per *Texas Register* guidelines, each definition should acronym a phrase only when the phrase has already been defined within that definition. The existing definition in paragraph (1)(EEEE) does not previously define VOC; therefore, the commission adopts this change.

Section 115.421, Emission Specifications

The commission adopts removing the existing subsection (a) designation to accommodate the deletion of existing subsection (b) and to conform to *Texas Register* formatting guidelines. Adopted 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 paragraphs (1) - (16), which are existing paragraphs (1) - (15). The citations in existing subsection (a) are also updated to correspond to the adopted numbering scheme. Finally, the commission adopts 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 adopted rulemaking renumbers 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 deletes subsection (b) and to include Gregg, Nueces, and Victoria Counties in the rules of subsection (a).

The commission modifies existing paragraph (7) to correctly describe the units of the VOC emission limits as solvent content per unit of volume instead of solvent content per gallon of coating. Because the existing table lists the emission limits in both pounds of VOC per gallon and kilogram of VOC per liter, the adopted revisions specify that the basis of the VOC emission limits in this paragraph is solvent "VOC" content per "unit volume."

Another change 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 adopted for existing paragraphs (13) - (15), which are adopted as paragraphs (14) - (16), respectively, as a result of the adopted 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.

Existing subsection (a)(9) - (11) is adopted as paragraphs (8) - (10), respectively. The commission adopts 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) is adopted 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 El Paso, BPA, DFW, and HGB areas are subject to.

The current rule structure combines automobile and light-duty truck surface coating and vehicle refinishing surface coating in paragraph (8). However, the rulemaking separates these two vehicle surface coating processes because each of the other surface coating processes in the division are regulated in individual paragraphs and because there are no common rule requirements between the two. The adopted applicability in §115.420(a) also reserves separate paragraphs for the two processes. The automobile and light-duty truck surface coating is adopted as

paragraph (11) and vehicle refinishing is adopted as paragraph (12). The requirements in each of the paragraphs are not being amended.

Amendments to existing paragraph (9)(A), renumbered as paragraph (8)(A), creates a table to display the VOC emission limits for miscellaneous metal parts and products coating. The adopted revisions delete the clauses in existing subparagraph (A), which list the emission limits in tabular format. The adopted table improves readability of the rule by presenting the data more clearly and concisely. The table contains 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).

Adopted paragraph (11) incorporates the emission specifications for automobile and light-duty truck manufacturing coating from existing paragraph (8)(A). The existing paragraph (11) is adopted as paragraph (10). No changes are adopted 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 lists all surface coating categories affecting Gregg, Nueces, and Victoria Counties, which comprise existing subsection (b), in uninterrupted numerical order.

Adopted paragraph (12) incorporates the emission specifications for vehicle refinishing coating (body shops) from existing paragraph (8)(B). The existing paragraph (12) is adopted as paragraph (13). The adopted rule will add a table displaying the coating VOC emission limits. The adopted table improves readability of the rule by presenting the data more clearly and concisely. No other substantive changes are made 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.

The adopted amendment to existing paragraph (13), renumbered as paragraph (14), creates a table to display the VOC emission limits for the surface coating of wood parts and products. The adopted revisions delete the clauses in existing subparagraph (A), which list the emission limits in tabular format. The adopted table improves readability of the rule by presenting the data more clearly and concisely. The table contains the same coating types and VOC limits, in both lb/gal and kg/liter, as in existing subparagraph (A). While not in response to comments, the commission adopts the addition of "of VOC" to the column header providing the VOC limits in kilograms. This clarification is made to properly conform to *Texas Register* formatting guidelines.

The commission also adopts 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) conforms to *Texas Register* formatting since both subparagraphs (A) and (C) are being adopted for deletion.

The adopted deletion of existing paragraph (13)(C) eliminates 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) already satisfies compliance with the rule and thus does not need to comply with §115.423(3).

The commission amends existing subsection (a)(15)(B)(ii), being adopted 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 adopts deleting the entire subsection (b) and integrating the requirements for Gregg, Nueces, and Victoria Counties with the requirements for the BPA, DFW, El Paso, and HGB areas. Since the surface coating requirements in subsection (b) are applicable to just Gregg, Nueces, and Victoria Counties, the commission is deleting subsection (b) and including Gregg, Nueces, and Victoria Counties in the subsection (a) rules.

Section 115.422, Control Requirements

The adopted revisions 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 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 indicates 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 adopted to include Gregg, Nueces, and Victoria Counties, paragraph (6) only continues to apply to the BPA, DFW, El Paso, and HGB areas. The emission specification citations are updated from §115.421(a) to §115.421 and the exemption citations are updated from §115.427(a) to §115.427.

Similarly, changes to paragraph (6)(A) update the rule citations to correctly match the rule being referenced, which are renumbered due to the reorganization of that section. The emission specification citations are updated from §115.421(a) to §115.421 and the exemption citations are updated from §115.427(a) to §115.427.

Adopted changes to paragraph (7) eliminate the March 1, 2013 compliance date for paper surface coating lines in the DFW and HGB areas that are subject to this division. This compliance date has already passed and is now obsolete.

Section 115.423, Alternate Control Requirements

The commission adopts 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 equation 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 renumbering in §115.421, the commission adopts various non-substan-

tive 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 adopted renumbering in §115.421, the commission adopts various non-substantive formatting and stylistic changes to §115.425 consistent with commission and *Texas Register* guidelines.

The adopted changes to paragraph (1)(C) and (D) update the existing language to accommodate the formatting changes adopted for the entire paragraph. Changes to paragraph (1)(D) also clarify that the local air pollution control agency has jurisdiction to request records maintained by affected owners and operators. The minor change to paragraph (2)(C) adds language to ensure any local air pollution control agency has jurisdiction when requesting records. At proposal, a bracket was inserted indicating "be maintained" should be deleted from the paragraph (1)(C); however, this bracket was erroneously inserted. Paragraph (1)(C) is adopted without this bracket and correctly requires that a material data sheet be maintained that documents the criteria specified in this provision. In addition, paragraph (1)(D) was erroneously revised at proposal and has been changed to reflect the existing intent of the requirement. Specifically, "shall" is updated in two instances to "must" and the portion of the requirement indicating the records must be made available upon request by the listed officials is restored. These changes are meant to retain this requirement as it currently exists in the Chapter 115 rules.

Section 115.427, Exemptions

The commission adopts the consolidation of the exemptions for all of the areas affected by this section. As a result, the contents of this section are significantly reorganized, improving the readability. The commission is adding language to indicate the areas affected for each exemption which does not apply in all areas so that owners and operators are able to easily navigate through the exemptions. The changes in this section are not intended to alter the processes or activities for which an exemption is provided.

Revisions to paragraph (1) specify that miscellaneous metal parts and products surface coating emission specifications in adopted revised §115.421(8) is the emission source category being referred to, instead of only citing the rule reference.

Adopted 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 changes to this exemption result in an exemption worded similarly to existing subsection (b)(2) for Gregg, Nueces, and Victoria Counties.

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. Adopted changes renumber existing paragraphs (7) and (8) as paragraphs (8) and (9), respectively. Adopted paragraph (7) exempts 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 consolidation of existing subsections (a) and (b).

The commission revises the exemption in existing paragraph (7), adopted 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 renumbered 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 only requiring 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 will apply in Wise County.

Existing exemptions in subsection (b) are being relocated into adopted designated subsection (a). The contents of existing paragraph (1) will become paragraph (7). Existing paragraphs (2) and (3) will be incorporated into adopted 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 adopted paragraph (6).

Section 115.429, Counties and Compliance Schedules

Adopted 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 included in subsection (a), the commission is deleting subsection (b). Accordingly, existing subsections (c) and (d) are re-lettered as subsections (b) and (c), respectively. Additionally, adopted subsection (c) excludes Wise County since this compliance date is already passed.

The commission adds subsections (d) and (e). Adopted subsection (d) specifies that compliance with the division for owners and operators in Wise County is required 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

The commission adopts subsection (e) to require an owner or operator in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties 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. Adopted subsection (e) is 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 adopted subsection (e) include those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption.

In response to comments received on this rulemaking, the commission deletes the reference to the DFW area in subsection (e) as written at proposal and instead lists the counties that comprise this area. Because the DFW area has been defined as a four-county area, a nine-county area, and now a 10-county area, the commission makes this change to clearly indicate which counties in the DFW area are intended to be covered in this instance. This change is made to clarify the commission's intended applicability of this subsection.

Adopted subsection (f) specifies 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 will not be required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 4, OFFSET LITHOGRAPHIC PRINTING

The exemption level in the current rule impacts sources that emit less than the reporting level required by the agency, making a negative declaration not possible; however, the commission did not identify sources in Wise County that would be directly affected by the requirements. Additional information is provided in other portions of this preamble.

Section 115.440, Applicability and Definitions

The commission revises 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. The major source definition for Wise County is different than the major source definition for the other nine DFW counties. Specifically, the commission excludes Wise County from the DFW area in subsection (b)(8)(A) and revises 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 adopts the replacement of "and" with "or" in paragraph (8)(B) to indicate that an offset lithographic printer does not have to meet all three provisions in paragraph (8)(A) - (C), but rather only meet one to trigger applicability to the rule. This change is made to clarify the commission's intended applicability of this paragraph.

The commission also revises 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 excludes Wise County from the DFW area in subsection (b)(9)(A) and revises 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. The commission adopts the replacement of "and" with "or" in paragraph (9)(B) to indicate that an offset lithographic printer does not have to meet all three provisions in paragraph (9)(A) - (C), but rather only meet one to trigger applicability to the rule. This change is made to clarify the commission's intended applicability of this paragraph.

Section 115.441, Exemptions

The exemptions that currently apply to minor printing sources, as defined in §115.440, 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.

Adopted revisions to subsection (b) specify that the owner or operator of a major printing source or minor printing source in Wise County qualifies for the listed exemptions. 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. This subsection does not alter the applicability of exemption for printing sources in the other nine DFW counties or in the HGB area.

The exemption in subsection (b)(1) is deleted since this exemption has expired. Accordingly, existing subsection (b)(2) - (4) is re-lettered as subsection (b)(1) - (3), respectively. No changes are made to the contents of these exemptions.

The adopted rulemaking deletes 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 removing reference to the DFW and HGB areas in subsections §115.442(a) and §115.446(a).

Section 115.442, Control Requirements

The commission adopts 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 en-

sure 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 subsections (b) and (c) began to apply.

Adopted 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 sufficiently directs owners and operators to the correct section to determine the appropriate compliance date for their process.

Adopted 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

Adopted 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. Adopted 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

Adopted 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.

In response to comments received on this rulemaking, the commission deletes the reference to the DFW and HGB areas as written at proposal in subsections (e) and (f) and instead lists the counties that comprise these areas. The affected counties are Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties. Because this rulemaking addresses RACT in the DFW area, this change is made in response to a comment that warranted clarification of the DFW area definition. However, the commission made similar clarification of the HGB area to clearly indicate which counties in both the DFW and HGB areas are intended as used in this instance. This change is made to clarify the commission's intended applicability of this subsection. Adopted revisions to subsections (e) and (f) exclude Wise County because, 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 these two subsections. 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 adopts 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, are 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

The commission adopts re-lettering subsection (g) as subsection (h). The commission adopts adding Wise County into subsection (h), which indicates that an owner or operator in Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties that becomes subject to the requirements of this division on or after the either of the appropriate compliance dates in subsection (e) or (f) has 60 days to comply. This requirement currently applies to the HGB and DFW counties, but is new for Wise County. This compliance schedule approach is consistent with the requirements of the existing rule.

In response to comments received on this rulemaking, the commission deletes the reference to the DFW and HGB areas as written at proposal in subsection (h) and instead lists the counties that comprise these areas. The affected counties are Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties. Because the DFW area has been defined as a four-county area, a nine-county area, and now a 10-county area, the commission makes this change to clearly indicate which counties in the DFW area are intended to be covered in this instance. This change is made to clarify the commission's intended applicability of this subsection.

Adopted subsection (i) specifies 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 will not be required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer des-

ignated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 5, CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

The adopted rulemaking expands 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 Adopted Rules section of this preamble. Although no sources were identified, these rules 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 could affect both of these areas. Many changes to the Subchapter E, Division 2 rules reorganize and consolidate existing requirements. As a result of these changes, the commission updates 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 adopted 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 adopts 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 section for December 2011 rulemaking describes the applicability for motor vehicle materials as the 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 clarifies the intended applicability by adding the re-coating of used parts and products into paragraph (4) as a regulated process coating in this division.

Adopted changes to the equation in subsection (b)(12) correctly subscript the variables. There are no substantive changes being made to this equation.

The commission adopts 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 uses 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 EPA 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 adopted in subsection (c)(2)(B), the commission adopts re-lettering existing subparagraphs (B) - (O) as subparagraphs (C) - (P), respectively. No other changes are adopted to the contents of the definitions in these subparagraphs.

The commission amends 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 adopts the references 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 amends 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 amends the rule citations referencing the surface coating categories in subsection (a). With the reorganization of the emission specifications in §115.421, the citations 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 adopted 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 change makes this exemption consistent with the Division 2 exemption, from which it was derived. The last minor revision to subsection (a) is to correct a comma that was erroneously adopted within the parentheses and should be located after the end parenthesis.

The commission incorporates 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). Adopted subsection (b) exempts 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 clarifies that any surface coating process regulated under another coating category in Chapter 115, which are those listed in the paragraphs of this subsection, will 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.

Adopted 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 adopting 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 adopted 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 adopts revisions to 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.

In addition, the commission adopts the revisions that refer to the rule citations for metal and plastic parts 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 incorporating §115.453(a)(1)(C) - (F) and (2) in the exemption.

Adopted subsection (p) exempts 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 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 Division 7 are subject to the requirements in Division 7 for those adhesives, rather than the requirements of Division 5. An adhesive meeting the contact adhesive definition does not include in this exemption since these are more general adhesives intended to be regulated under the appropriate miscellaneous metal and plastic parts coating category. This 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 adopts the amendment to 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 adopted compliance schedule in subsection (a) pertains to Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties, but not to Wise County. In response to comments received on this rulemaking, the commission deletes the existing reference to the DFW and HGB areas, as proposed, and instead lists the counties that comprise these two areas. Because this rulemaking addresses RACT in the DFW area, this change is made in response to a comment that warranted clarification of the DFW area definition. However, the commission made the same clarification of the HGB area and makes this change to clearly indicate which counties in both the DFW and HGB areas are intended to be covered in this instance.

In response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not in response to comments, the commission adopts the insertion of the "VOC" acronym after the first time it is defined and replacing "volatile organic compounds" in subsequent uses in the figure with "VOC." This clarification is necessary to conform to *Texas Register* formatting guidelines.

Existing subsection (b) is being re-lettered as subsection (c) to accommodate the compliance schedule adopted as subsection (b) for affected owners and operators in Wise County. The commission adopts subsection (b) specifying that compliance with the division for owners and operators in Wise County is required 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 January 1, 2017, the mandatory RACT deadline set

in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

The commission adopts modifications to 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 adopted subsection (c) include those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption.

Adopted subsection (d) specifies 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 in Wise County is not required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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). While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 6, INDUSTRIAL CLEANING SOLVENTS

Section 115.460, Applicability and Definitions

The commission renumbers and makes various revisions to the definitions in subsection (b). The existing definitions in paragraphs (10) and (11) are 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 made in this section impact the DFW and HGB areas.

The commission adopts paragraph (10) to define the term "Solvent" to accommodate the revision to the definition of "Solvent cleaning operation." Adopted 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 using the definition of "Solvent" from SCAQMD Solvent Cleaning Operations, Regulation XI, Rule 1171, with minor modification for terminology consistency within these rules.

The commission revises 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 serves to clarify, but not change, the cleaning solvent operations regulated in this division. The commission also adopts minor, non-substantive changes to the equation in subsection (b)(12) to correctly subscript the variables.

Section 115.461, Exemptions

The commission is 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 adds 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 revises subsection (a) specifying that the compliance schedule pertains to Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties, but not Wise County. The existing language does not list the counties since the compliance schedule applies to DFW and HGB, 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 other applicable counties so that all affected owners and operators know which compliance schedule to follow.

Existing subsection (b) is being re-lettered as subsection (c) to accommodate the compliance schedule adopted as subsection (b) for affected owners and operators in Wise County. The commission adopts subsection (b) to specify that compliance with

the division for owners and operators in Wise County is required 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 January 1, 2017, the mandatory RACT deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

The commission is modifying 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 adopted 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.

Adopted subsection (d) specifies 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 in Wise County is not be required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER E, SOLVENT-USING PROCESSES

DIVISION 7, MISCELLANEOUS INDUSTRIAL ADHESIVES

Section 115.471, Exemptions

The commission adopts revisions to 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, this 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 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, are subject to the requirements in Division 7 for those adhesives, rather than Division 5. An adhesive that meets the contact adhesive definition is not 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 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 115.473, Control Requirements

While not in response to comments, the commission adopts inserting the "VOC" acronym after the first time it is defined and replacing "volatile organic compounds" in subsequent uses in the figure with "VOC." This is a minor change necessary to conform to *Texas Register* formatting guidelines.

The commission adopts the amendment to 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 revises subsection (a) specifying that the compliance schedule pertains to Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties, but not Wise County. The existing language does not list the counties since the compliance schedule applies to DFW and HGB, 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 other applicable counties so that all affected owners and operators know which compliance schedule to follow.

Existing subsection (b) is re-lettered as subsection (c) to accommodate the compliance schedule adopted as subsection (b) for affected owners and operators in Wise County. Adopted subsection (b) requires 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, set in the EPA's proposed implementation rule for the 2008 eight-hour ozone NAAQS (78 FR 34178, June 6, 2013).

The commission modifies 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 subsection (c) includes those that were not in operation by the appropriate date of compliance as well as those that no longer qualify for exemption.

Adopted subsection (d) specifies 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 is not required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is necessary 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

SUBCHAPTER F, MISCELLANEOUS INDUSTRIAL SOURCES

DIVISION 1, CUTBACK ASPHALT

§115.519, Counties and Compliance Schedules

Adopted subsection (d) specifies 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 January 1, 2017, the mandatory RACT compliance deadline set in the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264).

Adopted subsection (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 or operator of each will not be required to comply with any of the requirements in this division. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is adopted 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 adopting 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 response to comments on this rulemaking, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective" for clarification. While not specifically commented on, the commission adds an additional reference to Wise County in the new subsection to make clear that if the provision were implemented then the cessation of compliance obligations would only apply to Wise County.

In other divisions of this rulemaking, the commission is adopting 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.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the adopted 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 adopted 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 most of 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 RACM, including RACT, for sources of pollutants identified by the EPA as required by FCAA, §183(e). The adopted 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 station-

ary sources of VOCs. The adopted rules update RACT requirements for the following source categories in 30 TAC 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 adopted 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 adopted 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 adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These 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 adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially 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 adopted 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 adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because although the adopted rulemaking meets the definition of a "major environmental rule," and it does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the adopted rulemaking is to 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 adopted 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 adopted 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 adopted 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 adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the 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(1)). The CMP policy applicable to the adopted 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 adopted 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 adopted 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.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

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. 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.

Public Comment

The commission held public hearings in Arlington on January 15, 2015 at 6:30 p.m. at the City of Arlington Council Chamber 101 W. Abrams Street 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. The January 22, 2015 hearing scheduled for 10:00 a.m. was not officially opened because no party indicated a desire to provide oral comment. The EPA, the Lone Star Sierra Club, the Texas Pipeline Association (TPA), and two individuals submitted written comments regarding this rulemaking.

Response to Comments

Comment

The TPA commented that the proposed 500 ppmv leak definition for valves at natural gas processing plants in Wise County is not RACT because it is not economically feasible and suggested regulatory alternatives. The TPA estimated that at one affected natural gas processing plant in Wise County, 494 valves would be affected by the 500 ppmv leak definition and that 75% of these valves would need repair and 25% of theses valves would need replacing. Using an average cost of $25,000 per valve to replace and $1,000 per valve to repair, the TPA estimated the plant to incur a total compliance cost of $3.45 million. The TPA indicated that the number of components requiring replacement or repair is even higher at another natural gas processing plant in Wise County.

The TPA claimed that the commission's estimate of repair costs is too low. Specifically, the TPA disagreed with the commission's assumption that on-site personnel would conduct monitoring, questioned the commission's assumption of two annual valve repairs per site, and noted an inconsistency in how the commission described repair costs in the fiscal note.

The TPA recommended allowing the two affected natural gas processing plants in Wise County to monitor valves with their current permit-based 10,000 ppmv leak definition. The TPA requested a limited exemption if a Wise County natural gas plant could demonstrate that leak detection and repair of valves with a 500 ppmv leak definition would be economically infeasible. The suggested exemption would expire if the valve became subject to 40 CFR Part 60, Subpart OOOO. The TPA supported its recommendation because DFW area ozone formation is not dependent on Wise County VOC emissions and only two facilities are affected.

Response

The commission disagrees that the fugitive emission control rules in Chapter 115, Subchapter D, Division 3, are not RACT

for natural gas processing plants in Wise County. The 500 ppmv leak definition is already established as RACT for the other nine counties of the DFW 2008 eight-hour ozone nonattainment area, as well as the HGB 1997 eight-hour ozone nonattainment area. The commenter did not provide data demonstrating that unique technological and economic circumstances exist for the natural gas processing plants in Wise County that warrant a leak definition different than the current 500 ppmv RACT-level leak definition to which natural gas processing plants in the other nonattainment counties and areas are subject. The commission determined, and contends, that these rule requirements are just as technologically and economically feasible for the applicable facilities in Wise County as the requirements are for facilities already subject to the rules. The commission's staff based the fiscal analysis, including the repair cost of $150 per valve, on EPA Natural Gas Star documents and articles published in *Oil and Gas Journal.* The commission continues to expect that Wise County natural gas processing plants will not incur additional expenses for monitoring valves with a 500 ppmv leak definition, whether they are monitored by on-site personnel or a contractor, since these valves are already monitored on the same schedule as those with a 10,000 ppmv leak definition. The commission also expects that the percentage of valves at a natural gas plant leaking more than 500 ppmv should be far lower than the 100% characterized in the comment.

The costs for replacing valves was not considered because the commission anticipates that valves would be designed and maintained to leak less than 500 ppmv. There may be an initial cost to replace leaking valves but adequate information was not provided to justify $25,000 per replaced valve as an appropriate replacement cost. No changes are made in response to this comment.

Comment

The TPA commented the commission should make clear that maintenance, shutdown, and startup (MSS) emissions are not included in the calculation to determine whether a particular vent gas stream qualifies for exemption by emitting less than or equal to 100 pounds of VOC in a continuous 24-hour period. Without making clear that MSS emissions are excluded in the calculation, the TPA indicated that unintended vent gas streams may trigger applicability to the rule requirements. The TPA expressed concern that the proposed addition of "emissions from compressor rod packing that are contained and routed through a vent" and "emissions from a glycol dehydrator still vent" to the rule applicability in §115.121(a)(1) may require compressor stations to install control devices to control emissions from MSS activities and rod packing vents, which the TPA claimed would be excessively expensive and increase nitrogen oxide emissions. The TPA specifically requested an amendment to the exemption in §115.127(a)(2)(A) to exclude emissions from MSS activities from the 100-pound per 24-hour VOC exemption threshold.

Response

The applicability of MSS activities to the exemption criteria in §115.127(a)(2)(A) is not within the scope of this rulemaking. The commission did not propose any modifications or clarifications to the existing rules with regard to MSS activities and other interested parties would not have adequate opportunity for comment regarding the suggested change. The purpose of this rulemaking is to implement RACT for the DFW area and to incorporate specific modifications for clarification purposes. The addition of "emissions from compressor rod packing that are contained and routed through a vent" and "emissions from a glycol dehydrator still vent" to the rule applicability in §115.121(a)(1) simply incorporate historical formal rule interpretations that are intended to clearly convey, but not in any way change, the existing applicability. No changes are made in response to this comment.

Comment

The TPA commented that it supports the proposed language in §115.112(e)(7)(D), which states that if a repair requires a shutdown that creates more emissions than the repair would eliminate, then the repair could be delayed until the next shutdown. The TPA suggested including this same repair schedule language into §115.114(a)(5)(B) since the preamble discussion for subparagraph (B) indicates delay of repair is allowed as in §115.112(e)(7)(D).

Response

The commission agrees that the delay of repair circumstances listed in proposed §115.112(e)(7)(D) should be incorporated into §115.114(a)(5)(B). As explained in the rule preamble at proposal, the commission intends to allow a delay of repair for lack of available parts and for a repair that will generate more emissions than a shutdown. Therefore, in response to this comment, §115.114(a)(5)(B) is revised to add the same language as in §115.112(e)(7)(D) allowing delay of repair.

Comment

The EPA commented that it supports the inclusion of major sources of VOC located in Wise County to become subject to the requirements in Chapter 115. The TPA expressed support of the TCEQ's intent to adopt measures in Wise County that fulfill FCAA RACT requirements.

Response

The commission appreciates the EPA's and TPA's support.

Comment

One individual requested that the 2015 DFW Attainment Demonstration SIP revision include control requirements for all stages of flowback following hydraulic fracturing of natural gas and oil wells. The commenter suggested closed flowback tanks that route vapors to vapor recovery units.

Response

The purpose of this Chapter 115 rulemaking is to meet FCAA VOC RACT requirements for the DFW area. The suggested control measure is not a RACT requirement and is outside the scope of this rulemaking. Additional discussion in response to this comment is provided in the 2015 DFW Attainment Demonstration SIP Revision (Non-Rule Project No. 2013-015-SIP-NR) being adopted concurrently with this rulemaking.

Comment

The EPA commented that it cannot approve the proposed compliance schedule stating that upon publishing notice in the *Texas Register* that Wise County is no longer nonattainment for the 2008 eight-hour ozone NAAQS, the rule applicability for sources in Wise County remains as it was prior to this rulemaking. The EPA indicated it cannot approve this provision because it does not contain "a replicable procedure" and to accomplish changing the applicability for sources in Wise County, the state would need to undergo rulemaking and submit a subsequent SIP revision.

Response

The commission disagrees that a replicable procedure is necessary to change the applicability of RACT rules in Wise County in the event the nonattainment designation for Wise County is no longer legally effective. If the nonattainment designation is no longer legally effective, then there is no underlying legal basis or support for the RACT requirement to apply in Wise County. The inclusion of Wise County in the DFW nonattainment area is currently in litigation, awaiting a decision from the D.C. Circuit Court. A final decision from the court that vacates the nonattainment designation for Wise County would mean that EPA would no longer have the authority to require or enforce RACT requirements in an area that is not legally designated nonattainment.

Only in the absence of a legally valid nonattainment designation would the commission be able to act under this rule provision, and such action would merely provide notice that Wise County would no longer be legally required to comply with provisions that are no longer legally valid. Further action from the EPA would not be required if a final court decision vacates the nonattainment designation of Wise County; therefore, no §110(l) demonstration could be required to remove a requirement that would no longer be legally required. Furthermore, the 2018 future year attainment demonstration modeling documented in the 2015 DFW Attainment Demonstration SIP Revision (2013-015-SIP-NR) being adopted concurrently with this rulemaking does not include VOC reductions from any of the RACT rules proposed for Wise County. Since no emissions reductions from this rulemaking were included in the 2018 future case modeling for Wise County, cessation of the compliance obligations for VOC sources in Wise County would not affect the attainment demonstration modeling.

To ensure that the rule language clearly establishes this standard, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" in §§115.119(h), 115.129(g), 115.139(e), 115.219(g), 115.229(f), 115.239(e), 115.359(e), 115.419(f), 115.429(f), 115.449(i), 115.459(d), 115.469(d), 115.479(d), and 115.519(e) with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective."

Comment

The Lone Star Sierra Club and one individual requested that vapor recovery units be required on VOC major source condensate tanks.

Response

The adopted changes in Chapter 115, Subchapter B, Division 1, will extend control requirements to Wise County to implement RACT for storage tanks storing condensate with the PTE VOC of at least the applicable major source threshold for all counties in the 2008 DFW eight-hour ozone nonattainment area. The adopted rules require 95% control of VOC from condensate storage tanks in Wise County, as is required in the other nine DFW counties, but do not specify use of vapor recovery units because Texas Health and Safety Code, §382.017, prohibits the commission from adopting rules that require specific types of control equipment unless required by federal law or regulation. The commission makes no changes in response to this comment.

Comment

The Lone Star Sierra Club and one individual suggested that the commission adopt rules similar to the State of Colorado for oil and natural gas production, transmission, and processing, with a special emphasis on reducing venting and flaring of hydrocarbons and VOC from the largest sources, condensate tanks, and pneumatic devices.

Response

The rule changes in Chapter 115, Subchapter B, Division 1, will implement RACT for storage tanks storing condensate with the potential to emit VOC of at least the applicable major source threshold for all counties in the 2008 DFW eight-hour ozone nonattainment area. Specifically, the rules will require proper maintenance of equipment and additional inspections of tank openings. As part of the RACT evaluation for this rulemaking, staff reviewed available information from many different sources, including the recent rule changes in Colorado and the EPA's new source performance standards for condensate storage tanks. The commission is amending Division 1, Storage of VOC, but is not adding control requirements for pneumatic devices. There is no existing CTG that establishes presumptive RACT for pneumatic devices used in the oil and natural gas industry. In addition, the rule proposal did not include any controls for pneumatics so affected parties would not be afforded the opportunity to provide comment on potential controls. The requested strategies are also not RACM because they would reduce VOC and photochemical modeling indicates VOC reductions will not advance attainment. The commission makes no changes in response to this comment.

Comment

The EPA suggested revising the proposed definition of the DFW area in §115.10 by creating three distinct definitions delineating the DFW four-county area, the DFW nine-county area, and the DFW 10-county area to clarify in each division which DFW area is being referenced. The EPA commented the commission's proposed definition of the DFW area would require cross-referencing particular divisions with the definition in §115.10 to determine which DFW counties are included.

The EPA commented that in the DFW area definition in §115.10, the loading and unloading rules are not delineated in §115.10(11)(A) or (B) and therefore it seems the applicable definition is §115.10(11)(C), which applies to all 10 counties in the DFW area. The EPA commented it believes the TCEQ intended the reference to the DFW area in §115.219(f), to include only nine counties because there is a separate paragraph that provides requirements for the tenth county, Wise County, in §115.219(e).

Response

The commission appreciates the EPA's suggestion. The commission expects that the proposed definition format provides the clearest layout given the complex structure of the Chapter 115 rules. Revising the definition to reflect the EPA's suggested definitions still requires a user to cross-reference the definition in §115.10 with the specific division to determine which counties are intended in each instance the suggested definitions are used.

The commission notes that the definition in §115.10 is specified by division level. For example, because the Loading and Unloading of VOC rule in Chapter C, Division 1 is not listed under either §115.10(11)(A) or (B), it is included in §115.10(11)(C). As written in §115.10(11)(C), each division that is not listed in §115.10(11)(A) or (B), applies in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties.

The compliance schedule in §115.219(e) applies to sources in Wise County and requires these sources to comply with the same requirements currently effective in the other DFW counties. However, the compliance schedule in §115.219(f) is intended to apply to a source in any of the entire 10-county DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) in the instance a source becomes subject to the requirements of the division on or after the January 1, 2017 compliance date. As discussed elsewhere in this response to comments section, depending on the D.C. Circuit Court decision, Wise County may no longer be subject to the Chapter 115 requirements, which apply to the DFW nonattainment area, including §115.219(f).

The commission agrees that in the compliance schedule for the Loading and Unloading of VOC division, each compliance schedule, other than §115.219(f), lists the affected counties by name instead of the area. To clarify the compliance schedule in this division, the commission is replacing the DFW area with the specific DFW counties. The commission is also making this change to other compliance schedules in the chapter. Where necessary, the commission is replacing the DFW area with the specific DFW counties affected by each compliance schedule in §§115.119(b)(3); 115.129(f); 115.139(d); 115.219(f); 115.359(d); 115.419(e); 115.429(e); 115.449(e), (f), and (h); and 115.459(a), in response to this comment. For the same reasoning, the commission also replaces the HGB area with the specific HGB counties affected where a compliance schedule covers both the DFW and HGB areas. This occurs in §115.449(e), (f), and (h) and §115.459(a).

Comment

An individual commented that the State's plan is inadequate, leaves no margin of error, and requires no new controls on sources of air pollution. The commenter indicated that the commission supports industry and not public health. The individual expressed disappointment with the State's lack of regard for air quality.

Response

The purpose of this Chapter 115 rulemaking is to meet FCAA VOC RACT requirements for the DFW area. New VOC control requirements are being adopted with this rulemaking for sources in Wise County in order to fulfill those RACT requirements. Additional discussion in response to this comment is provided in the 2015 DFW Attainment Demonstration SIP Revision (Non-Rule Project No. 2013-015-SIP-NR) being adopted concurrently with this rulemaking.

Comment

An individual requested a requirement that compressors pressurizing natural gas be driven by electric motors, not fossil fuel-fired engines. The individual suggested a requirement that all hydrocarbon drilling rigs be driven by electric motors rather than diesel fuel-fired engines. The commenter contended that the commission's decision not to require electrification of natural gas-fired compressors as a RACM strategy was not based on available studies or other supporting information.

Response

The purpose of this Chapter 115 rulemaking is to meet FCAA VOC RACT requirements for the DFW area. The suggested control measure is not a RACT requirement and is outside the scope of this rulemaking. Additional discussion in response to this comment is provided in the 2015 DFW Attainment Demonstration SIP Revision (Non-Rule Project No. 2013-015-SIP-NR) being adopted concurrent with this rulemaking.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

Statutory Authority

The amended section is adopted 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 adopted 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 adopted 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 adopted 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 (NAAQS) 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*.

§115.10. 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 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. Upon the date the commission publishes notice in the *Texas Register* that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, Wise County is included under this definition of covered attainment counties as it was prior to January 1, 2017.

(11) Dallas-Fort Worth area--As follows:

(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. Upon the date the commission publishes notice in the *Texas Register* that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, Wise County is no longer included in this definition of the Dallas-Fort Worth area.

(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 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 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 June 5, 2015.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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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 adopted 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 adopted 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 adopted 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 adopted 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, 382.017, and FCAA, 42 USC, §§7401 *et seq.*

§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 storage tank, the internal floating roof and the primary seal or the secondary seal (if one is in service) must be visually inspected through a fixed roof inspection hatch at least once every 12 months.

(A) If the internal floating roof is not resting on the surface of the volatile organic compounds (VOC) inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the internal floating 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 (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 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(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 unless delay of repair is allowed. 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. 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 storage tank, the following inspection requirements apply.

(A) If during an inspection of an internal floating roof storage tank, the internal 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 internal 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.

(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 storage tank, the following inspection requirements apply.

(A) If during an inspection of an internal floating roof storage tank, the internal 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 internal 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.

(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.

§115.119. Compliance Schedules.

(a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has passed and the owner or operator of each storage tank in which any volatile organic compounds (VOC) are 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 in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties 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) 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) 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each storage tank in Wise County is not required to comply with any of the requirements in this division.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. VENT GAS CONTROL

30 TAC §§115.121, 155.122, 115.125 - 115.127, 115.129

Statutory Authority

The amended sections are adopted 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 adopted 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 adopted 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 adopted 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, 382.017, and FCAA, 42 USC, §§7401 *et seq*.

§115.129. Counties and Compliance Schedules.

(a) 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.

(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 Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each vent gas stream in Wise County is not required to comply with any of the requirements in this division.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. WATER SEPARATION

30 TAC §115.139

Statutory Authority

The amended section is adopted 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 adopted 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 adopted 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 adopted 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.*

§115.139. Counties and Compliance Schedules.

(a) 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.

(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 Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each water separator in Wise County is not required to comply with any of the requirements in this division.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted 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 adopted 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 adopted 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 adopted 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, 382.017, and FCAA, 42 USC, §§7401 *et seq.*

§115.219. Counties and Compliance Schedules.

(a) 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.

(b) 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.

(c) 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.

(d) The owner or operator of each gasoline terminal, gasoline bulk plant, or 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.

(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 Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each gasoline terminal, gasoline bulk plant, or VOC transfer operation in Wise County 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 adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted 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 adopted 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 adopted 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 adopted

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 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 continue to comply with the requirements applicable to covered attainment counties, as defined in §115.10 of this title, until the facility achieves compliance with the requirements applicable to the Dallas-Fort Worth area, as defined in §115.10 of this title. The owner or operator shall comply with the requirements applicable to the Dallas-Fort Worth area as soon as practicable, but no later than January 1, 2017.

(f) Upon the date the commission publishes notice in the *Texas Register* that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each gasoline dispensing facility in Wise County 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 adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted 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 adopted 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 adopted 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 adopted 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*.

§115.239. Counties and Compliance Schedules.

(a) 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.

(b) 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.

(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.

(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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each tank-truck tank in Wise County 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 adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted 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 adopted 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 adopted 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 adopted 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*.

§115.359. Counties and Compliance Schedules.

(a) 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.

(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 Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Parker, Rockwall, Tarrant, and Wise Counties 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each affected source in Wise County is not required to comply with any of the requirements in this division.

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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 adopted 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 adopted 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 adopted 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 adopted 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, 382.017, and FCAA, 42 USC, §§7401 *et seq.*

§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 Counties.

(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.

§115.419. Counties and Compliance Schedules.

(a) 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 this division.

(b) All affected persons in Bastrop, Bexar, Caldwell, Comal, Guadalupe, Hays, Travis, Williamson, and Wilson Counties shall comply with 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 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 Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each degreasing process in Wise County is not required to comply with any of the requirements in this division.

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30 TAC §115.417

Statutory Authority

The repealed section is adopted 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 adopted 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 adopted 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 adopted 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, and382.017; and FCAA, 42 USC, §§7401 *et seq.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. SURFACE COATING PROCESSES

30 TAC §§115.420 - 115.423, 115.425 - 115.427, 115.429

Statutory Authority

The amended sections are adopted 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 adopted 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 adopted 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 adopted 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 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 the 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) General surface coating definitions. The following terms, when used in this division 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 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)

(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)

(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) 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)

(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 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. 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) Volatile organic compound (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)

(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) 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) Automobile and light-duty truck manufacturing.

(A) Automobile coating--The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(B) 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) Vehicle refinishing (body shops).

(A) 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)

(B) 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) 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) Primer or primer surfacers--Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

(E) 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) 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) 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)

(H) 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) Wipe-down solutions--Any solution used for cleaning and surface preparation.

(14) Vinyl coating--The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.

(15) Wood parts and products. The following terms apply to wood parts and products coating facilities subject to §115.421(14) of this title.

(A) Clear coat--A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.

(B) 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) Final repair coat--Liquids applied to correct imperfections or damage to the topcoat.

(D) 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) 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) 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) 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) Topcoat--A coating which provides the final protective and aesthetic properties to wood finishes.

(I) Varnishes--Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

(J) 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) Wood parts and products coating--The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

(16) Wood furniture manufacturing facilities. The following terms apply to wood furniture manufacturing facilities subject to §115.421(15) of this title.

(A) 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) of this title.

(B) 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) Cleaning operations--Operations in which organic solvent is used to remove coating materials from equipment used in wood furniture manufacturing operations.

(D) 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) 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) Finishing application station--The part of a finishing operation where the finishing material is applied (for example, a spray booth).

(G) 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) 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) 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) 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) 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) 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) 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) Touch-up and repair--The application of finishing materials to cover minor finishing imperfections.

(O) 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) Washoff operations--Those operations in which organic solvent is used to remove coating from a substrate.

(Q) 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) 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) 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.

The owner or operator of the surface coating processes specified in §115.420(a) of this title (relating to Applicability and Definitions) shall not cause, suffer, allow, or permit volatile organic compound (VOC) emissions 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) of this subsection which are based on paneling surface area, and those in paragraph (15) 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) of the subsection may choose to comply by using the monthly weighted average option as defined in §115.420(c)(1)(YY) of this title.

(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 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)).

(2) Metal furniture coating. VOC emissions from metal furniture coating lines (prime and topcoat, or single coat) must 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 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 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 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 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 be achieved, on the basis of VOC solvent content per unit of volume of coating (minus water and exempt solvent) delivered to the application system:

Figure: 30 TAC §115.421(7)

(8) Miscellaneous metal parts and products (MMPP) coating.

(A) VOC emissions from the coating of MMPP must not exceed the following limits for each surface coating type:

Figure: 30 TAC §115.421(8)(A)

(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.

(C) All VOC emissions from non-exempt solvent washings must 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 apply to each product category of factory-finished paneling (regardless of the number of coats applied):
Figure: 30 TAC §115.421(9)

(10) Aerospace coatings. The VOC content of coatings, including any VOC-containing materials added to the original coating supplied by the manufacturer, that are applied to aerospace vehicles or components must 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)

(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) Surface coating of mirror backing.

(A) VOC emissions from the coating of mirror backing must 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 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) 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)

(15) Surface coating at wood furniture manufacturing facilities. 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 be limited by:

(i) using topcoats with a VOC content no greater than 0.8 kilogram of VOC per kilogram of solids (0.8 pound 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 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 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 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 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 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 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 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)

(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 contain more than 0.8 kilogram of VOC per kilogram of solids (0.8 pound of VOC per pound of solids), as delivered to the application system.

(16) Marine coatings.

(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)

(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)

(ii) If the volume fraction of solids in the batch as supplied Vs is not supplied directly by the coating manufacturer, the owner or operator shall determine Vs as follows.
Figure: 30 TAC §115.421(16)(B)(ii)

§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, El Paso, and Houston-Galveston-Brazoria 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 be maintained that 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 be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable control limits. Such records must be sufficient to calculate the applicable weighted average of VOC 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) 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) of this title. If the owner or operator of a vehicle refinishing (body shop) operation that uses any coating or solvent which exceeds the limits of §115.421(11) of this title, then the owner or operator 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) 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) of this title. If the owner or operator of a wood parts and products coating operation uses any coating or solvent which exceeds the limits of §115.421(14) of this title, then the owner or operator 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) 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 must be maintained for at least two years and must be made available upon request by representatives of the executive director, the 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 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 shall maintain records 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) 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 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 §63.752, (National Emission Standards for Aerospace Manufacturing and Rework Facilities), is considered to represent compliance with the requirements of this section.

§115.429. Counties and Compliance Schedules.

(a) 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.

(b) In Hardin, Jefferson, and Orange Counties the compliance date has 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) 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, 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 Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each surface coating process in Wise County is not required to comply with any of the requirements in this division.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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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 adopted 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 adopted 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 adopted 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 emis-

sions. The amended sections are also adopted 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, 382.017, and FCAA, 42 USC, §§7401 *et seq.*

§115.440. Applicability and Definitions.

(a) Applicability. The provisions in this division 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;

(B) 25 tons of VOC per calendar year in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title; or

(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;

(B) 25 tons of VOC per calendar year in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title; or

(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 less than 3.0 tons per calendar year when uncontrolled, is exempt from the requirements in this division 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 minor printing source or a major printing source, as defined in §115.440 of this title:

(1) 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) 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) 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.

§115.449. Compliance Schedules.

(a) In the El Paso area, 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 Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties, 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 Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties, 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) The owner or operator of an offset lithographic printing line in Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties that becomes subject to this division on or after the date specified in subsections (e) - (g) 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator in Wise County 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 adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted 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 adopted 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 adopted 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 adopted 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, 382.017, and FCAA, 42 USC, §§7401 *et seq.*

§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)

(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; or

(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 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 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) 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 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each surface coating process in Wise County is not required to comply with any of the requirements in this division.

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DIVISION 6. INDUSTRIAL CLEANING SOLVENTS

30 TAC §§115.460, 115.461, 115.469

Statutory Authority

The amended sections are adopted 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 adopted 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 adopted 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 adopted 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, 382.017, and FCAA, 42 USC, §§7401 *et seq.*

§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 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) 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 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each solvent cleaning operation in Wise County is not required to comply with any of the requirements in this division.

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DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

30 TAC §§115.471, 115.473, 115.479

Statutory Authority

The amended sections are adopted 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 adopted 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 adopted 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 adopted 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, 382.017, and FCAA, 42 USC, §§7401 *et seq*.

§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)

(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 shall comply with 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) The owner or operator of an application process that becomes subject to this division on or after the applicable compliance date in this section 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each application process in Wise County is not required to comply with any of the requirements in this division.

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SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES
DIVISION 1. CUTBACK ASPHALT

30 TAC §115.519

Statutory Authority

The amended section is adopted 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 adopted 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 adopted 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 adopted 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.*

§115.519. Counties and Compliance Schedules.

(a) 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 this division.

(b) All affected persons in Bastrop, Caldwell, Hays, Travis, and Williamson Counties shall comply with 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 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 the Wise County nonattainment designated for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator in Wise County is not required to comply with any of the requirements in this division.

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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§117.10, 117.400, 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, 117.9800, and 117.9810; the 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 §117.452 *without changes* to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10337) and, therefore, will not be republished. The commission adopts amendments to §§117.403, 117.410, 117.9030, and 117.9130; and new §117.405 *with changes* to the proposed text.

The adopted new, amended, and repealed 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: §§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, adopted new §117.405(d) will not be submitted to the EPA as a SIP revision.

Background and Summary of the Factual Basis for the Adopted 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 with an attainment deadline of December 31, 2018 (77 FR 30088, May 21, 2012).

On December 23, 2014 the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) ruled on a lawsuit filed by the Natural Resources Defense Council, which resulted in vacatur of the EPA's December 31 attainment date for the 2008 0zone NAAQS. As part of the EPA's Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule, published in the *Federal Register* on March 6, 2015 (80 FR 12264), the EPA modified 40 Code of Federal Regulations (CFR) §51.1103 consistent with the D.C. Circuit Court decision to establish attainment dates that run from the effective date of designation, i.e., July 20, 2012, rather than the end of the 2012 calendar year. As a result, the attainment date for the DFW moderate nonattainment area has changed from December 31, 2018, to July 20, 2018. In addition, because the attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, the attainment year for the DFW moderate nonattainment area has changed from 2018 to 2017. The change in attainment date will not impact this rulemaking because the compliance date for implementing reasonably available control technology (RACT) remains January 1, 2017, as re-

quired by the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264, March 6, 2015).

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 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 adopted rulemaking will 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 adopted rulemaking will extend implementation of RACT to major sources of NO_x located in Wise County. These adopted rules will 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 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 (80 FR 12264, March 6, 2015). 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. For Wise County, the major source threshold is the moderate classification PTE of 100 tpy of NO_x.

The emission reduction requirements from this adopted rulemaking will result in reductions in ozone precursors in Wise County. The adopted compliance date for implementing control requirements and emission reductions for the DFW area is January 1, 2017, as required by the EPA's implementation rule for the 2008 eight-hour ozone NAAQS (80 FR 12264, March 6, 2015).

Adopted 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 adopted for repeal by the commission 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 adopts clarifications and minor revisions that will affect some sources in other areas covered by Chapter 117, such as changes to definitions and testing provisions for compliance flexibility. These changes and other changes are adopted to ensure the appropriate monitoring, testing, recordkeeping, and reporting requirements for demonstrating compliance are in the rule provisions in addition to providing clarity and compliance flexibility to owners or operators of affected units. These adopted 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 adopts the repeal of 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 commission adopts revisions to Subchapter B, Division 4 to add 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. Adopted revisions to this division will require some owners or operators of major ICI sources 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 PTE 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 PTE equal to or greater than 50 tpy of NO_x. In the adopted rulemaking, the stationary source type categories with 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 controls is wood-fired boilers. Adopted revisions to Subchapter B, Division 4 will also extend applicability of existing monitoring, testing, recordkeeping, and reporting requirements to the affected sources located in Wise and Kaufman Counties. These requirements will be necessary to ensure compliance with the adopted emission specifications and to ensure that the NO_x emission reductions are achieved. Specific discussion associ-

ated with the adopted emission specifications and other requirements in adopted revised Subchapter B, Division 4 is provided in the Section by Section Discussion section of this preamble.

The commission estimates that this adopted rule will result in a reduction of 1.17 tons per day of NO_x from major ICI sources in the DFW area. Although the commission estimated this reduction amount from the affected sources, the emissions reductions from the control strategies adopted during this rulemaking were not included in the attainment demonstration photochemical modeling associated with the 2015 DFW Attainment Demonstration SIP revision (Non-Rule Project No. 2013-015-SIP-NR) being adopted concurrent with this rulemaking. In the RACT rules adopted for the May 30, 2007 DFW SIP revision (Non-Rule Project No. 2006-013-SIP-NR), 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 adopted rulemaking, the commission fulfills NO_x RACT requirements for the DFW 2008 eight-hour ozone nonattainment area by implementing the adopted requirements for major sources in Wise County and Kaufman 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 adopts the repeal of 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 adopts revisions to Subchapter C, Division 4 requirements for utility electric generation sources in the DFW area. The commission is not adopting changes to 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 adopts the repeal of an existing exemption for auxiliary steam boilers and stationary gas turbines that were placed into service after November 15, 1992. This adopted revision makes the utility rules that apply to gas turbines in the DFW area consistent with the major source industrial rules in the DFW area and provides a more efficient RACT demonstration for the affected utility sources. Specific discussion associated with the adopted emission specifications and other requirements in adopted revised Subchapter C, Division 4 is provided in the Section by Section Discussion section of this preamble. With this adopted rulemaking, the commission implements and fulfills NO_x RACT requirements for major sources in Wise County.

This adopted rulemaking will 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 D.C. Circuit Court. Because the TCEQ cannot predict the outcome of this litigation at this time, the commission adopts 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 adopted 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 adopted amendments associated with implementing RACT for the DFW area and specific minor clarifications and corrections discussed in greater detail in this Section by Section Discussion, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble. Comments received regarding sections and rule language associated only with reformatting and minor stylistic changes were not considered, and no changes were made based on such comments.

SUBCHAPTER A: DEFINITIONS

Section 117.10, Definitions

The commission revises the definitions of applicable ozone nonattainment areas in §117.10(2). The commission adopts the removal of existing §117.10(2)(B), DFW ozone nonattainment area. The existing definition of "Dallas-Fort Worth 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 re-letters existing §117.10(2)(C), "Dallas-Fort Worth 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 revises the definition of "Dallas-Fort Worth eight-hour ozone nonattainment area." The existing definition of "Dallas-Fort Worth 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 revised definition of the DFW area includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties; and for all other divisions of Chapter 117, the revised definition of the DFW area includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties. This adopted change to the definition of "Dallas-Fort Worth eight-hour ozone nonattainment area" is necessary because the commission did not apply the existing minor source rules to sources located in Wise County.

The commission revises 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

(BPA) 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 (HGB) ozone nonattainment area are subject to the industrial, commercial, and institutional rules in Subchapter B.

The commission therefore revises §117.10(14) to clarify this difference in applicability between the different ozone nonattainment areas for independent power producers. The adopted revisions to subparagraph (A) add independent power producers but limit the applicability of the definition to only the BPA and DFW areas. Adopted changes to §117.10(14)(A) include removal of existing §117.10(14)(A)(ii), "Dallas-Fort Worth," consistent with the removal of §117.10(2)(B). The commission moves existing §117.10(14)(A)(iii), "Dallas-Fort Worth eight-hour," to §117.10(14)(A)(ii). Existing §117.10(14)(A)(iv), "Houston-Galveston-Brazoria," is removed to coincide with changes adopted in §117.10(14)(B) and in revised §117.10(14)(C). The commission therefore also moves existing §117.10(14)(B) to amended §117.10(14)(D). To address electric power generating systems located in the HGB area subject to Chapter 117, Subchapter C, the commission modifies subparagraph (B) in §117.10(14). Adopted §117.10(14)(B) is necessary to address specific combustion unit types that are part of electric power generating systems located in the HGB 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 therefore also revises §117.10(14)(C) to clarify that the provision only applies to Subchapter B, Division 3 and to update the reference from revised §117.10(14)(A) to concurrent adopted §117.10(14)(B). These changes to §117.10(14) are adopted to clarify the existing definition of an "electric power generating system" and are not intended to expand the definition.

The commission revises 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 revises the definition of "large utility system" in §117.10(24) to remove the reference to "Dallas-Fort Worth" as an applicable ozone nonattainment area to be consistent with the removal of existing §117.10(2)(B).

The commission revises the definition of "major source" in §117.10(29). Adopted changes to §117.10(29)(B) include the removal of reference to "Dallas-Fort Worth" or "Dallas-Fort Worth eight-hour ozone nonattainment area" and adding Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties as applicable counties. Adopted §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 adopted §117.10(2)(B), concerning the revised definition of "Dallas-Fort Worth 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 DFW ozone nonattainment area. The commission also moves existing §117.10(29)(C) to §117.10(29)(D) and re-letters existing §117.10(29)(D) to §117.10(29)(E).

Adopted revisions to the definition of "small utility system" in §117.10(44) include the removal of the reference to "Dallas-Fort Worth" as an applicable ozone nonattainment area to be consistent with the removal of existing §117.10(2)(B).

The commission revises the definition of "unit" in §117.10(51). Adopted changes to §117.10(51)(A) include a reference to 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, revised §117.10(51)(A) includes removing references to repealed sections.

Finally, adopted changes to §117.10(51)(B) include deleting references to §117.210 and §117.1110 because these sections are repealed.

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 adopts the repeal of existing Subchapter B, 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 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 adopts a new section, §117.405, in revised Subchapter B, Division 4 that will 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 not already addressed under the current rules are included as adopted revisions to the existing §117.410. The commission did not expand the list of applicable unit types at major ICI stationary sources of NO_x as it currently exists in §117.400 in revised Subchapter B, Division 4.

Section 117.400, Applicability

Adopted revisions to §117.400 clarify which unit types located in specific counties in the revised DFW eight-hour ozone nonattainment area will be subject to the adopted revisions of Subchapter B, Division 4. Adopted §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 will be subject to revised §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) will be an applicable unit under revised §117.400(a) subject to the NO_x emission specification of adopted new §117.405(a) as an ICI boiler.

The commission adopts §117.400(b) to specify the units located at major sources of NO_x located in Wise County that will be subject to new §117.405(b). The adopted stationary source type categories are ICI process heaters, stationary gas turbines, and stationary internal combustion engines.

Section 117.403, Exemptions

Adopted revisions to §117.403 clarify exemption criteria of units that will be exempt from specified requirements of revised Subchapter B, Division 4. To be consistent with the adopted revisions in §117.400, the commission revises §117.403(a), which retains the list of applicable unit types, sizes, and uses in existing §117.403(a). The commission specifically lists 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 adopted to be listed separately. Changes to existing §117.403(a)(4) are adopted 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. Adopted 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 adopted 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 revises 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 will 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 will more accurately reflect the intent of the rule and how an affected unit will 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 adopted by the commission to specify that the operating hours limit for exemption criteria for stationary diesel engines will be on a rolling 12-month basis and not on a rolling 12-month average and demonstrate how an affected unit will demonstrate compliance with the operating restriction of a total of 100 hours per year. The owner or operator of an affected unit will 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 deletes existing §117.403(b), concerning increment of progress (IOP) exemptions, because the provisions reference existing §117.410(a), which is concurrently adopted for deletion by the commission. The provisions of deleted §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.

Adopted §117.403(b) specifies the unit types, sizes, or uses for units located in Wise County that will be exempt from the requirements of this division. The unit type, maximum rated capacity, or specific use of a unit for which compliance with the adopted NO_x emission specifications is technically or economically infeasible are exempted from the provisions of this division, except as specified in revised §§117.440(i), 117.445(f)(4), and 117.450 and in new §117.452. The exceptions to the adopted exemptions are related to monitoring, recordkeeping, and control plan requirements associated with exempted units. 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) will be exempted. This exemption level is adopted to be consistent with previous RACT exemption approaches for ICI process heaters located in the DFW area and the HGB area.

The following stationary gas turbines and stationary internal combustion engines will be exempt in adopted §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 adopted due to the limited number, if any, of these unit types used in this dedicated service.

Adopted §117.403(b)(3) specifies an exemption for any stationary diesel engine, and adopted §117.403(b)(4) specifies an exemption for any stationary dual-fuel engine. Both stationary diesel and dual-fuel engines will meet the applicability criterion of stationary internal combustion engine in adopted §117.400(b); however, no units of these types were identified in the 2012 EI for Wise County; and the commission did not adopt emission specifications for these unit types.

Adopted §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 adopts subsection (c) to contain new section cross-references to adopted §117.410(a)(1) and (c) and deletes the cross-references to existing §117.410(b)(1) and (d).

Section 117.405, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission adopts new §117.405, which establishes adopted NO_x emission specifications to satisfy RACT requirements for units in the 10-county DFW 2008 eight-hour ozone nonattainment area that will be subject to this rulemaking.

Adopted new §117.405(a) includes the new emission specification for wood-fired boilers located in the revised DFW eight-hour ozone nonattainment area. The adopted 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 contends 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 does not contend that SCR represents RACT on wood fuel-fired boilers in general.

Adopted new §117.405(b) includes the new emission specifications that will apply to the following unit types at major ICI stationary sources of NO_x located in Wise County: process heaters; stationary, reciprocating internal combustion engines; and stationary gas turbines. Adopted new §117.405(b)(1) will 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 adopted 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 adopted NO_x emission specifications in new §117.405(b)(1).

Adopted new §117.405(b)(2) provides NO_x emission specifications for stationary, reciprocating internal combustion engines. The new language in §117.405(b)(2)(A) and (B) will establish NO_x emission specifications for stationary, gas-fired rich-burn and lean-burn, reciprocating internal combustion engines. Gas-fired, rich-burn engines will be limited to 0.50 grams per horsepower-hour (g/hp-hr) in new §117.405(b)(2)(A). The adopted emission specifications for some gas-fired, lean-burn engines in §117.405(b)(2)(B) will 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, will be limited to 12.0 g/hp-hr, and on or after June 1, 2015, will 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, will be limited to 12.0 g/hp-hr, and on or after June 1, 2015, will 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, will be limited to 4.0 g/hp-hr, and on or after June 1, 2015, will be limited to 2.0 g/hp-hr. All other gas-fired, lean-burn engines will be limited to 2.0 g/hp-hr, regardless of the date which the engine is placed into service modified, reconstructed, or relocated.

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 adopted emission specification. The commission contends that 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 adopts 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 contends that these adopted emission levels for these specific units will satisfy RACT requirements considering technological and economic feasibility. For all other lean-burn engines, the commission anticipates that affected units will require combustion modifications to comply with the adopted 2.0 g/hp-hr emission specification, if necessary. Any new gas-fired, lean-burn engines installed in Wise County should be able to meet the adopted 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 adopted 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, issue of the *Texas Register).* 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 contends that the NO_x emission specifications in adopted §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 did not adopt NO_x RACT requirements for these categories of stationary engines.

The commission adopts 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 10,000 hp will

be limited to 0.55 lb/MMBtu, and stationary gas turbines with a hp rating of 10,000 hp or greater will 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, as well as on comments and supplemental information provided by affected source owners and operators: 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. In response to comments, the commission is eliminating both the proposed unit size category of industrial gas-fired turbines with a rating of less than 4,500 hp in subsection (b)(3)(A) and the proposed unit size category for units with a rating of 4,500 hp or greater but less than 10,000 hp in subsection (b)(3)(B). The commission is replacing the unit size categories in proposed subsection (b)(3)(A) and (B) with a unit size category of less than 10,000 hp as adopted subsection (b)(3)(A). The corresponding NO_x emission limit is 0.55 lb/MMBtu. The commission retains the unit size category for units with a rating of 10,000 hp or greater and the corresponding NO_x emission limit of 0.15 lb/MMBtu, as proposed. To accommodate the changes in proposed subsection (b)(3)(A) and (B), the commission re-letters proposed subsection (b)(3)(C) as adopted subsection (b)(3)(B) with no substantive changes.

Based on supplemental data and information provided by affected source owners and operators of these units in Wise County, the commission determined that some affected units may not be able to meet the proposed NO_x RACT emission standard of 0.20 lb/MMBtu without making significant modifications or retrofits at substantial costs. The commission determined at proposal that these costs did not represent RACT for industrial turbines in Wise County. The commission's assessment of ongoing emissions performance was based on existing emissions data in the 2012 EI, which the commission used to propose the NO_x RACT standards for industrial turbines in Wise County. This assessment may have been too conservative for the mid-size category of turbines rated 4,500 hp or greater but less than 10,000 hp. Additional information provided by commenters indicated unit performance variability among various turbine model ratings, and stack test data provided by an affected source owner or operator for specific units identified in Wise County, indicated greater unit-specific performance variability. The commission therefore determined that 0.55 lb/MMBtu for units rated less than 10,000 hp is an appropriate RACT control level considering current performance levels of existing units in Wise County and is consistent with the commission's determination of RACT at proposal. Based on the revised NO_x emission specifications, the commission contends that the adopted emission levels for both unit size categories satisfy RACT requirements considering technological and economic feasibility.

Adopted new §117.405(c), concerning NO_x averaging time, specifies the averaging times for compliance with the emission specifications of new §117.405(a) and (b). 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 subparagraphs (A) - (C). Adopted subparagraph (A) specifies a rolling 30-day average, in units of the applicable emission standard. Adopted subparagraph (B) specifies a block one-hour average basis, in the units of the applicable emission standard. Adopted 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, adopted 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 new §117.405(c)(1)(C).

The commission adopts new §117.405(d) that will establish emission specifications for related emissions from any unit subject to the emission specifications in new §117.405(a) or (b). This is necessary to ensure that the NO_x reduction strategies of this adopted rulemaking do not result in a significant increase in emissions of other pollutants. Adopted 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. Adopted 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. Adopted 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%.

Adopted new §117.405(e) specifies conditions for compliance flexibility with the NO_x emission specifications of new §117.405. Adopted new §117.405(e)(1) specifies that owners or operators may use the source cap option under revised §117.423 or emission reduction credits as specified in revised §117.9800 to comply with the NO_x emission specifications of new §117.405(a) or (b). Adopted new subsection (e)(2) prohibits using revised §117.425 as a method of compliance with the NO_x emission specifications of adopted new §117.405(a) or (b). This prohibition is necessary to ensure that the NO_x reductions anticipated from this adopted rulemaking will be realized. Adopted 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 adopted new §117.405(d) according to revised §117.425.

The commission adopts new §117.405(f) to establish provisions for prohibition of circumvention to ensure that the anticipated NO_x emission reductions associated with this adopted rulemaking will be realized. The adopted new subsection (f)(1) establishes that the maximum rated capacity used to determine the applicability of the emission specifications in new §117.405, the initial compliance demonstration in revised §117.435, the monitoring and testing requirements in revised §117.440, and the final control plan requirements in 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. Adopted new §117.405(f)(2) specifies that a unit's classification

for the purposes of revised new Subchapter B, Division 4, is determined by the most specific classification applicable to the unit as of December 31, 2012. Finally, 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 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, will from that time forward always be classified as a major source for purposes of revised Subchapter B, Division 4.

Section 117.410, Emission Specifications for Eight-Hour Attainment Demonstration

The commission removes existing §117.410(a) and moves existing §117.410(b), Emission specifications for eight-hour ozone attainment demonstration, to §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 specifically lists Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County in revised 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 listed separately.

Because of the removal of subsection (a), all other subsections are re-lettered accordingly. In addition, the commission inadvertently omitted Parker County from the list of counties in revised subsection (a) in the proposal publication of the rulemaking. The commission has included Parker County in the adoption of revised subsection (a).

Revisions to existing §117.410(b)(7)(A) include updating the reference in the figure to revised §117.410(a)(7)(A) to coincide with the adopted incorporation of existing §117.410(b) into revised §117.410(a).

Revised §117.410(c) establishes NO_x emission specifications for related emissions from any unit subject to the emission specifications in revised §117.410(a). The commission deletes existing subsection (d)(4)(A) to be concurrent with 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 moves the provisions in existing subsection (d)(4)(B) to revised §117.410(c)(4)(A) - (C) because the restructuring of paragraph (4) is necessary to conform to *Texas Register* formatting requirements.

Adopted revisions to existing §117.410(f)(5) include updating the reference from existing §117.410(b)(14) to revised §117.410(a)(14) to coincide with the adopted incorporation of existing §117.410(b) into revised §117.410(a). Lastly, the commission deletes 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 moved to revised §117.410(a).

In §117.410(f), the commission clarifies 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 revises §117.423(a) to incorporate references to 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 adopted new §117.405 in addition to those of revised §117.410.

Revised §117.423(b) specifies the equations and procedures for determining the source cap allowable NO_x mass emission rate. The equation in revised §117.423(b)(1) specifies how to calculate the 30-day rolling average emission cap in pounds per day. Adopted revised §117.423(b)(1) contains new section cross-references to new §117.405. Revised subsection(b)(1) also defines 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 new §117.405. In addition, the effective date for an applicable permit emission limit in Figure: 30 TAC §117.423(b)(1) for clause (ii) of variable R_i for units subject to new §117.405 is December 31, 2012. The commission adopts the new date and date range to make clear the dates that will apply to units subject to new §117.405 and the existing date and date range in existing subsection (b)(1) that apply to units subject to §117.410.

Revised Figure: 30 TAC §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 revises the exponential power in the equation from a positive to a negative number. This change will allow the units, Btu and MMBtu, of the equation to properly cancel. Without this change, the equation will calculate a value that will misrepresent the cap that is intended by the existing rule.

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 deletes the section cross-reference to existing §117.410(b) in the equation and adds new section cross-references to new §117.405 and revised §117.410 to reflect changes adopted in those sections.

Revised §117.423(g) includes section cross-references to new §117.405 for conditions for including a permanently retired, decommissioned, or rendered inoperable unit in the source cap. Adopted revisions to subsection (g)(1) specify that the shutdown must have occurred after December 31, 2012, for units subject to new §117.405. In addition for units subject to new §117.405, if the unit was not in service 24 consecutive months between January 1, 2012, and December 31, 2013, adopted 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 adopts the new date and date range to make clear the dates that will apply to units subject to 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 revises existing §117.425(a), which provides procedures concerning alternative case specific specifications, by including new section cross-references to new §117.405(d) and a corrected reference to §117.410(c). Adopted revisions to paragraph (2) include a section cross-reference to new §117.405.

Section 117.430, Operating Requirements

The commission revises existing §117.430, which establishes operating requirements for sources subject to revised Subchapter B, Division 4. Adopted revised subsection (b) adds a section cross-reference to new §117.405. Additional changes to revised subsection (b) include deleting the reference to existing §117.410(a) and (b) and adding a reference to revised §117.410.

Section 117.435, Initial Demonstration of Compliance

The commission adopts 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. Adopted 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

Adopted revisions to §117.440(a)(1), which details the list of units that will be subject to the fuel metering requirements of revised §117.440(a), adds a section cross-reference to 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 adopts 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 will demonstrate compliance with the monitoring provisions of revised Subchapter B, Division 4 through either fuel use records that will be required in adopted 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. Adopted revisions to subsection (c)(1) include adding section cross-references to new §117.405(a) and (b) and revised §117.410(a) and deleting references to existing §117.410(b). Adopted revised §117.440(d), concerning ammonia monitoring requirements, adds section cross-references to new §117.405(a) and (b) and new §117.410(a) and deletes a reference to existing §117.410(b). In addition, the commission adds a reference to new §117.405(d)(2) to be consistent with the new §117.405.

During the rulemaking proposal, the commission requested comments on alternatives, such as periodic testing, to the existing provisions of the NO_x monitoring requirements of existing §117.440(c) for ceramic tile kilns. The commission received comments for changes to existing §117.440(c); however, the commission made no changes in response to these comments. 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.

Adopted revised §117.440(j), concerning data used for compliance, specifies that the methods required in adopted §117.440 must be used to demonstrate compliance with the emission specifications after the initial demonstration of compliance required by revised §117.435. The commission adds references to new §117.405(a) and (b) and new §117.410(a) and deletes the reference to existing §117.410(b).

Finally, adopted revised §117.440(k) specifies the testing and retesting requirements for units subject to the emission specifications of new §117.405(a) or (b) or revised §117.410(a). The commission deletes 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) will be concurrent with the adopted amendment of existing §117.410(a) and existing §117.9030(a), concerning IOP emission specifications. The commission moves existing subsection (k)(2) to subsection (k)(1). In addition, the commission adds new references to new §117.405(a) and (b) and revised §117.410(a) and removes the reference to existing §117.410(b). Adopted new paragraph (1) requires the owner or operator of units subject to the emission specifications of new §117.405(a) or (b) or revised §117.410(a) to test the units as specified in revised §117.435, "Initial Demonstration of Compliance," in accordance with the schedule specified in adopted revised §117.9030. The commission moves existing paragraph (3) to adopted paragraph (2). Adopted changes also include references to new §117.405(a) and (b) and revised §117.410(a) with removal of the reference to existing §117.410(b). Amended subsection (k)(2) is a retesting requirement for owners or operators to retest any unit subject to the emission specifications of new §117.405(a) or (b) or revised §117.410(a) after any modification that could be reasonably expected to increase the NO_x emission rate. This adopted 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 is 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 amended 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 moved to revised §117.410(a). In addition, the commission amends §117.445(b) to contain the provisions of existing §117.445(b)(2), which detail the notification requirements for units subject to existing §117.410(b). Adopted §117.445(b) will also include section cross-references to new §117.405(a) and (b) and revised §117.410(a). Under 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 revised §117.440 or stack test conducted under revised §117.435.

Adopted §117.445(e), which specifies the semiannual reporting requirements for owners or operators of any gas-fired engines, includes a section cross-reference to new §117.405. Written reports of excess emissions and the air-fuel ratio monitoring system performance must be submitted to the executive director.

Adopted §117.445(f) specifies requirements for written or electronic records for owners or operators of units subject to the requirements of this division. Adopted 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 revised §117.403(b)(2)(D) to reflect adopted changes in §117.403. The commission clarifies 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 revises 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, adopted §117.445(f)(10) updates the existing section cross-reference from existing §117.410(b)(7)(A)(ii) to revised §117.410(a)(7)(A)(ii), to coincide with the amendment of existing §117.410(a) and the re-lettering of existing §117.410(b) to §117.410(a).

Section 117.450, Initial Control Plan Procedures

The commission revises existing §117.450, concerning the requirements and procedures for submitting an initial control plan. The commission adopts in §117.450(a), (a)(1), (1)(C), and (2) section cross-references to new §117.405(a) and (b) and revised §117.410(a) and deletes references to existing §117.410(b). Adopted §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 new §117.405(a) or (b) or 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 were previously required to submit the initial control plans. Sources subject to adopted new §117.405 will be required to submit initial control plans by the applicable compliance date.

The commission revises existing subsection (b) to update the section cross-reference from existing §117.9030(b) to adopted §117.9030. Adopted §117.450(b) specifies that 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 revised §117.9030.

Finally, the commission deletes 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 repealed §117.254 in lieu of the initial control plan required by existing subsection (a). The adopted deletion of §117.450(c) is concurrent with the adopted 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 adopts new §117.452 requiring the owner or operator of any unit subject to adopted 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 new §117.405. Adopted 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 adopted revised §117.435; and the specific rule citation for any unit with a claimed exemption from the emission specifications of adopted new §117.405(a) or (b). In addition, if a compliance stack test report or monitor certification report required by adopted 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 the compliance stack test report or the monitor certification report was sent to the central office, the regional office, or both offices.

Adopted new §117.452(b)(1) - (3) specifies that for sources complying with revised §117.423 in addition to the requirements of 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 revised §117.423(b)(1); the maximum daily heat input, variable H_{mi}, specified in 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}.

Adopted 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 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 revised §117.9030(a).

Section 117.454, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission adopts revisions to existing §117.454 requiring the owner or operator of any unit subject to revised §117.410 at a major source of NO_x to submit a final control report to show compliance with the requirements of revised §117.410. Adopted §117.454(a)(4) updates the reference to "relative accuracy test audit" to "monitor certification," consistent with the concurrently amended revision to §117.435(c). Adopted §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, adopted §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 revised §117.9030.

Section 117.456, Revision of Final Control Plan

The commission adopts revisions to existing §117.456 by adding in paragraph (1) a section cross-reference to 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 new §117.405 or revised §117.410, replacement new units may be included in the control plan. In addition, for sources complying with 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 adopts the 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 adopts revisions in Subchapter C, Division 4, that will 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 adopted §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 PTE 100 tpy of NO_x.

Section 117.1303, Exemptions

Adopted revisions to §117.1303 clarify exemption criteria of units that will be exempt from specified requirements of adopted revised Subchapter C, Division 4. The commission adopts removal of 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 adopted 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 will be required to meet the NO_x emission specifications and monitoring and testing requirements, which are not changed in 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 adopted repeal of the exemption. New units will either qualify for the existing exemption in §117.1303(a)(2) based on annual heat input or will be required to comply with the provisions of 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 adopted removal of the exemption in §117.1303(a)(1) will affect these existing units, all of the affected turbines already meet the NO_x emission specifications and monitoring requirements of 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 will either qualify for the existing exemption in §117.1303(a)(3)(B) based on unit operating hours or will be required to comply with the provisions of 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 already meets the NO_x emission specifications and monitoring requirements of adopted revised Subchapter C, Division 4. The remaining paragraphs will be renumbered accordingly.

The commission revises the operating hours limit for exemption criteria for stationary gas turbines and stationary internal combustion engines in adopted §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 will 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 will more accurately reflect the intent of the rule and how an affected unit will demonstrate compliance with the operating restriction of a total of 850 hours per year.

Section 117.1310, Emission Specifications for Eight-Hour Attainment Demonstration

Adopted §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 adopts deletion of existing §117.1310(b)(1) and (2) due to removing an ammonia emission specification found in existing subsection (b)(2)(B) and the restructuring of subsection (b) that will 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 other units. Existing §117.1310(b)(2)(B) cites a RACT emission specification for ammonia that is now obsolete, and the commission contends 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 moves the existing provisions of §117.1310(b)(1)(A) to adopted §117.1310(b)(1)(A) and (B). The existing provisions of §117.1310(b)(1)(B) are moved to adopted §117.1310(b)(2). The existing provisions of §117.1310(b)(2)(A) are moved to adopted §117.1310(b)(3)(A) and (B).

Section 117.1325, Alternative Case Specific Specifications

Minor stylistic, non-substantive changes are adopted in existing subsection (a). No other changes are adopted.

Section 117.1335, Initial Demonstration of Compliance

The commission adopts §117.1335(d)(4) 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 renumbers existing paragraph (4) to paragraph (5). In addition, the commission adopts 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 adopted subsection (d)(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 adopted revision specifies that the 168-hour average emission rate is calculated using the equation in §117.1310(a)(1)(D). In addition, the commission clarifies 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 renumbers existing paragraph (5) to paragraph (7).

Section 117.1340, Continuous Demonstration of Compliance

The commission adopts 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 adopted revised §117.1310 in order to demonstrate continuous compliance. Adopted §117.1340(c), concerning ammonia monitoring requirements, updates a reference from existing §117.1310(b)(2)(A) and to §117.1310(b)(3) to coincide with the changes adopted in §117.1310(b). Alternative NO_x monitoring provisions for auxiliary steam boilers are provided in existing subsection (f). Adopted 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. Adopted revised §117.1340(h)(2) includes additional rule language to clarify that stationary gas turbines that are not rated less than 30 megawatts 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

Adopted 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 adopted revised §117.1340. Adopted 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. Adopted 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 adopted changes to existing §117.1345 are minor stylistic, non-substantive changes.

Section 117.1350, Initial Control Plan Procedures

The commission deletes existing subsection (c), which contains references to existing §117.1110 and §117.1154, concurrently adopted for repeal, to be consistent with the adopted repeal of existing Subchapter C, Division 2.

Section 117.1354, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

Adopted §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 revised §117.1310. Adopted §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 adopts §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 will not have sufficient amount of time to perform the testing requirements of the rule. These adopted requirements will be applicable to affected units in all areas covered by Chapter 117. Adopted subsection (e) will 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 will be newly installed at the account and not testing results or manufacture's guarantee of performance for a similar unit make or model. For the purposes of this adopted 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. Adopted 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.

Adopted 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, extensions to the 60 consecutive calendar days limitation of adopted subsection (e) will not be provided. This is to prevent circumvention of satisfying the applicable initial demonstration of compliance and testing requirements that will 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 will 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 adopts 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 adopted revised §117.9030.

Section 117.9030, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

The commission adopts deletion of 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 adopts as revised §117.410(a).

The commission adopts §117.9030(a), concerning RACT emission specifications, to specify the compliance schedule requirements for units subject to the emission specifications of adopted new §117.405(a) and (b). Adopted §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 new §117.405(a) or (b) to submit the initial control plan required by adopted revised §117.450 no later than June 1, 2016, and to comply with all other requirements of adopted revised Subchapter B, Division 4 as soon as practicable but no later than January 1, 2017. Adopted §117.9030(a)(2) specifies that the owner or operator of any stationary source of NO_x that becomes subject to the requirements of adopted 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, will 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, will be required to comply with the adopted rule no later than 60 days after the unit no longer qualifies for the exemption.

Adopted §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 or operator of any unit located at a major stationary source of NO_x located in Wise County will not be required to comply with the applicable requirements of adopted revised Subchapter B, Division 4. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register.* This change is adopted 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 adopting rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 attainment demonstration SIP. In response to comments received, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" in §117.9030(a)(3) with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective."

Adopted revisions to existing §117.9030(b), concerning eight-hour ozone attainment demonstration emission specifications, include updates to section cross-references. Adopted revised §117.9030(b)(1), (1)(B), (B)(i) and (ii) include deleting the references to existing §117.410(b) and adopting references to §117.410(a). Adopted paragraph (1)(C) deletes the reference to existing §117.410(g) and adds a reference to adopted §117.410(f).

Section 117.9110, Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources

The commission adopts the 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 adopted revised §117.9130.

Section 117.9130, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources

Adopted §117.9130 specifies the compliance schedule for owners or operators of electric utilities subject to adopted revised Subchapter C, Division 4. Adopted 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 adopts the following new list of counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. This change is adopted to be consistent with the adopted 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 will be newly subject by the adopted rulemaking.

The commission adopts §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 will be affected by the adopted amendment to the existing exemption in §117.1303(a)(1). Affected auxiliary steam boilers and stationary gas turbines will be units that were placed into service after November 15, 1992; and these affected units will be required to meet the NO_x emission specifications and monitoring and testing requirements, which are not changed in adopted revised Subchapter C, Division 4. Adopted §117.9130(b)(1) requires the owner or operator to submit the initial control plan required by revised §117.1350 by no later than June 1, 2016. Adopted §117.9130(b)(2) specifies that the owner or operator must comply with all other requirements of adopted revised Subchapter C, Division 4 as soon as practicable but no later than January 1, 2017.

The commission adopts §117.9130(c) to detail the compliance schedule for electric utilities located in Wise County subject to the adopted rule. Adopted §117.9130(c)(1) requires the owner or operator to submit the initial control plan required by adopted revised §117.1350 by no later than June 1, 2016. Adopted subsection (c)(2) specifies that the owner or operator must comply with all other requirements of adopted revised Subchapter C, Division 4 as soon as practicable but no later than January 1, 2017. The commission moves existing subsection (b) to adopted subsection (d).

Adopted §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, adopted §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 or operator of an electric utility located in Wise County will not be required to comply with the applicable requirements of adopted revised Subchapter C, Division 4. The commission will publish notice of a change in nonattainment status for Wise County in the *Texas Register*. This change is adopted 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 adopting rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 attainment demonstration SIP. In response to comments received, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" in §117.9130(e) with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective."

DIVISION 2: COMPLIANCE FLEXIBILITY

Section 117.9800, Use of Emission Credits for Compliance

Adopted §117.9800 includes section cross-reference updates to be consistent with adopted repeal of Subchapter B, Division 2, and Subchapter C, Division 2. The commission adopts revisions to existing subsections (a)(1) - (5), (b), and (d) to reflect adopted changes in the other subchapters. Adopted subsection (a)(1) will also add a section cross-reference to adopted new §117.405.

Section 117.9810, Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP)

The commission adopts revisions to existing §117.9810, which will remove cross-references to be consistent with the adopted repeal of Subchapter B, Division 2, and Subchapter C, Division 2 and renumber paragraphs accordingly. Adopted revised subsection (a)(1) will add a new reference to adopted new §117.405. The commission renumbers existing subsection (a)(6) to adopted subsection (a)(2) to reflect the deletion of subsection (a)(2) - (5).

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking 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 adopted 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 the FCAA under §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 adopted rulemaking will 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 adopted rulemaking will 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 adopts rules that will 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 adopted 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 adopts rules that will ensure that sources within Wise County will be properly accounted for in the DFW 2008 attainment demonstration SIP. The adopted 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, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources; Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources. The adopted rules also modify and update definitions; general monitoring and testing requirements; emission monitoring requirements; and administrative, scheduling, and compliance requirements.

The adopted 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 adopted 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 adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These 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, a delegated federal program or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted adopted rules from the full analysis unless the rule was a major environmental rule that 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 adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially 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 adopted 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 will 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 adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because although the adopted 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 invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received regarding the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the adopted rulemaking is to 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 adopted 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 adopted 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 adopted rules fulfill the FCAA requirement to implement RACT in nonattainment areas. These revisions will 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 adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the 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.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments on the CMP.

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. 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.

Public Comment

The commission held two public hearings on the proposal: one in Arlington on January 15, 2015, and a second hearing in Austin on January 22, 2015. The comment period closed on February 11, 2015. The commission received written comments regarding the Chapter 117 NO_x RACT rulemaking from Dal-Tile, the EPA, Luminant, Solar Turbines Incorporated (Solar), Texas Pipeline Association (TPA), and one individual.

Response to Comments

Comment

Dal-Tile requested that the TCEQ remove ceramic tile kilns as a specified named source in §117.440(c)(1)(F). Dal-Tile commented that monitoring exhaust NO_x in order to demonstrate ongoing compliance with NO_x standards would be more accurately and properly demonstrated with periodic stack testing instead of with the existing requirement to use either a CEMS or a PEMS. Dal-Tile commented it was the only company operating ceramic tile kilns in the DFW area and due to naturally occurring trace elements in the raw materials used to produce ceramic tile, the nature of the exhaust from the ceramic kilns resulted in aggressive corrosion of the CEMS units. This also resulted in a very high degree of maintenance and repairs, coupled with significant downtime of the CEMS units, which in turn affected the accuracy and reliability of the CEMS units. Dal-Tile further commented the data from the CEMS units could not be considered high quality due to the amount of downtime and frequency of calibration adjustments. Dal-Tile commented these issues were ongoing for all of the CEMS units on the kilns. The requirement to use a CEMS or a PEMS on ceramic kilns did not provide any public benefit, enhance protection of the environment, or provide efficient and equitable administration of the NO_x emission standard. Dal-Tile also commented that their kilns met the definition of a Low-Mass Emission (LME) unit in 40 CFR Part 75 and, therefore, met the qualifications for using the LME methodology in lieu of using a CEMS, as allowed by the EPA in 40 CFR Part 75.

Response

The commission solicited comment in the proposed rulemaking ((39 TexReg 10344) December 26, 2014, issue of the *Texas Register)* on the issue of continuous NO_x monitoring for ceramic kilns, including the possibility of alternatives such as periodic testing. The commission adopted the continuous NO_x monitoring requirement for ceramic kilns in the DFW area in 2007 due to the potential variability in emissions from ceramic kilns. The NO_x monitoring requirements exist to ensure that actual measured data from monitoring for major sources of NO_x can be used for comparison to and compliance with the applicable NO_x emission limit. Based on the information provided by the commenter, the commission acknowledges that some technical challenges could exist for the use of CEMS at the current location where the commenter has installed the CEMS, i.e., upstream of the scrubber. However, the commission expects that relocating the CEMS downstream of the scrubber would have less potential problems for the CEMS. Additionally, the current rule allows for the use of a PEMS in lieu of a CEMS. The commenter has not provided sufficient justification for why relocating the CEMS or installing a PEMS are not feasible alternatives for the commenter's ceramic kilns. Neither has the commenter provided sufficient justification for why the continuous NO_x monitoring is not needed to assure compliance with the rule. Therefore, the commission has no basis to consider replacing the continuous NO_x monitoring requirement using a CEMS or PEMS with an alternative method such as periodic testing. No change has been made to the rule in response to this comment.

Comment

Dal-Tile also commented it had no control over the required test methods for determining fuel calorific value, as part of the stack testing requirements of §117.8000(c)(6), that may be used by the fuel supplier. Therefore, Dal-Tile requested the TCEQ revise the rule language to allow calorific values provided by natural gas suppliers to be fully compliant with the rules.

Response

Regarding changes to required methods for determining fuel calorific value, the commission declines to make the change. The commission did not propose changes to §117.8000(c)(6), and the suggested change is outside the scope of this rulemaking. Furthermore, the existing rule provision applies to the NO_x source owner or operator and not to the fuel supplier. The owner or operator has the flexibility to have a separate analysis performed to determine the fuel calorific value according to the

specified methods in the rule. The existing provision also allows the source owner or operator to request an alternate method as approved by the TCEQ executive director and the EPA. The commission makes no changes in response to this comment.

Comment

The EPA commented that previous NO_x control requirements for natural gas-fired compressor engines in the DFW nine-county area and in East Texas counties relied on NSCR, catalytic convertors. The EPA commented that these catalytic convertors typically require periodic changes of catalysts to maintain NO_x control levels. The EPA questioned whether Texas performed any follow-up on the affected sources to confirm that proper maintenance occurred to ensure NO_x controls still met the applicable NO_x requirements.

Response

To date, while the TCEQ has not initiated a targeted review of affected sources to confirm whether proper maintenance is occurring to ensure that NO_x controls still meet the NO_x control requirements, like the EPA, the TCEQ conducts investigation activities of affected sources, where the required maintenance would be one of the issues that is reviewed, and determines if an enforcement action is warranted. Source owners or operators of affected units subject to the DFW industrial rules are required to conduct testing every two years or within 15,000 hours of engine operation after the previous emission test and perform quarterly emission checks to ensure continued compliance with the NO_x emission specifications. Affected source owners and operators are also required to report in writing to the TCEQ executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. This includes the quarterly emission checks; the biennial emission testing required for demonstration of emissions compliance; and the specific identification 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. Owners and operators are also required to maintain records on-site for a period of at least five years.

Source owners or operators of affected units subject to the East Texas combustion rules in Subchapter E, Division 4 are required to conduct testing every two years or within 15,000 hours of engine operation after the previous emission test and perform quarterly emission checks to ensure continued compliance with the NO_x emission specifications. Owners and operators are also required to maintain records on-site for a period of at least five years. These records also include information relating to catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken. The commission considers the current quarterly emissions checks, periodic testing, recordkeeping, and reporting requirements for engines subject to the Chapter 117 requirements to be sufficient to ensure proper operation and maintenance of catalyst controls. No changes are made in response to this comment.

Comment

The EPA expressed support of the commission clearly identifying the sections that pertain to control of ammonia and CO emissions, which are not ozone precursors, and are therefore not necessary components of the Texas ozone SIP and are not intended for inclusion into the EPA-approved Texas SIP. The EPA also expressed support of the commission's inclusion of major sources of NO_x located in Wise County to become subject to the requirements of Chapter 117.

Response

The commission appreciates the EPA's support of the NO_x RACT rulemaking. No changes are made in response to this comment.

Comment

The EPA commented that it cannot approve the proposed compliance schedule, which states that upon publishing notice in the *Texas Register* that Wise County is no longer designated nonattainment for the 2008 eight-hour ozone NAAQS, the owner or operator of a unit in Wise County is not required to comply with the requirements of Subchapter B, Division 4. The EPA indicated it cannot approve this provision because it does not contain "a replicable procedure" and to accomplish changing the applicability for sources in Wise County, the state would need to undergo rulemaking and submit a subsequent SIP revision.

Response

The commission disagrees that a replicable procedure is necessary to change the applicability of RACT rules to Wise County in the event the nonattainment designation for Wise County is no longer legally effective. If the nonattainment designation is no longer legally effective, then there is no underlying legal basis or support for the RACT requirement to apply to Wise County. The inclusion of Wise County in the DFW nonattainment area is currently in litigation, awaiting a decision from the D.C. Circuit. A final decision from the court that vacates the nonattainment designation for Wise County would mean that the EPA would no longer have the authority to require or enforce RACT requirements in an area that is not legally designated nonattainment.

Only in the absence of a legally valid nonattainment designation would the commission be able to act under this rule provision and such action would merely provide notice that Wise County would no longer be legally required to comply with provisions that are no longer legally valid. Further action from the EPA would not be required if a final court decision vacates the nonattainment designation of Wise County; therefore, no FCAA, §110(l) demonstration could be required to remove a requirement that would no longer be legally required. Furthermore, the 2018 future-year attainment demonstration modeling documented in the 2015 DFW Attainment Demonstration SIP (2013-015-SIP-NR) proposal being adopted concurrently with this rulemaking does not include NO_x reductions from any of the RACT rules proposed for Wise County. Since no emissions reductions from this rulemaking were included in the 2018 future case modeling for Wise County, cessation of the compliance obligations for NO_x sources in Wise County would not affect the attainment demonstration modeling.

To ensure that the rule language clearly establishes this standard, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" in §117.9030(a)(3) and §117.9130(e) with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective."

Comment

Luminant expressed support of the addition of §117.1335(d)(6), which specifies the requirements for utility sources to comply with the NOx emission specification in lb/MMBtu on a rolling 168-hour average. Although Luminant disagreed that the pro-

posed clarification is the best interpretation of the rules, Luminant favored the proposed changes that would provide regulatory consistency and clarification regarding the specific requirements of the appropriate calculation methodology.

Response

The commission appreciates Luminant's support of the NO_x RACT rulemaking. No changes are made in response to this comment.

Comment

Solar and the TPA suggested that the commission maintain the 4,500 hp level as the threshold for units subject to the NO_x standards and adopt emission levels in 40 CFR Part 60, Subpart KKKK, the current New Source Performance Standard (NSPS) for industrial combustion turbines, for modified and reconstructed industrial turbines. Solar and the TPA commented that the proposed emission values are stricter than 40 CFR Part 60, Subpart KKKK levels for modified and reconstructed units, and 40 CFR Part 60, Subpart KKKK contains emission standards for modified and reconstructed units were set at emission levels existing units were capable of meeting. For modified and reconstructed units with a heat input less than or equal to 50 MMBtu/hr, 40 CFR Part 60, Subpart KKKK contains an emission standard of 150 ppm. The proposed RACT requirements set a NO_x limit of 122 ppm for similarly sized industrial turbines, i.e., turbines rated less than 4,500 hp. For two affected units in Wise County, Solar commented that a dry low-NO_x retrofit is available but at significant capital cost. The other two affected units in Wise County will require uprating to a higher power rating and retrofitting with dry low-NO_x technology; this will impose significant capital costs. For these two units, Solar commented the results of the uprate and retrofit will potentially require corresponding compressor or other equipment upgrading, replacement, or modification; may trigger additional new source review permitting and/or Federal Energy Regulatory Commission permitting issues; and may result in the site running at a lower, less efficient load.

The TPA and Solar also disagreed with the commission's analysis that no capital costs due to retrofits or combustion modifications were expected for industrial gas-fired turbines in Wise County to meet the proposed NO_x emission specifications. Solar and the TPA estimated the compliance cost to be as high as $2 million to $4 million for each of the four affected Solar industrial turbines to comply with the RACT rulemaking. One TPA member determined that two industrial gas-fired turbines from its fleet would require retrofit technology estimated to cost between $1.5 million to $4 million per turbine. The TPA member estimated the cost per ton for emissions reductions to be $38,800. The TPA contended this would approach a complete source replacement, contrary to RACT requirements. Solar contended that a source-specific RACT cost estimate is imperative to assess the cost-effectiveness of the proposed RACT rulemaking on each affected unit in Wise County. Similarly, the TPA commented that consideration on a case-by-case basis of the specific technological and economic circumstances of an individual unit is the best way to ensure emission limits are complied with while accounting for exceptional circumstances that may arise in particular cases. The TPA endorsed and fully incorporated Solar's comments.

Response

While the commission may consider Federal rules such as 40 CFR Part 60, Subpart KKKK when determining NO_x RACT control levels, RACT is not defined by rules such as the NSPS. The referenced NSPS rules are national rules, whereas the NO_x RACT rules that the commission is adopting for the DFW 2008 eight-hour ozone nonattainment area are specific to the facilities in that area. Furthermore, RACT requirements can be, and are in some circumstances, more stringent than NSPS or National Emission Standards for Hazardous Air Pollutants rules. The commission declines to make the suggested change to create an exemption threshold based on unit size. However, based on supplemental data and information provided by, and comments received from, owners or operators of these units in Wise County, the commission has determined that some of the affected turbines in Wise County in the proposed mid-size category, 4,500 hp and greater but less than 10,000 hp, may not be able to meet the proposed 0.20 lb/MMBtu NO_x emission specification without making significant modifications or retrofits at substantial costs. The commission determined at proposal that these costs did not represent RACT for these turbines in Wise County. The commission's proposed emission standards were based on existing emissions data for the units, but the commission's assessment of the ongoing emissions performance based on this data for the midsize category of turbines may have been too conservative. This resulted in the emissions standard being lower than what would be consistent with the commission's determination of RACT for industrial turbines in Wise County. Furthermore, additional information was provided by the TPA, and stack test data was provided by an affected source owner or operator for specific units identified in Wise County, which supplemented and clarified the 2012 EI data, upon which the commission proposed the NO_x RACT standards for industrial turbines in Wise County. The additional information and data indicated unit performance variability among the various turbine model ratings and showed test results as high as 0.50 lb/MMBtu.

Therefore, the commission is removing the unit size category for units with a hp rating of less than 4,500 hp and the unit size category for units with a hp rating of 4,500 hp or greater but less than 10,000 hp. The commission is replacing these two unit size categories with a unit size category for units with a hp rating of less than 10,000 hp. Furthermore, the commission adopts a NO_x emission limit of 0.55 lb/MMBtu for turbines rated less than 10,000 hp. Based on the supplemental information provided by source owners or operators of affected units and considering the variation in test data for some units, the commission determines that 0.55 lb/MMBtu for units rated less than 10,000 hp is an appropriate RACT control level considering current performance levels of existing units in Wise County. While this control level is numerically the same as the current NSPS rule for modified and reconstructed industrial gas turbines with a heat input less than or equal to 50 MMBtu/hr, the commission makes clear that 0.55 lb/MMBtu is the appropriate RACT level of control specifically for the units rated less than 10,000 hp identified in Wise County considering the specific factors associated with those units. This control level is also consistent with the commission's determination of RACT for industrial turbines in Wise County made at proposal. Furthermore, based on unit specific information, the commission expects that no NO_x control technology retrofits will be necessary to comply with the RACT rule requirements for any of the affected industrial combustion turbines in Wise County. Therefore, the commission expects no fiscal impacts associated with controls for units in Wise County to comply with the adopted RACT emission standards. Based on the revised NO_x emission specifications, no affected sources are anticipated to undergo retrofits of any kind in order to meet the emission limits for industrial gas-fired turbines in Wise County. Due to public comment, the commission revises the unit power rating threshold of 4,500

hp in proposed §117.405(b)(3)(A) to 10,000 hp. The commission also removes proposed §117.405 (b)(3)(B) and re-letters proposed subsection (b)(3)(C) to subsection (b)(3)(B).

Comment

Solar and the TPA opposed the January 1, 2017, compliance deadline and suggested a phased-in compliance schedule to allow industry the time to develop and implement technology upgrades necessary to comply with proposed RACT standards.

Response

An alternative compliance schedule, such as a phased-in compliance schedule suggested by the commenter, is unnecessary at this time, especially given that the affected Wise County turbines are not expected to require retrofits. Furthermore, the EPA's implementation rule for the 2008 eight-hour ozone NAAQS specifies the January 1, 2017, date as the compliance deadline for implementation of RACT requirements. The commission retains in the rule the compliance deadline of January 1, 2017, for affected units. No changes are made in response to this comment.

Comment

The TPA disagreed with the commission's analysis that 0.50 g/hp-hr represents RACT for gas-fired rich-burn engines. One TPA member determined that six gas-fired rich-burn engines from its fleet, already controlled by catalyst, could not meet the proposed NO_x level even with additional catalyst. For a particular 1,680 hp engine, an emission control system conversion kit would cost $90,000 for the engine to meet 0.50 g/hp-hr. The member estimated $540,000 in total costs for the six engines. The member further estimated the cost per ton of NO_x reduced for this one engine to be $11,100. The TPA, therefore, requested the commission establish 1.0 g/hp-hr as NOx RACT for Waukesha engines.

Response

The commission disagrees that an emission limit of 0.50 g/hp-hr is not representative of RACT for gas-fired rich-burn engines. The commission estimated the total costs for NSCR catalyst retrofits for gas-fired rich-burn engines in Wise County based on some rich-burn engines needing entire catalyst system retrofits and some engines already equipped with catalyst systems only needing additional catalyst elements. The $30/hp estimate used by the commission for capital costs for new NSCR systems ((39 TexReg 10351) December 26, 2014, issue of the *Texas Register)* is an overall estimate, and capital costs for an individual engine may be higher than this estimate. The $90,000 capital cost estimate provided by the TPA would equate to approximately $54/hp. While higher than the commission's estimate, the commission still considers the TPA's cost estimate for NSCR on rich-burn engines to be economically feasible. The TPA's estimated cost-effectiveness of $11,100 per ton appears to be based on only first-year capital costs and is not annualized. Capital costs associated with control requirements are typically annualized over a period of years when calculating cost-effectiveness on a dollar-per-ton basis. Calculating cost-effectiveness based on the first-year capital costs and a single year of emission reductions inflates the dollar-per-ton estimate. The cost-effectiveness estimate used by the commission in the RACT and fiscal analyses for this rulemaking included annual operating and maintenance costs and annualized capital costs over the first five years the rules are in effect. The first-year cost-effectiveness estimate by the TPA cannot be compared to the commission's cost-effectiveness estimates without being converted to the same basis.

Furthermore, the TPA's cost-per-ton estimate of $11,100 is also based on a NO_x reduction from 1.0 g/hp-hr to 0.50 g/hp-hr, when it should be from 2.0 g/hp-hr to 0.50 g/hp-hr. Site-specific data of annual NO_x emissions and operating hours reported to the 2012 EI indicate the 1,680 hp engine operated at a performance level of 2.0 g/hp-hr. Based on the TPA's cost information of the conversion kit annualized over five years, the commission estimates the cost per ton for the 1,680 hp engine to be $1,027. This figure includes the $90,000 capital cost for the conversion kit, a capital cost of $2,500 for one totalizing fuel flow meter, annual maintenance costs of $3,000 for catalyst washing and O_2 or NO_x sensor replacement, annual average costs of $2,525 for compliance testing, and an emission reduction of approximately 23.4 tpy. Annualizing this over five years, the commission notes that this estimate of $1,027 per ton for NSCR systems using the TPA capital costs is lower than the overall average of $1,563 per ton the commission cited for all affected units, including rich-burn engines, in the proposed rulemaking ((39 TexReg 10350) December 26, 2014, issue of the *Texas Register)*. The commission maintains that the NO_x emission specification of 0.50 g/hp-hr represents RACT for gas-fired rich-burn engines. No changes are made in response to this comment.

Comment

The TPA supported the source cap option and use of emission reduction credits as a compliance flexibility mechanism for sources in Wise County affected by the proposed RACT rules. The TPA also supported rule provisions allowing affected source owners and operators to petition the TCEQ executive director for alternative CO and ammonia emission specifications. Regarding gas-fired lean-burn engines in Wise County, the TPA expressed support of the proposed NO_x levels set at a higher level than existing levels for sources in the DFW nine-county ozone nonattainment area. The TPA stated support of the commission's decision to not revise existing RACT rules applicable to oil and gas sources of NO_x in the DFW nine-county ozone nonattainment area.

Response

The commission appreciates the TPA's support of the NO_x RACT rulemaking. No changes are made in response to these comments.

Comment

One individual commented the public is doomed to suffer if its air is left to the TCEQ since those making money from dirty air seem to have bought everyone with power to do something to clean up the air, and no TCEQ board member was present at the public hearing.

Response

The purpose of this Chapter 117 rulemaking is to meet FCAA NO_x RACT requirements for the DFW area. This comment is outside the scope of this rulemaking. Additional discussion in response to this comment is provided in the 2015 DFW Attainment Demonstration SIP Revision (Non-Rule Project No. 2013-015-SIP-NR) being adopted concurrent with this rulemaking. No changes are made to this rulemaking in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

Statutory Authority

The amended section is adopted 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 adopted 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 adopted 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 adopted 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.*

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 June 5, 2015.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2141

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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

Statutory Authority

The repealed sections are adopted 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 adopted 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 adopted 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 adopted 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.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted 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 adopted 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 adopted 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 adopted 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.*

§117.403. Exemptions.

(a) Units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County exempted from the provisions of this division, 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. 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; 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), 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;

(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, 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 a hp rating less than 50 hp.

(c) The emission specifications in §117.410(a)(1) and (c) 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 10,000 hp, 0.55 lb/MMBtu; and

(B) with a 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) 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 eight-hour ozone attainment demonstration. For units located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County, no person shall allow the discharge into the atmosphere nitrogen oxides (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) 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); 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) 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 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) §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)

(B) brick and ceramic kilns, one of the following:

(i) a 40% reduction from the daily NO_x emissions reported to the Emissions Assessment Section for the calendar year 2000 Emissions 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) or predictive emissions monitoring systems (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 Emissions Assessment Section for the calendar year 2000 Emissions 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) NO_x averaging time. The emission specifications of subsection (a) of this section apply:

(1) if the unit is operated with a NO_x CEMS or PEMS under §117.440 of this title, 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) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a) 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 (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

(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.

(d) 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) 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 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.

(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) 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 December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (a)(14) of this section than would otherwise apply to the unit.

(f) 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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

Statutory Authority

The repealed sections are adopted 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 adopted 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 adopted 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 adopted 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.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted 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 adopted 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 adopted 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 emis-

sions. The amended sections are also adopted 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.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
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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 adopted 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 adopted 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 adopted 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 adopted 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.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. ADMINISTRATIVE PROVISIONS
DIVISION 1. COMPLIANCE SCHEDULES

30 TAC §117.9010, §117.9110

Statutory Authority

The repealed sections are adopted 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 adopted 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 adopted 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 adopted 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.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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30 TAC §117.9030, §117.9130

Statutory Authority

The amended sections are adopted 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 adopted 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 adopted 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 adopted 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.

(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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, 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.

(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) 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 as follows:

(A) submit the initial control plan required by §117.450 of this title no later than June 1, 2008; and

(B) for units subject to the emission specifications of §117.410(a) 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), (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), (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) 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 owner or operator of each electric utility in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant County shall com-

ply 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) The owner or operator of each electric utility 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, 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 the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, 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 adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. COMPLIANCE FLEXIBILITY

30 TAC §117.9800, §117.9810

Statutory Authority

The amended sections are adopted 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 adopted 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 adopted 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 adopted 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.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.19

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §331.19 *without change* to the proposed text as published in the February 6, 2015, issue of the *Texas Register* (40 TexReg 587) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

As existing water supplies decline and demand for fresh water increases in central and southwest Texas, efforts are underway to identify and develop potential new sources of water. Two strategies being pursued are desalination of brackish groundwater and aquifer storage and recovery (ASR). In support of these options, this rulemaking implements Senate Bill (SB) 1532, 83rd Texas Legislature, 2013. The intent of SB 1532 was to provide a statutory and regulatory basis to promote research that could make desalination of brackish groundwater and ASR more viable in the Edwards Aquifer.

Prior to the passage of SB 1532, Texas Water Code (TWC), §27.051(i) and 30 TAC §331.19 prohibited certain injection wells that transect or terminate in the Edwards Aquifer. SB 1532 amends TWC, Chapter 27, Subchapter D, by adding TWC, §27.0516. Within specific geographic boundaries, TWC, §27.0516 allows the commission to authorize by rule or general permit certain injection wells that transect or terminate in the Edwards Aquifer while providing a statutory and regulatory basis that is protective of the freshwater aquifer and supportive of desalination and ASR.

The applicability of the provisions in TWC, §27.0516 is limited to the portion of the Edwards Aquifer that is within the geographic area circumscribed by the external boundaries of the Barton Springs-Edwards Aquifer Conservation District (BSEACD) but is not in that district's territory or the territory of the Edwards Aquifer Authority. The official jurisdictional boundaries of the BSEACD were originally established by order of the commission and subsequently modified by orders of both the commission and the BSEACD. As part of this rulemaking, the commission has developed a map, which is located in §331.19(c), for inclusion in the adopted rule to give a general depiction of the affected geographic areas.

The commission's Underground Injection Control (UIC) program has one existing general permit that authorizes disposal of nonhazardous desalination concentrate and other nonhazardous drinking water treatment residuals in a Class I well. This statewide general permit expedites the processing of authorizations for wells used for these purposes. The existing UIC general permit did not contemplate the addition of provisions such as those in SB 1532 that apply to only specific small geographic areas within a certain aquifer. It would not be feasible to amend the existing general permit to add the SB 1532 provisions. Because the number of applications is not expected to be significant under the general permits authorized in SB 1532, new general permits that include the special conditions required in SB 1532 will be implemented when there is a need for them.

Section Discussion

§331.19, Injection Into or Through the Edwards Aquifer

The commission adopts the amendment to subsection (a) that inserts "except as authorized in subsection (c) of this section" at the beginning of subsection (a). This language will provide for the exceptions granted by SB 1532 for certain injection wells that transect or terminate in the Edwards Aquifer.

The commission adopts subsection (c) to specify that this subsection applies only to the portion of the Edwards Aquifer that is within the geographic area circumscribed by the external boundaries of the BSEACD, but is not in that district's territory or the territory of the Edwards Aquifer Authority. In order to reference the authoritative sources for BSEACD's boundaries, subsection (c) cites the defining documents that delineate the borders of the BSEACD to include orders of the commission dated November 19, 1986 and April 18, 1988; two subsequent orders of the BSEACD dated August 13, 1987; three orders of the BSEACD dated January 24, 2002; an order of the BSEACD canvassing the returns and declaring the results of a special election, dated November 12, 2002; and a resolution of the BSEACD adopted June 23, 2011. Subsection (c) also provides a figure showing a general depiction of the affected geographic area. The map in Figure: 30 TAC §331.19(c) is for illustrative purposes and is not to be used to establish the jurisdictional boundaries of the BSEACD. Adopted subsection (c) further states that all injection wells within this specific geographic area are prohibited unless authorized by rule or by a general permit.

The commission adopts subsection (c)(1) to include definitions for "Engineered aquifer storage and recovery facility," "Fresh water" and "Saline portion of the Edwards Aquifer." These three definitions, quoted from TWC, §27.0516, are adopted in §331.19(c)(1)(A) - (C), respectively, for use in §331.19(c). Although the term "fresh water" was already defined in TWC, §27.002(8), and §331.2(46), it is uniquely defined in the context of this rulemaking and as applied in §331.19.

The commission adopts subsection (c)(2) to list activities that may be authorized by rule within the geographic area described in subsection (c) for the purpose of providing additional recharge. Any injection well subject to this section is also subject to the requirement of §331.5 (relating to Prevention of Pollution) providing that no permit or authorization shall be allowed where an injection well causes or allows the movement of fluid that would result in the pollution of an underground source of drinking water (USDW). Adopted §331.19(c)(2)(A) would authorize the injection of fresh water withdrawn from the Edwards Aquifer into a well that transects or terminates in the Edwards Aquifer. Adopted §331.19(c)(2)(B) would authorize the injection of rainwater, storm water, flood water or groundwater into the Edwards Aquifer through an improved natural recharge feature such as a sinkhole or cave located in a karst topographic area. These activities would be authorized by rule under §331.9 as stated in adopted §331.19(a).

Adopted subsection (c)(3) lists the types of injection wells which may be authorized under a general permit issued by the commission. Adopted subsection (c)(3)(A) provides that activities described by subsection (c)(2) may also be authorized under a general permit in addition to authorization by rule. Adopted subsection (c)(3)(B) and (C) pertains to the injection of concentrate from a desalination facility or fresh water as part of an engineered ASR facility. These fluids may be injected into a well that either transects and isolates the saline portion of the Edwards Aquifer and terminates in a lower aquifer, or a well that terminates in the saline portion of the Edwards Aquifer having a total dissolved solids concentration of more than 10,000 milligrams per liter (provided that each well used for injection or withdrawal from the facility must be at least three miles from the closest outlet of Barton Springs). Lastly, adopted subsection (c)(3)(D) would provide authorization for an injection well that transects or terminates in the Edwards Aquifer for aquifer remediation, the injection of a nontoxic tracer dye as part of a hydrologic study, or another beneficial activity that is designed and undertaken for the purpose of increasing protection of an USDW from pollution or other deleterious effects. The activities provided in subsection (c)(3) would apply only within the geographic area described in subsection (c).

Adopted subsection (c)(4) requires the commission to hold a public meeting before issuing a general permit under this section.

Adopted subsection (c)(5)(A) pertains to requirements for monitoring wells. Under subsection (c)(5)(A)(i), the injection well owner is required to operate a monitoring well if the executive director determines that there is an USDW in the area of review that is potentially affected by the injection well. If the injection well owner does not operate a monitoring well, then subsection (c)(5)(A)(ii) provides that the monitoring well may be operated by a party other than the injection well owner. In this latter case, all results of monitoring must be promptly made available to the injection well owner. The previously described monitoring wells, if properly sited and completed, may also be used to monitor a saline water production well as provided in subsection (c)(5)(A)(iii). Subsection (c)(5)(B)(i) prohibits the waste or pollution of fresh water by an injection well covered under §331.19(c). Finally, subsection (c)(5)(B)(ii) provides that an injection well may be authorized for a term not to exceed ten years, and the authorization may be renewed.

Additional requirements of SB 1532 that are not specifically implemented in commission rule will be implemented as specific provisions in a general permit as authorized in §331.19.

Final Regulatory Impact Determination

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking action implements legislative requirements in SB 1532, which authorizes certain types of injection wells in the Edwards Aquifer within a specified geographic area of the BSEACD. The adopted rulemaking does not meet the definition of "major environmental rule" because the rulemaking does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or public health and safety of the state or a sector of the state. The new requirements for injection wells apply only to a specific geographic area within the circumscribed boundary but not within the jurisdiction of the BSEACD, and no injection well authorized by the commission may allow the movement of fluid that would result in the pollution of an USDW.

Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The adopted rule does not exceed a standard set by federal law, because there is no comparable federal law regarding the Edwards Aquifer. The adopted rule does not exceed an express requirement of state law because it is consistent with the express requirements of SB 1532 and TWC, §27.0516. The adopted rule does not exceed requirements set out in the commission's UIC program authorized for the state of Texas under the federal Safe Drinking Water Act. The rulemaking is not adopted under the general powers of the agency, but is adopted under the express requirements of SB 1532 and TWC, §27.019 and §27.0516(h).

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The adopted action implements legislative requirements in SB 1532, which authorizes certain types of injection wells within a specified geographic area in the Edwards Aquifer.

The adopted rule would be neither a statutory nor a constitutional taking of private real property. The adopted rule would allow certain injection wells in the Edwards Aquifer within a specified geographic area circumscribed by the boundary of the BSEACD as authorized under SB 1532. The adopted rule does not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission held a public hearing in Austin on March 3, 2015. No oral comments were submitted at the meeting. The comment period closed on March 9, 2015. The commission received one written comment from an individual who expressed concern about water management issues outside the scope of this rulemaking.

Response to Comment

The commission received one written comment and question from an individual who expressed concern about the unregulated pumping of water from the Trinity Aquifer in Hays County and the endangerment of species by diminishing water flows from springs. This individual stated that daily water use is restricted yet a company from Houston can drain all the water they can sell. The commenter asked whether TCEQ is considering the impact of something as environmentally irresponsible and reckless as Ron Pucek's Living Waters Catfish Farm, Southern Bexar County, 1991.

Response

The commission responds that this comment and question is outside the scope of this rulemaking. The purpose of this rulemaking is to implement legislation to facilitate possible desalination or aquifer storage projects that applies to only specific small geographic areas within the Edwards Aquifer. The adopted rule does not address the pumping or withdrawal of water from the Trinity Aquifer, endangerment of species by diminishing water

flows from springs, restrictions on citizens' water use or the impact of a specific project. No change was made to the rule in response to this comment.

Statutory Authority

The amended section is adopted under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and Senate Bill (SB) 1532, 83rd Texas Legislature, 2013.

The amended section implements SB 1532 and TWC, §27.0516, which authorizes certain injection wells in the Edwards Aquifer within a specified geographic area circumscribed by the boundary of the Barton Springs-Edwards Aquifer Conservation District.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§336.2, 336.105, 336.1111, and 336.1127.

The amendments to §§336.2, 336.105, 336.1111, and 336.1127 are adopted *without changes* to the proposed text as published in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9484) and will not be republished. New §336.739 is withdrawn in this issue of the *Texas Register.*

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking is to implement Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)) and to add non-substantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission (NRC).

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 37, Financial Assurance.

Section by Section Discussion

§336.2, Definitions

The commission adopts amended §336.2 to revise the definitions of "Perpetual care account" and "Radiation and Perpetual Care Account" to reflect the new name of the dedicated general revenue account created by SB 347. The definitions have been reorganized to keep them in alphabetical order and renumbered accordingly. The commission adopts an amendment to §336.2(139) to make a non-substantive revision to the definition of "Total effective dose equivalent (TEDE)" to conform to updated federal regulations by adding two sets of parentheses.

§336.105, Schedule of Fees for Other Licenses

The commission adopts amended §336.105(h)(1) to reflect the new name of the dedicated general revenue account created by SB 347.

§336.739, Volume Reduction

Proposed new §336.739 on Volume Reduction is withdrawn. The commission will continue review of this matter and pursue implementation of statutory requirements at a later date.

§336.1111, Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities

The commission adopts amended §336.1111(1)(H) regarding the application requirements for a new license for source material recovery (i.e., uranium mining) and by-product disposal facilities. Under the current rule, an applicant is required to submit a signed certification from the landowners on which radioactive substances are recovered, stored, processed or disposed to reflect the landowner's consent to that activity and to acknowledge that decommissioning of the licensed site is required even if the licensee fails to perform the required decommissioning. The purpose of this provision was to assure that landowners are fully informed of both on-going licensed activities involving radioactive substances on the property and future closure requirements. The landowner acknowledgement was not intended to provide landowner approval power of a proposed project or disrupt the ability of an applicant to prepare a complete application. In addition, changes in land ownership can complicate and delay an applicant's need for timely application development and processing. Arrangements between landowners and uranium miners regarding use of the property should be made in private agreements and not be made part of the commission's license application processing. Instead of requiring landowners' signatures and consent, the adopted amendment will require the applicant to provide notification to the landowners. The notification is in addition to any required public notice under 30 TAC Chapter 39, concerning Public Notice, of the commission's rules. The adopted revisions to §336.1111(1)(H) require an applicant to submit proof of the effort to provide the landowners with notification by certified and regular United States mail that radioactive materials will be recovered, stored, processed or disposed on the property and that the decommissioning of the property may be required and performed on the licensed site even if the licensee is unable to perform the decommissioning. An applicant may be able to submit the required proof in a variety of ways, such as an affidavit from the person responsible for mailing the notification, proof of certified mail receipts, or a description of the efforts implemented to comply with the requirements that is included in the sworn application.

§336.1127, Long-term Care and Maintenance Requirements

The commission adopts amended §336.1127(a) and (c) to reflect the new name of the dedicated general revenue account cre-

ated by SB 347. The commission also adopts the amendment to §336.1127(c) to decrease the assumed annual real interest rate allowed for certain licensees' financial assurance in order to comply with new federal requirements.

Final Regulatory Impact Analysis Determination

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the 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 adopted rulemaking action implements legislative requirements in SB 347 regarding funding and subject to appropriation by the legislature of the Environmental Radiation and Perpetual Care Account. The adoption of the revisions to Chapter 336 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because financial assurance and this fund was already required for these licensing programs. The adopted rulemaking only changes the name for the fund that is administered by the commission and the commission will only be implementing an appropriation of the state budget from the legislature following an order from the Comptroller of Public Accounts Office. While there could be new costs associated with obtaining a financial assurance mechanism that meets the requirements of the adopted rules, the commission does not expect that the costs to adversely affect the economy, productivity, or competition in a material way.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The adopted rules are compatible with federal law.

The adopted rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 347.

The adopted rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The adopted rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

This rulemaking is adopted under the specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the Private Real Property Rights Preservation Act does not apply to this adopted rulemaking because these rules implement SB 1604, 80th Texas Legislature, 2007, transferring certain regulatory responsibilities from Texas Department of State Health Services to the commission and is an action reasonably taken to fulfill an obligation mandated by federal law. Financial assurance is required for these licensing programs under the NRC's requirements.

Nevertheless, the commission further evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this adopted rulemaking is to implement changes to the TRCA required by SB 347, for the deposit of funds into the Environmental Radiation and Perpetual Care Account.

Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Public Comment

The commission held a public hearing on January 13, 2015, at 10:00 a.m. in Austin, Texas, at the commission's central office located at 12100 Park 35 Circle. The comment period closed on January 20, 2015. The commission received two comments at the public hearing. One comment from Waste Control Specialists stated its support of the proposal. One comment from Energy Solutions expressed two concerns that they would submit in greater detail in formal written comments.

The commission received seven written comments during the comment period. Comments were received from: Waste Control Specialists; Energy Solutions; Advocates for Responsible Disposal in Texas; Electric Power Research Institute; STARS Alliance; Uranium Committee of the Texas Mining & Reclamation Association; and Exelon Generation.

Waste Control Specialists stated its support, generally, for the rule language as written, but encouraged the commission to consider the possible negative impact that volume reduction could have on fee revenue derived from disposal at the site.

The commission responds that proposed new §336.739 on Volume Reduction is withdrawn. The commission will continue review of this matter and pursue implementation of statutory requirements at a later date.

Energy Solutions stated that the rulemaking goes beyond the legislative intent of SB 347 and eligibility for volume reduction should be determined entirely by the suitably of waste streams for volume reduction, rather than based on curie concentrations, market competitiveness, or executive director discretion. The comment recommended that the commission remove the exemption from volume reduction requirements when a competitive market is not present, remove the requirement to volume reduce to the greatest extent possible when reduction by a factor of three is not technically feasible, remove the prohibition on volume reduction from causing concentrations of radioactivity of a waste to exceed certain levels determined by the executive director, and remove the exemption from volume reduction requirements of other waste.

The commission responds that proposed new §336.739 on Volume Reduction is withdrawn. The commission will continue review of this matter and pursue implementation of statutory requirements at a later date.

Advocates for Responsible Disposal in Texas expressed concern over the possible impact that volume reduction requirements could have on the future dose levels of the Compact Waste Facility and the limitation that could pose on available capacity for party state generators, further calling for safeguards to be put in place to protect that capacity.

The commission responds that proposed new §336.739 on Volume Reduction is withdrawn. The commission will continue review of this matter and pursue implementation of statutory requirements at a later date.

Electric Power Research Institute stated that limited volume reduction options are available post-generation for Class B and C waste.

The commission responds that proposed new §336.739 on Volume Reduction is withdrawn. The commission will continue review of this matter and pursue implementation of statutory requirements at a later date.

STARS Alliance stated that no competitive market exists for offsite volume reduction of certain waste streams and that on-site volume reduction methods were limited for certain Class B and C wastes. STARS Alliance further stated that the proposed language was confusing regarding the prohibition of volume reduction creating a waste stream with a classification higher than Class C.

The commission responds that proposed new §336.739 on Volume Reduction is withdrawn. The commission will continue review of this matter and pursue implementation of statutory requirements at a later date.

Uranium Committee of the Texas Mining & Reclamation Association stated support of the rulemaking language regarding special requirements for a license application for source material recovery and by-product material disposal facilities.

The commission appreciates the support of this rulemaking project.

Exelon Generation addressed five different issues: 1) TCEQ should publish a list of approved vendors offering volume reduction services; 2) TCEQ should provide an exemption from volume reduction requirements for generators who have achieved volume reduction through certain alternative measures; 3) TCEQ should ensure that a monopoly is not inadvertently created through the volume reduction requirements; 4) TCEQ should ensure that volume reduction does not create a health risk for disposal site workers due to higher curie concentration; and 5) TCEQ should ensure that dilution of higher class waste with Class A waste is not occurring at waste processor facilities. Regarding the first comment on publishing a vendor list, the commission responds the recommendation will be taken under advisement, particularly in developing the guidance for the requirement.

The commission responds that proposed new §336.739 on Volume Reduction is withdrawn. The commission will continue review of this matter and pursue implementation of statutory requirements at a later date.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.2

Statutory Authority

The amendment is adopted under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendment is also adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules

necessary to carry out its powers and duties under TWC and other laws of the state.

The amendment is adopted to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory 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 June 5, 2015.

TRD-201502073
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: June 25, 2015
Proposal publication date: December 5, 2014
For further information, please call: (512) 239-6812

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SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.105

Statutory Authority

The amendment is adopted under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendment is also adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The amendment is adopted to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory 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.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §336.1111, §336.1127

Statutory Authority

The amendments are adopted under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The amendments are also adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The adopted amendments implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401 and to add nonsubstantive changes to rules to ensure the commission's continued compatibility with the United States Nuclear Regulatory Commission and implement THSC, §401.2625, regarding the commission's authority to grant licenses for source material recovery and by-product disposal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.333

The Comptroller of Public Accounts adopts an amendment to §3.333, concerning security services, without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2393). This section is amended to implement Senate Bill 1600, 82nd Legislature, 2011, relating to the registration of peace officers as private security officers, which amended Occupations Code, §1702.322.

Subsection (a) is revised to add the subsection heading "security service" to improve the readability of the section.

Subsection (b) is amended to remove Tax Code, §§151.006, 151.054, 151.151, 151.152, 151.153, 151.154, 151.302,

151.707 from the title of §3.285 of this title, which is being revised.

Subsection (h)(5)(A) is amended to correct a reference to §151 to Chapter 151.

Subsection (i) is amended to correct a typographical error. In addition, paragraph (3) is amended to include a reference to the requirements in Occupations Code, §1702.322 that a peace officer must meet to be excepted from licensure.

Subsection (j) is amended to correct a typographical error.

Subsection (k)(3) is amended to remove Tax Code, §§151.0047, 151.0101, 151.056, 151.058, 151.311, 151.350, 151.429 from the title of §3.357 of this title, which is being revised.

Subsection (m) is amended to remove references to §3.374 and §3.375 of this title, which have been repealed and replaced with §3.334 of this title (relating to Local Sales and Use Taxes).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002 which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Occupations Code, §1702.322, and clarifies the application of Tax Code, §151.0075.

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 June 5, 2015.

TRD-201502094
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: June 25, 2015
Proposal publication date: May 1, 2015
For further information, please call: (512) 475-0387

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SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.597

The Comptroller of Public Accounts adopts the repeal of §3.597, concerning margin: business tax advisory committee, without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2396). This section is being repealed because Tax Code, §171.214, which created the Business Tax Advisory Committee, expired January 31, 2013.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

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 June 5, 2015.

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 206, Subchapter A, §206.1, Texas Motor Vehicle Board; §206.2, Texas Department of Motor Vehicles; Subchapter B, §206.22, Public Access to Board Meetings; §206.23, Public Hearings; Subchapter E, §206.92, Definitions; §206.93, Advisory Committee Operations and Procedures; Subchapter F, §206.111, Restrictions on Assignment of Vehicles; and Subchapter G, §206.131, Digital Certificates. The department also adopts the repeals of Subchapter B, §206.21, Board Meetings, and Subchapter E, §206.91, Scope and Purpose. The department adopts the amendments and repeals without changes to the proposed text as published in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1019). The sections will not be republished.

The proposal included the repeal of Chapter 206, Subchapter D, Procedures in Contested Cases, §§206.61 - 206.73. However, there are other department rules that refer to and depend on Subchapter D. Therefore, the department withdraws the proposed repeal of Subchapter D, as published in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1023). As the department completes rule reviews of all rule chapters under its jurisdiction, the rules will be reviewed to determine if the cross reference to Chapter 206, Subchapter D is still accurate and necessary. The department may propose the repeal of the subchapter at a later date.

EXPLANATION OF AMENDMENTS AND REPEALS

The department conducted a review of its rules in compliance with Government Code, §2001.039. Notice of the department's intention to review was published in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1111).

As a result of the review, the department determined that the reasons for initially adopting rules under Subchapters A - C and E - G continue to exist, but that amendments are necessary. The department has further determined that the reasons for initially adopting Subchapter B, §206.21, and Subchapter E, §206.91 no longer exist and that they should be repealed.

An amendment to §206.1 revises the title of that section to "Delegation." Additional amendments delete language contained in statute that already describes the board's duties and makeup. The only language remaining allows the board to delegate responsibilities consistent with other law.

Amendments to §206.2 describe the roles of the executive director and department staff, consistent with statute.

The department repeals §206.21 as it simply repeats statutory language.

Amendments to §206.22 are made to remove language that repeats statute and for other cleanup revisions consistent with other agency rule sections.

Minor amendments to §206.23 are made for cleanup, consistent with other department rules.

The department repeals §206.91 as the section contains unnecessary verbiage that describes the purpose of the rules under Subchapter E.

Nonsubstantive amendments to §206.92 are made for consistency with other department rules and to clarify language.

Amendments to §206.93 clean up language and remove unnecessary statutory repetition.

Amendments to §206.111 make the language consistent with statutes of the Texas Comptroller of Public Accounts regarding fleet vehicle management.

Amendments to §206.131 are made for consistency with other department rules and to comply with corresponding rules of the Texas Department of Information Resources.

COMMENTS

No comments on the proposed amendments and repeals were received.

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §206.1, §206.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department, and Chapter 1003, which sets forth requirements and limitations for the department to specify procedures; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001 - 1003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5565

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SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §206.21

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department, and Chapter 1003, which sets forth requirements and limitations for the department to specify procedures; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001 - 1003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5565

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43 TAC §206.22, §206.23

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department, and Chapter 1003, which sets forth requirements and limitations for the department to specify procedures; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001 - 1003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5565

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SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §206.91

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department, and Chapter 1003, which sets forth requirements and limitations for the department to specify procedures; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001 - 1003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5565

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43 TAC §206.92, §206.93

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department, and Chapter 1003, which sets forth requirements and limitations for the department to specify procedures; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001 - 1003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER F. DEPARTMENT VEHICLE FLEET MANAGEMENT

43 TAC §206.111

STATUTORY AUTHORITY

The amendment is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department, and Chapter 1003, which sets forth requirements and limitations for the department to specify procedures; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001 - 1003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER G. ELECTRONIC SIGNATURES

43 TAC §206.131

STATUTORY AUTHORITY

The amendment is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department, and Chapter 1003, which sets forth requirements and limitations for the department to specify procedures; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001 - 1003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5565

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.27

The Texas Department of Motor Vehicles (department) adopts amendments to §217.27, Vehicle Registration Insignia, without changes to the proposed text as published in the April 3, 2015, issue of the *Texas Register* (40 TexReg 1963). The amended section will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments to §217.27 implement House Bill 2305, 83rd Legislature, Regular Session, 2013, regarding registration-based enforcement of motor vehicle inspection requirements under Transportation Code, Chapter 548.

The amendments to §217.27 are for those motor vehicle dealers that are required to apply for the registration of passenger cars and lights trucks in the name of the purchaser under Transportation Code, §501.0234. The amendments require these dealers to register the vehicle for 24 consecutive months if the vehicle received a two-year inspection under Transportation Code, §548.102.

COMMENTS

The department received a written comment from the Texas Automobile Dealers Association (TADA) in support of the amendments. TADA commented that the amendments allow consistency in the titling and registration process.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Chapter 502, Registration of Vehicles.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 502 and 548.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5565

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CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Motor Vehicles (department) adopts amendments to Subchapter A: §219.1, Purpose and Scope; §219.2, Definitions; §219.3, Surety Bonds for Vehicles Transporting Recyclable Materials or Solid Waste; Subchapter B: §219.11, General Oversize/Overweight Permit Requirements and Procedures; §219.12, Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D; §219.13, Time Permits; §219.14, Manufactured Housing, and Industrialized Housing and Building Permits; §219.15, Portable Building Unit Permits; §219.16, Permits for Military and Governmental Agencies; §219.17, Multi-state Permitting Agreements; Subchapter C: §219.30, Permits for Over Axle and Over Gross Weight Tolerances; Subchapter D: §219.41, General Requirements; §219.42, Single-Trip Mileage Permits; §219.43, Quarterly Hubometer Permits; §219.44, Annual Permits; §219.45, Permits for Vehicles Transporting Liquid Products Related to Oil Well Production; Subchapter E: §219.61, General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles; §219.62, Single Trip Mileage Permits; §219.63, Quarterly Hubometer Permits; §219.64, Annual Permits; Subchapter F: §219.82, Falsification of Information on Application and Permit; and Subchapter H: §219.124, Administrative Proceedings; §219.125, Settlement Agreements; and §219.126, Administrative Penalty for False Information on Certificate by a Shipper. The amendments to §219.2, Definitions; §219.12, Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D; and §219.44, Annual Permits are adopted with changes to the proposed text as published in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1026) and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill 1420, 82nd Legislature, Regular Session, 2011, transferred certain functions related to oversize and overweight vehicles from the Texas Department of Transportation to the department.

Amendments throughout Chapter 219 reflect the transfer of these functions to the department, delete language that repeats the statutes, transfer language from certain graphics to the rules, and delete certain graphics. Amendments are also made throughout Chapter 219 to reflect changes in the law, to delete language that does not belong in an administrative rule, to clarify current requirements and procedures, and to revise terminology for consistency with other department rules and with current department practice. Further, nonsubstantive amendments are made to correct references to statutes and rules.

Additional amendments to §219.2 are adopted to add, delete, and modify certain definitions. Additionally, an amendment to §219.124(e) deletes the word "unappealable," so the language is consistent with Transportation Code, §643.2525. An amendment to §219.125 deletes subsection (c) regarding the revocation of the settlement agreement because the clause is unnecessary. According to §219.125(b), if the settlement agreement requires the payment of a penalty, the alleged violator must submit payment in an agreed amount before the agreement may be executed. In addition, if the settlement agreement involves the revocation, suspension, or denial of an oversize or overweight permit, the department activates the revocation, suspension, or denial.

The department amended the proposed published text of §219.2(75) to change "TXDOT" to "TxDOT" for consistency. The department also amended the proposed published text of §219.2(81) to replace the reference to §217.3(b) with a reference to Transportation Code, §501.032 and §501.033 because §217.3(b) does not address vehicle identification numbers. Because §219.2(75) includes an acronym for the Texas Department of Transportation, the department deleted the full name of the state agency from §219.12(b)(9) as published. Finally,

the department added the following clause to the end of the first sentence in §219.44(a) because the clause was inadvertently omitted from the published proposed text: "of this title (relating to General Requirements)."

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§219.1 - 219.3

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.2. Definitions.

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

(1) Annual permit--A permit that authorizes movement of an oversize and/or overweight load for one year commencing with the "movement to begin" date.

(2) Applicant--Any person, firm, or corporation requesting a permit.

(3) Axle--The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments.

(4) Axle group--An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group.

(5) Board--The Board of the Texas Department of Motor Vehicles.

(6) Cash collection office--An office that has been designated as the place where a permit applicant can apply for a permit or pay for a permit with cash, cashier's check, personal or business check, or money order.

(7) Closeout--The procedure used by the department to terminate a permit, issued under Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.

(8) Complete identification number--A unique and distinguishing number assigned to equipment or a commodity for purposes of identification.

(9) Concrete pump truck--A self-propelled vehicle designed to pump the concrete product from a ready mix truck to the point of construction.

(10) Crane--Any unladen lift equipment motor vehicle designed for the sole purpose of raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(11) Credit card--A credit card approved by the department and a permit account card.

(12) Daylight--The period beginning one-half hour before sunrise and ending one-half hour after sunset.

(13) Department--The Texas Department of Motor Vehicles.

(14) Digital signature--An electronic identifier intended by the person using it to have the same force and effect as a manual signature. The digital signature shall be unique to the person using it.

(15) Director--The Executive Director of the Texas Department of Motor Vehicles or a designee not below the level of division director.

(16) District--One of the 25 geographical areas, managed by a district engineer of the Texas Department of Transportation, in which the Texas Department of Transportation conducts its primary work activities.

(17) District engineer--The chief executive officer in charge of a district of the Texas Department of Transportation.

(18) Electronic identifier--A unique identifier which is distinctive to the person using it, is independently verifiable, is under the sole control of the person using it, and is transmitted in a manner that makes it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(19) Escort vehicle--A motor vehicle used to warn traffic of the presence of a permitted vehicle.

(20) Four-axle group--Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(21) Gauge--The transverse spacing distance between tires on an axle, expressed in feet and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the center of the dual wheels on the opposite side of the axle.

(22) Gross weight--The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported.

(23) Height pole--A device made of a non-conductive material, used to measure the height of overhead obstructions.

(24) Highway maintenance fee--A fee established by Transportation Code, §623.077, based on gross weight, and paid by the permittee when the permit is issued.

(25) Highway use factor--A mileage reduction figure used in the calculation of a permit fee for a permit issued under Transportation Code, §623.142 and §623.192.

(26) Hubometer--A mechanical device attached to an axle on a unit or a crane for recording mileage traveled.

(27) HUD number--A unique number assigned to a manufactured home by the U.S. Department of Housing and Urban Development.

(28) Indirect cost share--A prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services.

(29) Load-restricted bridge--A bridge that is restricted by the Texas Department of Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(30) Load-restricted road--A road that is restricted by the Texas Department of Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(31) Machinery plate--A license plate issued under Transportation Code, §502.146.

(32) Manufactured home--Manufactured housing, as defined in Occupations Code, Chapter 1201, and industrialized housing and buildings, as defined in Occupations Code, §1202.002, and temporary chassis systems, and returnable undercarriages used for the transportation of manufactured housing and industrialized housing and buildings, and a transportable section which is transported on a chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or destruction, be transported within legal size limits for motor vehicles.

(33) Motor carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state, as defined in Chapter 218 of this title (relating to Motor Carriers).

(34) Motor carrier registration (MCR)--The registration issued by the department to motor carriers moving intrastate, under authority of Transportation Code, Chapter 643 as amended.

(35) Nighttime--The period beginning one-half hour after sunset and ending one-half hour before sunrise, as defined by Transportation Code, §541.401.

(36) Nondivisible load--A load that cannot be reduced to a smaller dimension without compromising the integrity of the load or requiring more than eight hours of work using appropriate equipment to dismantle.

(37) Oil field rig-up truck--An unladen vehicle with an overweight single steering axle, equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and machinery.

(38) Oil well servicing unit--An oil well clean-out unit, oil well drilling unit, or oil well swabbing unit, which is mobile equipment, either self-propelled or trailer-mounted, constructed as a machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(39) One trip registration--Temporary vehicle registration issued under Transportation Code, §502.095.

(40) Overdimension load--A vehicle, combination of vehicles, or vehicle and its load that exceeds maximum legal width, height, length, overhang, or weight as set forth by Transportation Code, Chapter 621, Subchapters B and C.

(41) Overhang--The portion of a load extending beyond the front or rear of a vehicle or combination of vehicles.

(42) Overheight--An overdimension load that exceeds the maximum height specified in Transportation Code, §621.207.

(43) Overlength--An overdimension load that exceeds the maximum length specified in Transportation Code, §§621.203, 621.204, 621.205, and 621.206.

(44) Overweight--An overdimension load that exceeds the maximum weight specified in Transportation Code, §621.101.

(45) Overwidth--An overdimension load that exceeds the maximum width specified in Transportation Code, §621.201.

(46) Permit--Authority for the movement of an overdimension load, issued by the department under Transportation Code, Chapter 623.

(47) Permit account card (PAC)--A debit card that can only be used to purchase a permit or temporary vehicle registration and which is issued by a financial institution that is under contract to the department and the Comptroller of Public Accounts.

(48) Permit officer--An employee of the department who is authorized to issue an oversize/overweight permit or temporary vehicle registration.

(49) Permit plate--A license plate issued under Transportation Code, §502.146, to a crane or an oil well servicing vehicle.

(50) Permitted vehicle--A vehicle, combination of vehicles, or vehicle and its load operating under the provisions of a permit.

(51) Permittee--Any person, firm, or corporation that is issued an oversize/overweight permit or temporary vehicle registration by the department.

(52) Pipe box--A container specifically constructed to safely transport and handle oil field drill pipe and drill collars.

(53) Portable building compatible cargo--Cargo, other than a portable building unit, that is manufactured, assembled, or distributed by a portable building unit manufacturer and is transported in combination with a portable building unit.

(54) Portable building unit--The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled, or kit (unassembled) configuration when loaded for transport.

(55) Principal--The person, firm, or corporation that is insured by a surety bond company.

(56) Recyclable materials--Material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recycled material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(57) Shipper--Person who consigns the movement of a shipment.

(58) Shipper's certificate of weight--A form approved by the department in which the shipper certifies to the maximum weight of the shipment being transported.

(59) Single axle--An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle.

(60) Single-trip permit--A permit issued for an overdimension load for a single continuous movement over a specific route for an amount of time necessary to make the movement.

(61) State highway--A highway or road under the jurisdiction of the Texas Department of Transportation.

(62) State highway system--A network of roads and highways as defined by Transportation Code, §221.001.

(63) Surety bond--An agreement issued by a surety bond company to a principal that pledges to compensate the Texas Department of Transportation for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(64) Tare weight--The empty weight of any vehicle transporting an overdimension load.

(65) Temporary vehicle registration--A 72-hour temporary vehicle registration, 144-hour temporary vehicle registration, or one-trip registration, as defined by Transportation Code, §502.094.

(66) Three-axle group--Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(67) Time permit--A permit issued for a specified period of time under §219.13 of this title (relating to Time Permits).

(68) Traffic control device--All traffic signals, signs, and markings, including their supports, used to regulate, warn, or control traffic.

(69) Trailer mounted unit--An oil well clean-out, drilling, servicing, or swabbing unit mounted on a trailer, constructed as a machine used for cleaning out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(70) Truck--A motor vehicle designed, used, or maintained primarily for the transportation of property.

(71) Truck-tractor--A motor vehicle designed or used primarily for drawing another vehicle:

(A) that is not constructed to carry a load other than a part of the weight of the vehicle and load being drawn; or

(B) that is engaged with a semitrailer in the transportation of automobiles or boats and that transports the automobiles or boats on part of the truck-tractor.

(72) Trunnion axle--Two individual axles mounted in the same transverse plane, with four tires on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

(73) Trunnion axle group--Two or more consecutive trunnion axles whose centers are at least 40 inches apart and which are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(74) Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(75) TxDOT--Texas Department of Transportation.

(76) Unit--Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or oil well swabbing unit.

(77) Unladen lift equipment motor vehicle--A motor vehicle designed for use as lift equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(78) USDOT Number--The United States Department of Transportation number.

(79) Variable load suspension axles--Axles, whose controls must be located outside of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle.

(80) Vehicle--Every device in or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

(81) Vehicle identification number--A unique and distinguishing number assigned to a vehicle by the manufacturer or by the department in accordance with Transportation Code, §501.032 and §501.033.

(82) Vehicle supervision fee--A fee required by Transportation Code, §623.078, paid by the permittee to the department, designed to recover the direct cost of providing safe transportation of a permit load exceeding 200,000 pounds gross weight over a state highway, including the cost for bridge structural analysis, monitoring the progress of the trip, and moving and replacing traffic control devices.

(83) Water Well Drilling Machinery--Machinery used exclusively for the purpose of drilling water wells, including machinery that is a unit or a unit mounted on a conventional vehicle or chassis.

(84) Weight-equalizing suspension system--An arrangement of parts designed to attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load between the axles.

(85) Windshield sticker--Identifying insignia indicating that an over axle/over gross weight tolerance permit has been issued in accordance with Subchapter C of this chapter and Transportation Code, §623.011.

(86) Year--A time period consisting of 12 consecutive months that commences with the "movement to begin" date stated in the permit.

(87) 72-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 72 consecutive hours, as prescribed by Transportation Code, §502.094.

(88) 144-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to

operate at maximum legal weight on a state highway for a period not longer than 144 consecutive hours, as prescribed by Transportation Code, §502.094.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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SUBCHAPTER B. GENERAL PERMITS

43 TAC §§219.11 - 219.17

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.12. Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D.

(a) General. The information in this section applies to single-trip permits issued under Transportation Code, Chapter 623, Subchapter D. The department will issue permits under this section in accordance with the requirements of §219.11 of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(b) Overweight loads.

(1) The maximum weight limits for an overweight permit are specified in §219.11(d).

(2) The applicant shall pay, in addition to the single-trip permit fee of $60, the applicable highway maintenance fee.

(3) The applicant must also pay the vehicle supervision fee (VSF) for a permit issued for an overweight vehicle and load exceeding 200,000 pounds gross weight.

(A) The VSF is $35 if:

(i) the vehicle and load do not exceed 254,300 pounds gross weight;

(ii) there is at least 95 feet of overall axle spacing; and

(iii) the vehicle and load do not exceed maximum permit weight on any axle or axle group, as described in §219.11(d).

(B) The VSF is $500 if:

(i) there is less than 95 feet of overall axle spacing;

(ii) the vehicle and load exceed maximum permit weight on any axle or axle group, as described in §219.11(d); or

(iii) the vehicle and load exceed 254,300 pounds gross weight. However, for a vehicle and load described in this subparagraph, the VSF is reduced from $500 to $100 if no bridges are crossed, and the VSF is reduced from $500 to $35 for an additional identical load that is to be moved over the same route within 30 days of the movement date of the original permit.

(C) An applicant must pay the VSF at the time of permit application in order to offset department costs for analyses performed in advance of issuing the permit. A request for cancellation must be in writing and received by the department prior to collection of the structural information associated with the permit application. If the application is canceled, the department will return the vehicle supervision fee.

(4) An applicant applying for a permit to move a load that is required for the fulfillment of a fixed price public works contract that was entered into prior to the effective date of this section, and administered by federal, state, or local governmental entities, will not be required to pay the vehicle supervision fee, provided the applicant presents proof of the contract to the department prior to permit issuance.

(5) When the department has determined that a permit can be issued for an overdimension load exceeding 200,000 pounds gross weight, all remaining fees are due at the time the permit is issued.

(6) The department will not charge an analysis fee for single and multiple box culverts.

(7) An applicant requesting a permit to move an overdimension load that is between 200,001 and 254,300 pounds total with less than 95 feet overall axle spacing, or is over the maximum permitted weight on any axle or axle group, or is over 254,300 pounds gross weight, or the weight limits described in §219.11(d), must submit the following items to the department to determine if the permit can be issued:

(A) a detailed loading diagram which indicates the number of axles, the number of tires on each axle, the tire size on each axle, the distance between each axle, the tare and gross weight on each axle, the transverse spacing of each set of dual wheels, the distance between each set of dual wheels, the load's center of gravity, the distance from the center of gravity to the center of the front bolster, the distance from the center of gravity to the center of the rear bolster, the distance from the center of the front bolster to the center of the fifth wheel of the truck, the distance from the center of the rear bolster to the center of the closest axle, and any other measurements as may be needed to verify that the weight of the overdimension load is adequately distributed among the various axle groups in the amounts indicated by the loading diagram;

(B) a map indicating the exact beginning and ending points relative to a state highway;

(C) a copy of the signed contract indicating that the applicant has been retained to transport the shipment;

(D) the vehicle supervision fee as specified in paragraph (3) of this subsection; and

(E) the name, phone number, and fax number of the applicant's licensed professional engineer who has been approved by the department.

(8) The department will select a tentative route based on the physical size of the overdimension load excluding the weight. The tentative route must be investigated by the applicant, and the department

must be advised, in writing, that the route is capable of accommodating the overdimension load.

(9) Before the permit is issued, the applicant's TxDOT approved licensed professional engineer shall submit to the department and TxDOT a written certification that includes a detailed structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on the travel route are capable of sustaining the load. The certification must be approved by TxDOT and submitted to the department before the permit will be issued.

(10) A permit may be issued for the movement of oversize and overweight self-propelled off road equipment under the following guidelines.

(A) The weight per inch of tire width must not exceed 650 pounds.

(B) The rim diameter of each wheel must be a minimum of 25 inches.

(C) The maximum weight per axle must not exceed 45,000 pounds.

(D) The minimum spacing between axles, measured from center of axle to center of axle, must not be less than 12 feet.

(E) The equipment must be moved empty.

(F) The equipment must be licensed with a machinery license plate or a one trip registration.

(G) The route will not include any controlled access highway, unless an exception is granted based on a route and traffic study conducted by the department.

(c) Drill pipe and drill collars hauled in a pipe box.

(1) A vehicle or combination of vehicles may be issued a permit under Transportation Code, §623.071, to haul drill pipe and drill collars in a pipe box.

(2) The maximum width must not exceed nine feet.

(3) The axle weight limits must not exceed the maximum weight limits as specified in §219.11(d)(3).

(4) The height and length must not exceed the legal limits specified in Transportation Code, Chapter 621, Subchapter C.

(5) The permit will be issued for a single-trip only. For loads over 80,000 pounds, the applicant must pay the single-trip permit fee, in addition to the highway maintenance fee specified in Transportation Code, §623.077.

(6) The permit is valid only for travel on any farm-to-market and ranch-to-market road, and such road will be specified on the permit; however, the permitted vehicle will not be allowed to cross any load restricted bridge when exceeding the posted capacity of the bridge.

(7) Movement will be restricted to daylight hours only.

(d) Houses and storage tanks.

(1) Unless an exception is granted by the department, approval for the issuance of a permit for a house or storage tank exceeding 20 feet in width will reside with each district engineer, or the district engineer's designee, along the proposed route.

(2) The issuance of a permit for a house or storage tank exceeding 20 feet in width will be based on:

(A) the amount of inconvenience and hazard to the traveling public, based on traffic volume;

(B) highway geometrics and time of movement; and

(C) the overall width, measured to the nearest inch, of the house, including the eaves or porches.

(3) A storage tank must be empty.

(4) The proposed route must include the beginning and ending points on a state highway.

(5) A permit will not be issued for a newly constructed house or storage tank that exceeds 34 feet overall width unless an exception is granted by the department based on a route and traffic study.

(6) A permit will not be issued for the relocation of an existing house or storage tank that exceeds 40 feet overall width, unless an exception is granted by the department based on a route and traffic study.

(7) A permit may be issued for the movement of an overweight house provided:

(A) the applicant completes and submits to the department a copy of a diagram for moving overweight houses, as shown in Figure: 43 TAC §219.12(e) of this section;

(B) each support beam, parallel to the centerline of the highway, is equipped with an identical number of two axle groups which may be placed directly in line and across from the other corresponding two axle group or may be placed in a staggered offset arrangement to provide for proper weight distribution;

(C) that, when a support beam is equipped with two or more two axle groups, each two axle group is connected to a common mechanical or hydraulic system to ensure that each two axle group shares equally in the weight distribution at all times during the movement; and when the spacing between the two axle groups, measured from the center of the last axle of the front group to the center of the first axle of the following group, is eight feet or more, the front two axle group is equipped for self-steering in a manner that will guide or direct the axle group in turning movements without tire scrubbing or pavement scuffing; and

(D) the department conducts a detailed analysis of each structure on the proposed route and determines the load can be moved without damaging the roads and bridges.

(8) The department may waive the requirement that a loading diagram be submitted for the movement of an overweight house if the total weight of all axle groups located in the same transverse plane across the house does not exceed the maximum weight limits specified in §219.11(d)(2).

(e) Diagram for moving overweight houses. The following Figure: 43 TAC §219.12(e) indicates the type of diagram that is to be completed by the permit applicant for moving an overweight house. All measurements must be stated to the nearest inch.

Figure: 43 TAC §219.12(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.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §219.30

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

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Texas Department of Motor Vehicles
Effective date: June 28, 2015
Proposal publication date: March 6, 2015
For further information, please call: (512) 465-5665

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SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

43 TAC §§219.41 - 219.45

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.44. Annual Permits.

(a) General information. Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(1) Annual self-propelled oil well servicing unit permits.

(A) A unit that does not exceed legal size and weight limits and is registered with a permit plate must purchase an annual permit issued under this section.

(B) The fee for an annual self-propelled oil well servicing unit permit is $52 per axle. The indirect cost share is included in this fee.

(2) Annual oil field rig-up truck permits.

(A) An oil field rig-up truck permitted under this section must not exceed:

(i) legal height or length limits, as provided in Transportation Code, Chapter 621, Subchapter C;

(ii) 850 pounds per inch of tire width on the front axle;

(iii) 25,000 pounds on the front axle; or

(iv) legal weight on all other axles.

(B) An oil field rig-up truck, operating under an annual permit, must be registered in accordance with Transportation Code, Chapter 502.

(C) The annual permit fee for an oil field rig-up truck is $52. The indirect cost share is included in this fee.

(D) An annual permit for an oil field rig-up truck allows the unit to travel at night, provided the unit does not exceed nine feet in width.

(3) A permit issued under this section may not be amended.

(4) A permit issued under this section allows travel on a statewide basis and on all state maintained highways.

(b) Permit application and issuance.

(1) Initial permit application. An applicant for an annual permit under this section must submit a completed application by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(A) name and address of applicant;

(B) make and model of the unit;

(C) vehicle identification number of the unit;

(D) license plate number of the unit;

(E) size and weight dimensions; and

(F) any other information required by law.

(2) Permit issuance. Upon receipt of the application and the appropriate fees, the department will provide the permit to the applicant if requested, and will also provide a renewal application form to the applicant.

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 June 8, 2015.

TRD-201502155

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: June 28, 2015
Proposal publication date: March 6, 2015
For further information, please call: (512) 465-5665

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SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

43 TAC §§219.61 - 219.64

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

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 June 8, 2015.

TRD-201502158
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: June 28, 2015
Proposal publication date: March 6, 2015
For further information, please call: (512) 465-5665

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SUBCHAPTER F. COMPLIANCE

43 TAC §219.82

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

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 June 8, 2015.

TRD-201502159
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: June 28, 2015
Proposal publication date: March 6, 2015
For further information, please call: (512) 465-5665

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SUBCHAPTER H. ENFORCEMENT

43 TAC §§219.124 - 219.126

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

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 June 8, 2015.

TRD-201502160
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: June 28, 2015
Proposal publication date: March 6, 2015
For further information, please call: (512) 465-5665

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 209, §§209.1 - 209.3, 209.10, 209.11, 209.30, and 209.31, concerning Minimum Standards for Meetings Held by Videoconference. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register.* Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rules by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201502068
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: June 4, 2015

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The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 210, §§210.1 - 210.3, 210.30 - 210.36, and 210.54, concerning State Electronic Internet Portal. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register.* Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rules by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201502069
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: June 4, 2015

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The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 212, §§212.1, 212.10 - 212.12, 212.20 - 212.23, and 212.30 - 212.33, concerning Purchase of Commodity Items. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register.* Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rules by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201502070
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: June 4, 2015

♦ ♦ ♦

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 217, §§217.1 - 217.3, 217.10, 217.11, 217.30, and 217.31, concerning Procurement of Information Resources. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039.

The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rules by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201502071
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: June 4, 2015

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Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) files this notice of intent to review 43 TAC Chapter 215, Motor Vehicle Distribution. This review is conducted pursuant to Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules. The department's review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

The department is conducting this rule review in conjunction with proposing amendments and repeals, which are published in the Proposed Rules section of this issue of the *Texas Register*.

Comments regarding this rule review may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on July 20, 2015.

TRD-201502118
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: June 5, 2015

♦ ♦ ♦

Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board (Agency) files this notice of intent to review Title 31, Part 17, Chapter 520, Subchapter B, §§520.11 - 520.13, Requirements to Receive State Funds or Administer State Programs, of the Texas Administrative Code (TAC) in accordance with the Texas Government Code, §2001.039. The Agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the Agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by email to risom@tsswcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-201502145
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: June 5, 2015

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Adopted Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

In accordance with Texas Government Code §2001.039, the Commission on State Emergency Communications (CSEC) has concluded its review of its Chapter 254 rules and readopts with amendment §§254.1 - 254.4.

CSEC's notice of intent to review its Chapter 254 rules was published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 9078). The review assessed whether the reasons for originally adopting the rules continue to exist. CSEC reviewed each rule in Chapter 254 and determined that for those rules being readopted without amendment that the original reasoned justification for the rules continues to exist and is within the agency's legal authority as certified by legal counsel. For those rules being adopted or proposed with amendments, CSEC has provided with each its reasoned justification and certification of legal authority.

No comments were received regarding CSEC's notice of review. This notice concludes CSEC's review of its Chapter 254 rules.

TRD-201502146
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: June 8, 2015

♦ ♦ ♦

In accordance with Texas Government Code §2001.039, the Commission on State Emergency Communications (CSEC) has concluded its review of its Chapter 255 rules and readopts without amendment §255.1. CSEC readopts new §255.2 and §255.3 (adopted in the November 14, 2014, issue of the *Texas Register* (39 TexReg 8959)). CSEC adopted the repeal of §§255.5, 255.7 and 255.8 (November 14, 2014, issue of the *Texas Register* (39 TexReg 8959)).

CSEC's notice of intent to review its Chapter 255 rules was published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3991). The review assessed whether the reasons for originally adopting the rules continue to exist. CSEC reviewed each rule in Chapter 255 and determined that for those rules being readopted without amendment that the original reasoned justification for the rules continues to exist and is within the agency's legal authority as certified by legal counsel.

No comments were received regarding CSEC's notice of review. This notice concludes CSEC's review of its Chapter 255 rules.

TRD-201502147
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: June 8, 2015

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Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) files this notice of readoption of 43 TAC Chapter 206, Management, pursuant to Government Code, §2001.039. Notice of the department's intention to review was published in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1111).

As a result of the review, the department determined that the reasons for initially adopting rules under Subchapters A - G continue to exist, but that amendments to certain rules are necessary. The department further determined that the reasons for initially adopting Subchapter B, §206.21 and Subchapter E, §206.91 no longer exist.

No comments on the proposed review were received.

The department is also publishing in the Adopted Rules and Withdrawn Rules sections of this issue of the *Texas Register,* the adoption of various amendments and repeals under Chapter 206, as well as the withdrawal of the proposed repeal of Subchapter D.

This concludes the review of Chapter 206, Management.

TRD-201502078
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: June 5, 2015

♦ ♦ ♦


Alexander Moore
3rd Grade

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 22 TAC §102.1

SCHEDULE OF FEES

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	84th Leg - SB 195	Total Fee
DENTIST								
Application by Exam	$215.00	$200.00	$5.00	$7.00	$5.00	$55.00	$13.00	~~$475.00~~ $500.00
Annual Renewal	$150.00	$200.00	~~$10.00~~ $4.00	~~$9.00~~ $7.00	$1.00	$55.00	$13.00	~~$425.00~~ $430.00
Annual Renewal - Late 1 to 90 days	$225.00	$200.00	~~$10.00~~ $4.00	~~$9.00~~ $7.00	$1.00	$55.00	$13.00	~~$500.00~~ $505.00
Annual Renewal - Late 90 to 365 days	$300.00	$200.00	~~$10.00~~ $4.00	~~$9.00~~ $7.00	$1.00	$55.00	$13.00	~~$575.00~~ $580.00
Licensure by Credentials	$2,800.00	$200.00	$5.00	$7.00	$5.00	$55.00	$13.00	~~$2855.00~~ $3085.00
Temporary Licensure by Credentials	$750.00	$200.00	$5.00	$7.00	$5.00	$55.00	$13.00	~~$750.00~~ $1035.00
Provisional License	$100.00							$100.00
Faculty Initial Application	$115.00		$4.00	$7.00	$5.00	$55.00	$13.00	~~$120.00~~ $199.00
Faculty Annual Renewal	$95.00		~~$10.00~~ $3.00	~~$9.00~~ $7.00	$1.00	$55.00	$13.00	~~$115.00~~ $174.00
Faculty Annual Renewal - Late 1 to 90 days	$142.50		~~$10.00~~ $3.00	~~$9.00~~ $7.00	$1.00	$55.00	$13.00	~~$162.50~~ $221.50
Faculty Annual Renewal - Late 90 to 365 days	$190.00		~~$10.00~~ $3.00	~~$9.00~~ $7.00	$1.00	$55.00	$13.00	~~$210.00~~ $269.00
Conversion Fee - Faculty to Full Privilege	$50.00							$50.00
Nitrous Oxide and Level 1 Anesthesia Application	$32.00							$32.00
Nitrous Oxide and Level 1 Anesthesia Annual Renewal	$10.00							$10.00
Level 2 thru Level 4 Anesthesia Application	$60.00							$60.00
Level 2 thru Level 4 Anesthesia Annual Renewal	$10.00							$10.00
Portability of Anesthesia Level 3 thru Level 4 Application	$120.00							$120.00
Application to Reactivate a Retired License	$75.00							$75.00
Reinstatement of a Canceled Dental Licesne	~~$850.00~~ $860.00							~~$850.00~~ $860.00
Duplicate License / Renewal	$25.00							$25.00

SCHEDULE OF FEES

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	84th Leg - SB 195	Total Fee
Conversion Fee - Full Privilege to Faculty	$50.00							$50.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$2,050.00	$200.00	$5.00	$7.00	$5.00	$55.00	$13.00	~~$2105.00~~ $2335.00
DENTAL HYGIENIST								
Application by Exam	$115.00		$4.00	$2.00	$5.00			~~$120.00~~ $126.00
Annual Renewal	$100.00		~~$6.00~~ $3.00	$2.00	$1.00			~~$109.00~~ $106.00
Annual Renewal - Late 1 to 90 days	$150.00		~~$6.00~~ $3.00	$2.00	$1.00			~~$159.00~~ $156.00
Annual Renewal - Late 90 to 365 days	$200.00		~~$6.00~~ $3.00	$2.00	$1.00			~~$209.00~~ $206.00
Licensure by Credentials	$630.00		$4.00	$2.00	$5.00			~~$630.00~~ $641.00
Temporary Licensure by Credentials	$220.00		$4.00	$2.00	$5.00			~~$220.00~~ $231.00
Faculty Initial Application	$115.00		$4.00	$2.00	$5.00			~~$120.00~~ $126.00
Faculty Annual Renewal	$83.00		~~$6.00~~ $3.00	$2.00	$1.00			~~$92.00~~ $89.00
Faculty Annual Renewal - Late 1 to 90 days	$124.50		~~$6.00~~ $3.00	$2.00	$1.00			~~$133.50~~ $130.50
Faculty Annual Renewal - Late 90 to 365 days	$166.00		~~$6.00~~ $3.00	$2.00	$1.00			~~$175.00~~ $172.00
Conversion Fee - Faculty to Full Privilege	$50.00							$50.00
Application to Reactivate a Retired License	$75.00							$75.00
Reinstatement of a Canceled Dental Hygiene License	~~$218.00~~ $212.00							~~$218.00~~ $212.00
Duplicate License / Renewal	$25.00							$25.00
Nitrous Oxide Cons Sed Monitoring Application	$12.00							$12.00
Nitrous Oxide Monitoring Duplicate Certificate	$10.00							$10.00
Conversion Fee - Full Privilege to Faculty	$50.00							$50.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$410.00		$4.00	$2.00	$5.00			~~$410.00~~ $421.00

SCHEDULE OF FEES

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	**84th Leg - SB 195**	Total Fee
DENTAL ASSISTANT								$0.00
Initial Application	$31.00				$5.00			$36.00
Annual Renewal	$29.00		$2.00		$1.00			$32.00
Annual Renewal - Late 1 to 90 days	$43.50		$2.00		$1.00			$46.50
Annual Renewal - Late 90 to 365 days	$58.00		$2.00		$1.00			$61.00
Duplicate License / Renewal	$25.00							$25.00
Pit and Fissure Sealant Application	$30.00							$30.00
Pit and Fissure Sealant Renewal	$18.00							$18.00
Duplicate Pit Fissure Certificate	$15.00							$15.00
Nitrous Oxide Cons Sed Monitoring Application	$12.00							$12.00
Nitrous Oxide Monitoring Duplicate Certificate	$10.00							$10.00
Coronal Polishing Application	$12.00							$12.00
Duplicate Coronal Polishing Certificate	$10.00							$10.00
DENTAL LABORATORIES								
Application	$120.00				$5.00			$125.00
Annual Renewal	$131.00		~~$3.00~~ **$4.00**		$1.00			~~$135.00~~ **$136.00**
Annual Renewal - Late 1 to 90 days	$196.50		~~$3.00~~ **$4.00**		$1.00			~~$200.50~~ **$201.50**
Annual Renewal - Late 90 to 365 days	$262.00		~~$3.00~~ **$4.00**		$1.00			~~$266.00~~ **$267.00**
Duplicate Certificate	$25.00							$25.00
OTHER								
Mobile Application	$120.00							$120.00

SCHEDULE OF FEES

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	**84th Leg - SB 195**	Total Fee
Annual Mobile Renewal	$60.00							$60.00
Duplicate Certificate Mobile Certificate	$15.00							$15.00
Dentist Intern / Resident Prescription Privileges	$50.00						**$13.00**	~~$50.00~~ **$63.00**
Dental Assistant Course Provider	$100.00							$100.00
Jurisprudence	~~$55.00~~ **$54.00**							~~$55.00~~ **$54.00**
Licensure Verification without Seal	$4.00							$4.00
Licensure Verification with Seal	$9.00							$9.00
Criminal History Letter	$25.00							$25.00
Printed Copy - Rules and Regulations	$20.00							$20.00
Printed Copy - TX Occupations Code - Dental Practice Act	$15.00							$15.00
Printed Consumer Signage	$5.00							$5.00
Board Scores	$10.00							$10.00

Figure: 30 TAC §101.300(14)

$$E_H = \frac{(A_1 \times ER_1) + (A_2 \times ER_2)}{2}$$

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)

$$EC = A \times \left(ER_p - ER_r\right)$$

Where:

EC = The amount of emission credits needed.

A = The maximum projected annual activity level during use period.

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)

$$ECs = \left[\sum_{i=1}^{N}\left(H_n \times R_n\right) - \sum_{i=1}^{N}\left(H_i \times R_i\right)\right] \times \frac{365}{2000}$$

Where:

ECs = The amount of emission credits needed.

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 discrete emission reduction credits generated in tenths of a ton.

SA = Strategy activity, which is the facility's level of activity during the discrete emission reduction credit generation period.

BER = The facility's baseline emission rate, which is the lowest of the emission rate used in the historical adjusted emissions or the state implementation plan emissions.

SER = The facility's emission rate during the discrete emission reduction credit generation period.

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)

$$DECs = (ELA) \times (EER - RER)$$

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)(2)(A)

$$DECs = (ALA) \times (AER - RER)$$

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)(2)(B)

$$DECs = (ALA - PLA) \times (AER)$$

Where:

ALA = actual level of activity

PLA = permitted level of activity

AER = permitted emission rate per unit activity

Figure: 30 TAC §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)

VOLATILE ORGANIC COMPOUND (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 of VOC 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)

$0.9\ (0.8\ (TC_1 + TC_2 + \ldots)) \geq (ER_{TC1})\ (TC_1) + (ER_{TC2})\ (TC_2) + \ldots)$ (Inequality 1)

$0.9\ \{1.8\ (TC_1 + TC_2 + \ldots)\} + \{1.9\ (SE_1 + SE_2 + \ldots)\} +$ (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)

$$V_s = \frac{1 - (m_{volatiles})}{D_{avg}} \quad \text{(Equation 2)}$$

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 §115.453(a)(1)(E)

Table 1.

Automotive/Transportation Coating Category	Pounds of volatile organic compounds (VOC) per gallon coating	Pounds of VOC 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 VOC per gallon coating	Pounds of VOC 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 §115.473(a)

Table 1.

General Adhesive Application Processes	Pounds of volatile organic compounds (VOC) 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 VOC 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 VOC 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;

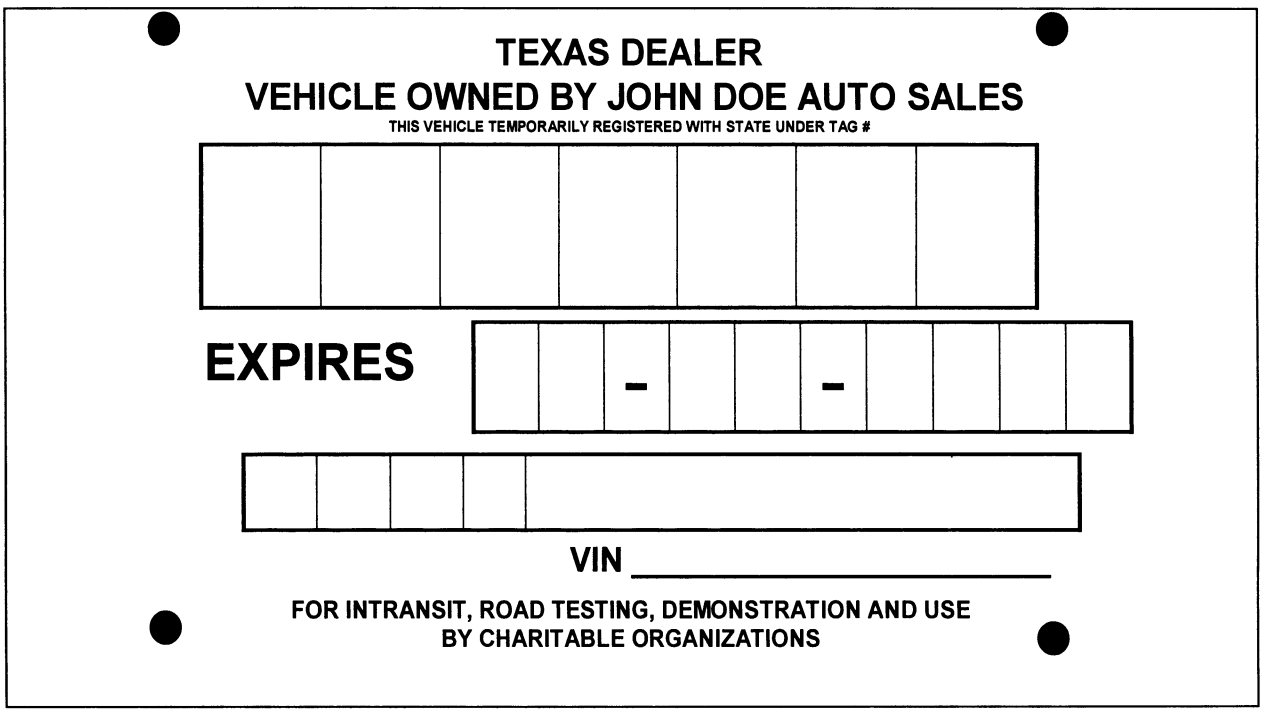
i = each lime kiln at the site;

N = the total number of kilns at the site; and

PR_i = production rate of calcium oxide for kiln i, tons/day.

Figure: 43 TAC §215.153(c)(2)(A)

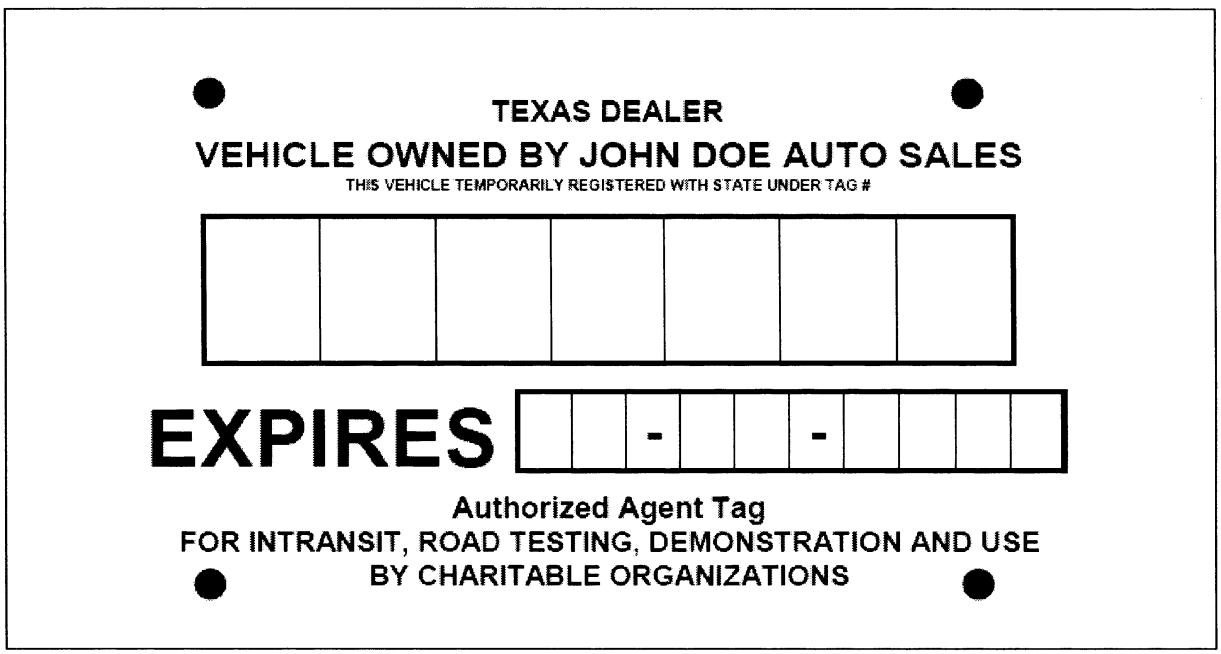
APPENDIX A-1



DEALER'S TEMPORARY [~~DEALER~~] TAG – ASSIGNED TO SPECIFIC VEHICLE

Figure: 43 TAC §215.153(c)(2)(B)

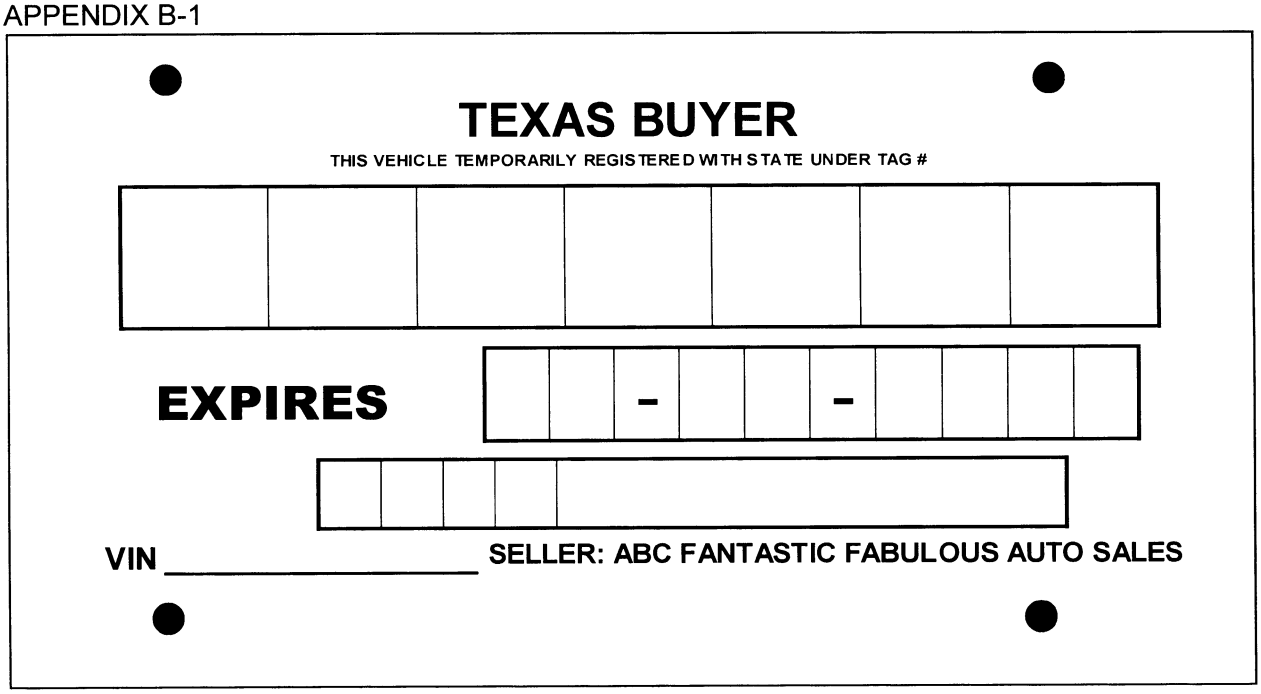
APPENDIX A-2



DEALER'S TEMPORARY [~~DEALER~~] TAG – ASSIGNED TO AGENT

Figure: 43 TAC §215.153(c)(2)(C)

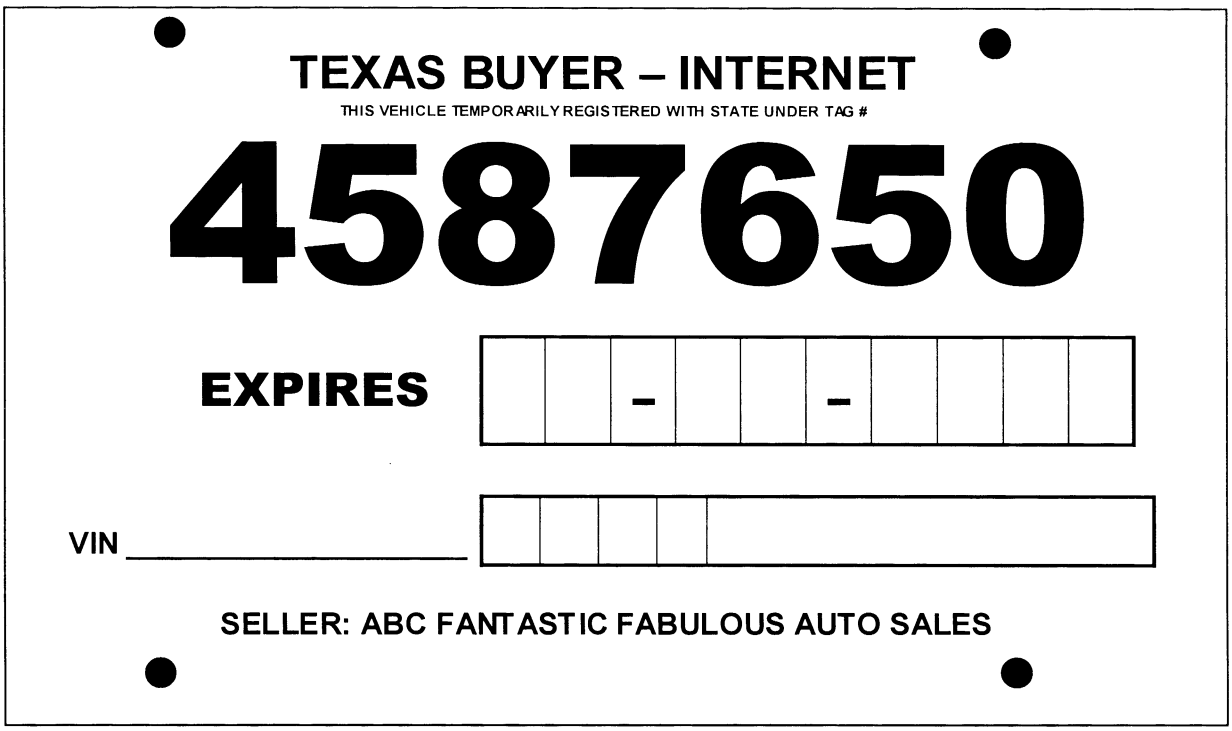
APPENDIX B-1



BUYER'S TEMPORARY TAG

Figure: 43 TAC §215.153(c)(2)(D)

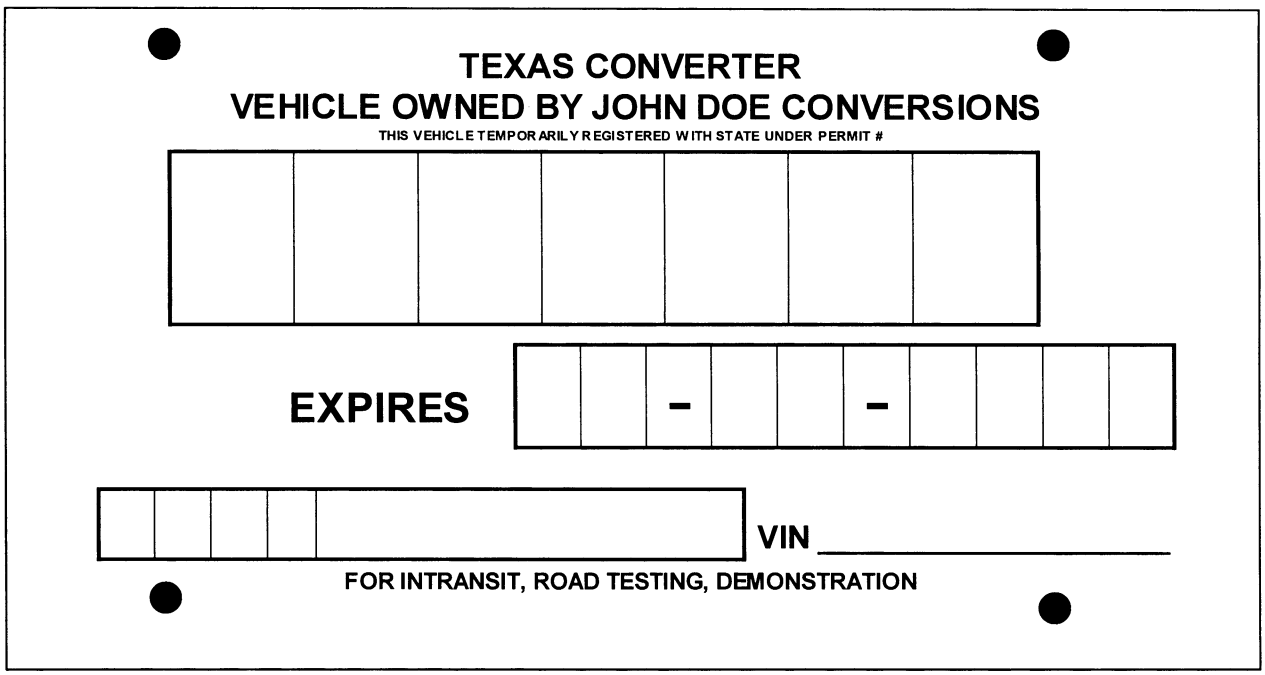
APPENDIX B-2



PREPRINTED INTERNET-DOWN TEMPORARY [~~INTERNET-DOWN BUYER'S~~] TAG

Figure: 43 TAC §215.153(c)(2)(E)

APPENDIX C-1



CONVERTER'S TEMPORARY [~~CONVERTER~~] TAG

Figure: 43 TAC §215.250(h)(1)

Dealer Discount with Sales Price:	
MSRP	$20,000
Less Dealer Discount	1,000
Sales [~~Sale~~] Price	$19,000

Dealer Discount without Sales Price:
"$1,000 Discount Off MSRP"

Figure: 43 TAC §215.250(h)(2)

Manufacturer's Customer Rebate with Sales Price:	
Advertised Price	$18,000
Less Rebate	500
Sales [~~Sale~~] Price	$17,500

Manufacturer's Customer Rebate without Sales Price:
"$500 Rebate Off MSRP"

Figure: 43 TAC §215.250(h)(3)

Manufacturer's Customer Rebate and Dealer Discount with Sales Price:	
MSRP	$20,000
Less Rebate	500
Less Dealer Discount	500
Sales [~~Sale~~] Price	$19,000

Manufacturer's Customer Rebate and Dealer Discount without Sales Price:
"$1,000 Savings Off MSRP ($500 Rebate and $500 Dealer Discount)

Figure: 43 TAC §215.250(i)

Manufacturer's Option Package Discount with Sales Price:	
Total Motor Vehicle Plus Options	$10,995
Option Package Discount	1,000
MSRP	9,995
Less Rebate	500
Less Dealer Discount	500
Sales [~~Sale~~] Price	$8,995

Manufacturer's Option Package Discount without Sales Price:
"Total Savings $2,000 ($1,000 Option Package Discount; $500 rebate, and $500 dealer discount off MSRP)"

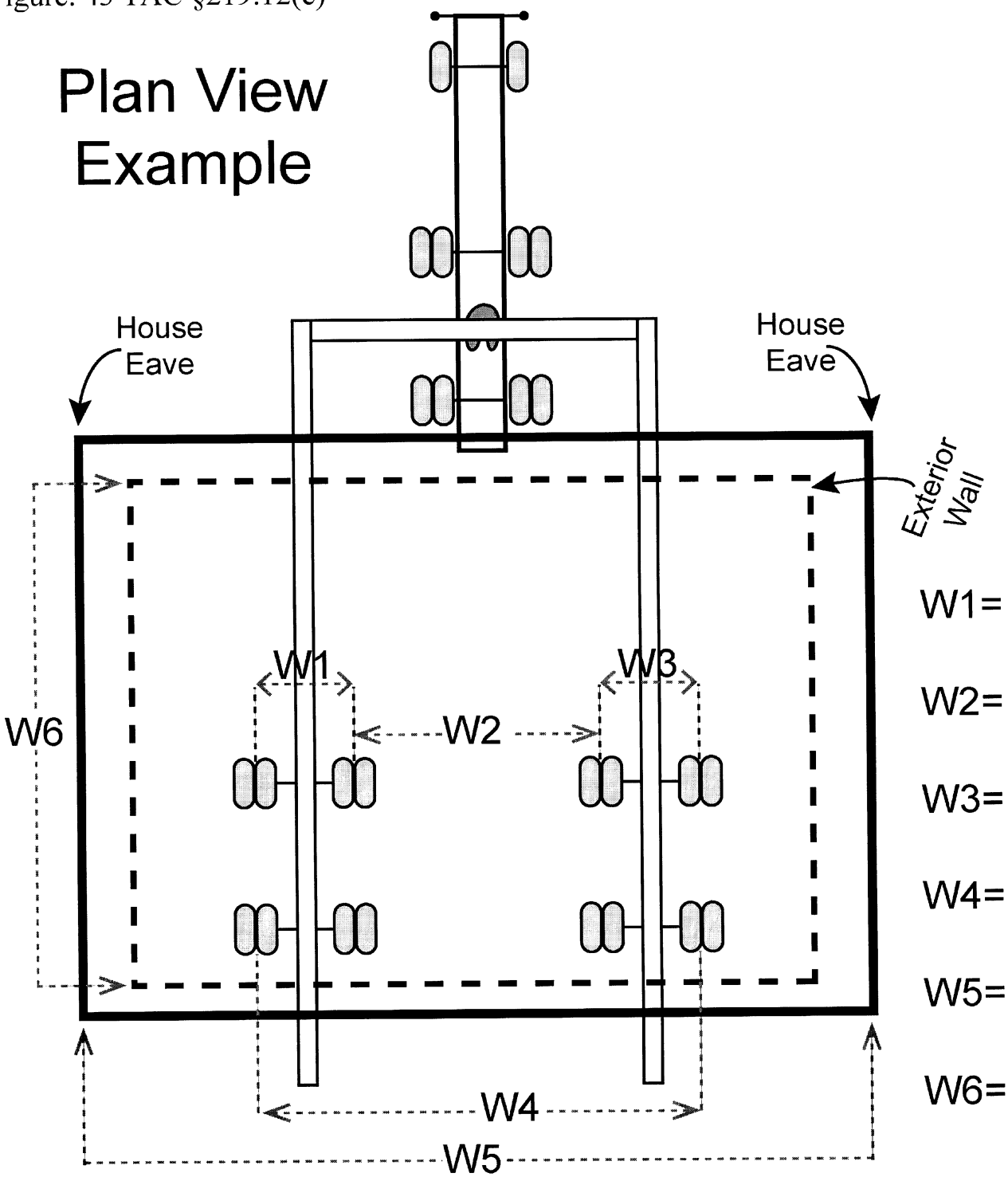
Figure: 43 TAC §215.250(j)

Limited Rebate with Sales Price:	
MSRP	$10,995 [~~$9.995~~]
Less Rebate	1000 [~~500~~]
Less Dealer Discount	1000 [500]
Sales [~~Sale~~] Price	$8,995

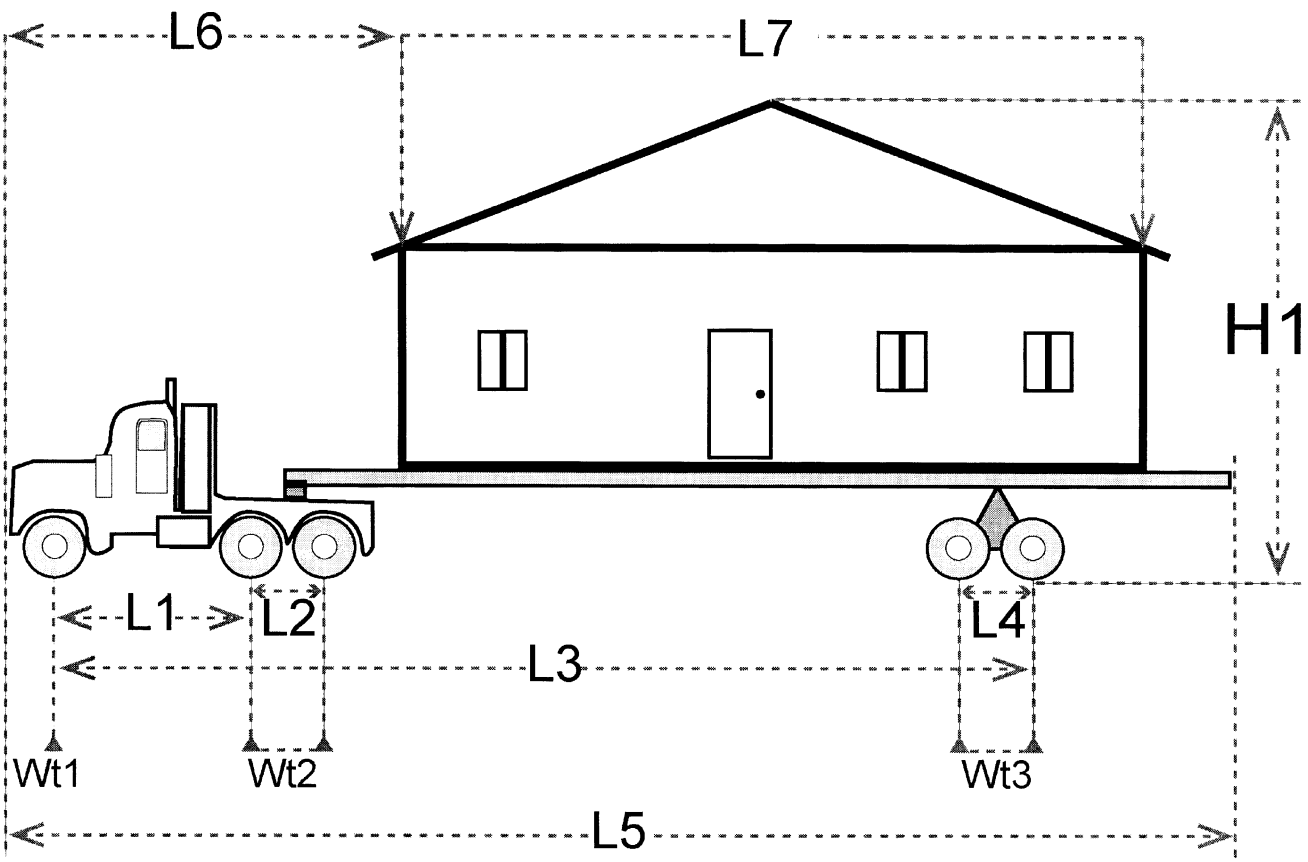
FIRST TIME BUYERS RECEIVE ADDITIONAL $500 OFF

Limited Rebate without Sales Price:	
Save $5,000 Off MSRP	Save $6,000 Off MSRP w/$1,000 Additional Owner Loyalty Cash*
Savings includes $2,000 rebate and $3,000 dealer discount	*Loyalty cash available to current owners of a 2010 or newer model year (xyz) motor vehicle. You must show proof of ownership. Trade-in not required.

Figure: 43 TAC §219.12(e)



Side View Example



L1= L2= L3= L4= L5= L6= L7= H1=

Weight (Wt) Per Dolly Wt1= Wt2= Wt3=

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2015

A one percent local sales and use tax will become effective July 1, 2015 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Sandy Oaks (Bexar Co)	2015263	.015000	.077500

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished, effective June 30, 2015, in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Garrett (Ellis Co)	2070130	.010000	.072500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government code, Type B Corporations (4B) will become effective July 1, 2015 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Kendleton (Fort Bend Co)	2079088	.015000	.077500

TRD-201502150
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: June 8, 2015

♦ ♦ ♦

Notice of Contract Award

The Texas Comptroller of Public Accounts announces this notice of awards for Transition Management Services for the Texas Prepaid Higher Education Tuition Board. The Request for Proposals 206i was published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8451).

Two contracts were awarded:

State Street Bank and Trust Company, State Street Financial Center, 1 Lincoln Street, Boston, MA 02111. The compensation for the contract are fees and commissions to be paid as agreed to in each transition notice executed under the contract. The term of the contract is January 13, 2015 through August 31, 2016, with option to renew for up to three (3) additional one (1) year periods, one (1) year at a time.

Northern Trust Investments Inc., 50 South LaSalle Street, Chicago, IL 60603. The compensation for the contract are fees and commissions to be paid as agreed to in each transition notice executed under the contract. The term of the contract is June 3, 2015 through August 31, 2016, with option to renew for up to three (3) additional one (1) year periods, one (1) year at a time.

TRD-201502184
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 10, 2015

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/15/15 - 06/21/15 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/15/15 - 06/21/15 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201502168
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 9, 2015

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning 2015-2020 Texas Title I Priority Schools Grant, Cycle 4

Filing Date. June 10, 2015

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-15-107 is authorized as the School Improvement Grants program by P.L. 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Section 1003(g).

The U.S. Department of Education (USDE) published final requirements for the School Improvement Grants program in the *Federal Register* on October 28, 2010 (http://www.gpo.gov/fdsys/pkg/FR-2010-10-28/pdf/2010-27313.pdf). In 2015, the USDE revised the final requirements to implement language in the Consolidated Appropriations Act, 2014, and the Consolidated and Further Continuing Appropriations Act, 2015.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-15-107 from campuses that qualify as Title I priority schools and Title I focus schools and are not currently receiving Texas Title I Priority Schools (TTIPS) funds.

Campuses are identified as priority and focus in the state of Texas flexibility waiver from specific provisions from the USDE Elementary and Secondary Education Act. A list of campuses identified as priority or focus is posted on the TEA Grant Opportunities web page at http://burleson.tea.state.tx.us/GrantOpportunities/forms with all documents pertaining to this RFA.

Description. The purpose of the 2015-2020 Texas Title I Priority Schools Grant is to provide funding to local education agencies (LEAs) for use in eligible schools in order to substantially raise the achievement of their students and enable the schools to meet annual goals and program-term measurable objectives. Funding is intended for LEAs that demonstrate the greatest need for the funds and the strongest commitment to provide adequate resources to support schools in meeting the criteria to exit priority or focus status.

The TTIPS grant program strives to achieve lasting positive reforms in the state's most struggling campuses through highest-quality implementation of strong evidence-based interventions. These interventions are designed within a framework of one of seven school reform models.

The LEA must describe how it will use school improvement funds in its priority/focus schools to plan and effectively implement one of the following school reform models:

1. Transformation model, which addresses specific areas critical to transforming persistently lowest-achieving schools;

2. Texas state-design model, in which the campus must deliver a comprehensive school improvement strategy, implemented for all students in the school, consistent with the Texas concept for developing an Early College High School (ECHS). In doing so, the LEA/campus will (1) pursue designation as a Texas ECHS, with a target of earning TEA ECHS designation and full operation as an ECHS no later than the start of the second year of the TTIPS grant implementation period; (2) create an innovative high school that enables students to graduate with a high school diploma and an associate degree or high school diploma and 60 college credit hours toward a baccalaureate degree; and (3) provide college credit earned through the high school years for all students at no cost, including tuition, fees, and textbook costs;

3. Early learning intervention model, in which a campus addresses specific areas critical to transforming a persistently low-achieving elementary school and additionally offers full-day kindergarten and a pre-kindergarten program that meets the requirements of a high-quality preschool program, as defined in the USDE's Preschool Development Grants program;

4. Turnaround model, which includes, among other actions, replacing the principal and rehiring no more than 50% of the school's staff, adopting a new governance structure, and implementing an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with Texas' academic standards;

5. Whole-school reform model, in which the campus must implement an evidence-based whole-school reform in partnership with a model developer. The model developer is an entity or individual that either has proprietary rights to the model or an entity or individual that has a demonstrated record of success in implementing whole-school reform models in one or more low-achieving schools that are comparable on several variables to the TTIPS applicant;

6. Restart model, in which an LEA converts the school or closes and reopens it under the management of a charter school operator, a charter management organization, or an education management organization that has been selected through a rigorous review process;

7. School closure, in which an LEA closes the school and enrolls the students who attended the school in other, higher-achieving schools within the LEA; or

8. Optional modification: rural LEA applicant flexibility, in which an applicant proposes to modify one element of the Transformation or Turnaround model but only in a manner that the modification meets the original intent and purpose of the element and does not eliminate the element from the resulting implementation plan.

Prospective applicants can see a full description of all elements within each of the school intervention models in the Program Assurances section of the Standard Application System of RFA #701-15-107.

Dates of Project. Applicants should plan for a project that will operate in a pre-implementation period from January 1, 2016, through August 31, 2016; in full implementation during the school years of 2016-2017, 2017-2018, and 2018-2019; and in a sustainability period through the school year of 2019-2020. Funding is available to grantees through all periods.

Pre-award costs are permitted from October 1, 2015, to December 31, 2015.

The timeline for this project is contingent upon the final approval from USDE for the Texas school improvement grant program state plan. Approval is recognized as final on the date a Grant Award Notification is issued from USDE to TEA.

Project Amount. The total amount of funding for this project is approximately $48 million. Each awarded project could receive up to a maximum of $10 million for operation through the school years of 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020. A maximum funding per year for any applicant is $2 million.

This project is funded 100% from federal funds.

Note that funding availability and final terms for this project are contingent upon approval from USDE for the Texas school improvement grant program state plan. Funding and approval are recognized as final on the date a Grant Award Notification is issued from USDE to TEA.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary

objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding.

Applications will be scored using the standard review criteria, as described in TEA Grants Administration General and Fiscal Guidelines at http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/General_and_Fiscal_Guidelines/. In addition to the standard review criteria, applications will be scored on the following grant-specific criteria:

1. Level of ability to benefit from grant resources, as demonstrated through district commitments and vision for school reform and existing structures that will allow reform to take hold;

2. Family and community member involvement in project planning, intervention selection, and ongoing program engagement;

3. Methods for selecting highest-quality staff and external providers for the project and methods for providing rigorous oversight of external providers;

4. Level of capacity gains that will create lasting, positive change to campus practices and can be sustained beyond the grant period; and

5. Quality of intervention design and strength at which interventions fulfill all requirements of the federal School Improvement Grant model selected.

Special consideration (or priority) will be given to certain applicants. TEA will give priority to campuses that have not met state accountability ratings for two or more years as of August 2015 and to campuses that select the state-designed or early-learning model. Twenty priority points will be given to each LEA/campus applying to serve schools that meet any of these criteria.

TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The announcement letter, complete RFA, and additional applicant resources will be posted on the TEA Grant Opportunities web page at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Karyn Gukeisen, Division of Grants Administration, Texas Education Agency, by email at karyn.gukeisen@tea.texas.gov or by telephone at (512) 463-8525.

In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, August 20, 2015, to be eligible to be considered for funding.

TRD-201502180
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: June 10, 2015

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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 July 20, 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 July 20, 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: Adam C. Benefield; DOCKET NUMBER: 2015-0433-LII-E; IDENTIFIER: RN105126312; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: landscape irrigation system; RULES VIOLATED: 30 TAC §344.72(a) and (b), by failing to include the irrigator's seal, irrigator's signature, date, irrigator's name, business address, business telephone number, signature of the homeowner, and TCEQ statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us." on the written warranty; PENALTY: $312; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: California Rock Crushers; DOCKET NUMBER: 2015-0470-AIR-E; IDENTIFIER: RN107801367; LOCATION: Dilley, Frio County; TYPE OF FACILITY: Tier II rock crushers; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization to

construct and operate two rock crushers (Portable Crushers SN412788 and SN199024); PENALTY: $1,925; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: CHOI'S FOUR SEASONS INCORPORATED dba US Mart 109; DOCKET NUMBER: 2015-0362-PST-E; IDENTIFIER: RN105636674; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $33,850; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Ciria Canales dba Bumper to Bumper Auto Repair and Collision Center; DOCKET NUMBER: 2014-1168-AIR-E; IDENTIFIER: RN100816198; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: auto body repair and refinishing shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air emissions; 30 TAC §115.426(1)(A) and (B) and THSC, §382.085(b), by failing to properly maintain records; 30 TAC §115.422(1)(C) and THSC, §382.085(b), by failing to store waste solvents in closed containers; and 30 TAC §115.422(1)(A) and THSC, §382.085(b), by failing to use an enclosed cleaner to clean equipment; PENALTY: $4,156; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: City of Bryson; DOCKET NUMBER: 2015-0612-PWS-E; IDENTIFIER: RN101399699; LOCATION: Bryson, Jack County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $160; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Crystal City; DOCKET NUMBER: 2014-0729-MWD-E; IDENTIFIER: RN101918233; LOCATION: Crystal City, Zavala County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(4), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010098001, Permit Conditions Number 2.d and 2.g., by failing to prevent an unauthorized discharge into or adjacent to water in the state; 30 TAC §305.125(9) and TPDES Permit Number WQ0010098001, Monitoring and Reporting Requirements Number 7.a and 7.b.i, by failing to provide notification to the Laredo Regional Office of a noncompliance within 24 hours of discovery; and 30 TAC §30.350(i) and §305.125(1) and TPDES Permit Number WQ0010098001, Other Requirements Number 1, by failing to employ or contract a chief operator that possesses a license equal to or higher than that of the category of the facility; PENALTY: $12,813; Supplemental Environmental Project offset amount of $10,251; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(7) COMPANY: City of Nome; DOCKET NUMBER: 2015-0410-PWS-E; IDENTIFIER: RN101387843; LOCATION: Nome, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(3)(C)(iii) and (4), by failing to submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter; 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: $805; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Devon Street Homes, L.P.; DOCKET NUMBER: 2015-0788-WQ-E; IDENTIFIER: RN108302118; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: DOSS COMMUNITY IMPROVEMENT CLUB, INC.; DOCKET NUMBER: 2015-0384-PWS-E; IDENTIFIER: RN101265874; LOCATION: Doss, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect a routine distribution water sample for coliform analysis for the month of December 2014; 30 TAC §290.110(e)(4)(A) and (f)(3), and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter for the first quarter of 2014 through the third quarter of 2014 and failed to post public notification and submit a copy of the public notification to the executive director regarding the failure to submit DLQORs for the first and second quarters of 2014; and 30 TAC §290.117(c)(2)(C) and (i)(1), and §290.122(c)(2)(A) and (f), by failing to collect lead and copper samples at the required five sample sites, have the samples analyzed at a TCEQ approved laboratory, and submit the results to the executive director for the January 1, 2012 - December 31, 2014, monitoring period and failed to post public notification and submit a copy of the public notification to the executive director regarding the failure to collect lead and copper samples for the January 1, 2012 - December 31, 2014, monitoring period; PENALTY: $770; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: E.R. Carpenter, L.P.; DOCKET NUMBER: 2014-1890-AIR-E; IDENTIFIER: RN100210830; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O1443, General Terms and Conditions, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1443, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $12,038; Supplemental Environmental Project offset amount of $4,815; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Gilbert W. Herrera; DOCKET NUMBER: 2015-0510-LII-E; IDENTIFIER: RN105688709; LOCATION: Leander, Williamson County; TYPE OF FACILITY: landscape irrigation system; RULES VIOLATED: 30 TAC §30.5(a) and (b), TWC, §37.003, and Texas Occupations Code §1903.251, by failing to hold an irrigator license prior to representing themselves to the public as a holder of an irrigator license; PENALTY: $959; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(12) COMPANY: GOLDEN TRIANGLE PROPERTIES, LLC; DOCKET NUMBER: 2015-0561-AIR-E; IDENTIFIER: RN102509676; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: dry abrasive cleaning and surface coating plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2812, General Terms and Conditions, by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Henry L. Padgett dba Kountry Korner; DOCKET NUMBER: 2015-0210-PST-E; IDENTIFIER: RN101665610; LOCATION: Marquez, Leon 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 system; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Howard T. Nelius dba Coushatte Campground; DOCKET NUMBER: 2015-0411-PWS-E; IDENTIFIER: RN101233054; LOCATION: Bellville, Austin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 5 picoCuries per liter (pCi/L) for combined radium-226 and radium-228 based on the running annual average; and 30 TAC §290.108(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 15 pCi/L for gross alpha particle activity based on the running annual average; PENALTY: $510; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Hydril Company; DOCKET NUMBER: 2014-1389-AIR-E; IDENTIFIER: RN102332673; LOCATION: Houston, Harris County; TYPE OF FACILITY: pipe threading facility and industrial chemical manufacturing; RULES VIOLATED: 30 TAC §§115.421(a)(9)(A)(ii), §116.115(c), and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Number 97967, Special Conditions Number 5, and Federal Operating Permit (FOP) Number O3466, Special Terms and Conditions (STC) Number 1A and 8, by failing to comply with the volatile organic compound emissions specifications for surface coating; 30 TAC §101.376(d)(1)(B)(ii) and §122.143(4), THSC, §382.085(b), and FOP Number O3466, STC Number 13B(i), by failing to submit the Discrete Emission Credits (DEC-2) at least 45 days prior to the first day of the use period; 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O3466, General Terms and Conditions (GTC), by failing to submit the Permit Compliance Certification no later than 30 days after the end of the certification period; 30 TAC §122.210(a) and THSC, §382.085(b), by failing to reference all Permits by Rule within the FOP; and 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O3466, GTC, by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: $15,002; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: James Rosenberg dba Bayview Marina; DOCKET NUMBER: 2015-0263-PST-E; IDENTIFIER: RN102434081; LOCATION: Rowlett, Dallas County; TYPE OF FACILITY: marina with underground storage tank (UST); RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the 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: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: La Casita Holdings Incorporated; DOCKET NUMBER: 2015-0312-MWD-E; IDENTIFIER: RN101528313; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013709001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,950; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2015-0491-PWS-E; IDENTIFIER: RN101376424; LOCATION: Point Blank, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 5 picoCuries per liter for combined radium-226 and radium-228 based on the running annual average; PENALTY: $501; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: MULTI-COUNTY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-0154-PWS-E; IDENTIFIER: RN101428746; LOCATION: Gatesville, Coryell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter (mg/L) for total trihalomethanes, based on the locational running annual average; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(f)(2), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; and 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.5 mg/L total chlorine throughout the distribution system at all times; PENALTY: $838; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Pahuja Orange, LLC aka Alloy Polymers Orange, LLC; DOCKET NUMBER: 2015-0338-IWD-E; IDENTIFIER: RN100590207; LOCATION: Orange, Orange 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 Permit Number WQ0002835000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 002, by failing to comply with permitted effluent limits; PENALTY: $14,000; ENFORCEMENT COORDINATOR: Gregory Zychowski, (832) 401-7445; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: PALO DURO SERVICE COMPANY, INCORPORATED dba Glider Base Estates Public Water Supply; DOCKET NUMBER: 2015-0393-PWS-E; IDENTIFIER: RN102324217; LOCATION: Fort Worth, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; PENALTY: $72; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Rayburn Country Municipal Utility District; DOCKET NUMBER: 2015-0275-PWS-E; IDENTIFIER: RN101213890; LOCATION: Sam Rayburn, Jasper County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from the two active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of December 2013; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number P0949 for calendar years 1996 - 1998; PENALTY: $616; Supplemental Environmental Project offset amount of $493; ENFORCEMENT COORDINATOR: Ryan Byer, (512)239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: RIVERSIDE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-0152-PWS-E; IDENTIFIER: RN101247948; LOCATION: Riverside, Walker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from the 11 active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of March 2014; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $1,035; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Roshan Shrestha dba New Yonkers; DOCKET NUMBER: 2015-0269-PST-E; IDENTIFIER: RN102659786; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: $8,625; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: Taylor Morrison of Texas, Incorporated; DOCKET NUMBER: 2015-0755-WQ-E; IDENTIFIER: RN107802159; LOCATION: Spring, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: U.S. Department of the Interior; DOCKET NUMBER: 2015-0110-IWD-E; IDENTIFIER: RN102076700; LOCATION: Kountze, Hardin County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and §319.11(c) and TCEQ Permit Number WQ0004779000, Monitoring Requirements Number 2, by failing to comply with specified test procedures; 30 TAC §305.125(1) and TCEQ Permit Number WQ0004779000, Special Provisions Number H, by failing to collect and analyze representative soil samples from the root zones of the land application area between December and March of each year and submit the results of the analyses and copies of the laboratory reports to the TCEQ; 30 TAC §305.125(1) and TCEQ Permit Number WQ0004779000, Special Provisions Number G, by failing to take representative soil samples for the irrigation tract and determine the sodium-adsorption ratio once per six months; 30 TAC §305.125(1) and (17) and TCEQ Permit Number WQ0004779000, Conditions of the Permit, by failing to timely submit effluent analyses results to the TCEQ Enforcement Division, TCEQ Industrial Permits Team, and TCEQ Beaumont Regional Office; 30 TAC §305.125(1) and TCEQ Permit Number WQ0004779000, Special Provisions Number I, by failing to indicate whether crayfish mounds exist on the irrigation site during the annual soil sampling operation and report the presence or absence of crayfish mounds to the TCEQ Water Quality Assessment Team, the TCEQ Beaumont Regional Office, and the TCEQ Enforcement Division no later than the end of September of each sampling year; 30 TAC §305.125(1) and TCEQ Permit Number WQ0004779000, Special Provisions Number N, by failing to timely submit a cropping plan to the TCEQ Beaumont Regional Office on an annual basis; and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Division Account Number 0608127R for Fiscal Years 2013 and 2014; PENALTY: $7,600; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: WILSON BUSINESS, INCORPORATED dba All Season Food Store; DOCKET NUMBER: 2015-0404-PST-E; IDENTIFIER: RN104527031; LOCATION: Humble, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request by agency; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once per month; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.6(b)(2) and (4), by failing to submit a construction notification; PENALTY: $5,701; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201502173
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 9, 2015

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Enforcement Orders

An agreed order was entered regarding Roman Forest Consolidated Municipal Utility District, Docket No. 2014-0458-MWD-E on May 27, 2015 assessing $3,412 in administrative penalties with $682 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dalworthington Gardens, Docket No. 2014-1071-WR-E on May 27, 2015 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dooner Organics Inc, Docket No. 2014-1167-MSW-E on May 27, 2015 assessing $3,950 in administrative penalties with $790 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark Stewart, Docket No. 2014-1172-PWS-E on May 27, 2015 assessing $357 in administrative penalties with $71 deferred.

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.

A field citation was entered regarding Scott L. Newland, Docket No. 2014-1183-WQ-E on May 27, 2015 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Petcoke, L.P., Docket No. 2014-1412-IWD-E on May 27, 2015 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 5, Docket No. 2014-1473-MWD-E on May 27, 2015 assessing $6,376 in administrative penalties with $1,275 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Royal Valley Utilities, Inc., Docket No. 2014-1494-MWD-E on May 27, 2015 assessing $4,751 in administrative penalties with $950 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Camp Wood, Docket No. 2014-1549-PWS-E on May 27, 2015 assessing $1,075 in administrative penalties with $215 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Water Control and Improvement District No. 1, Docket No. 2014-1580-MWD-E on May 27, 2015 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2014-1605-AIR-E on May 27, 2015 assessing $7,038 in administrative penalties with $1,407 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 International Paper Company, Docket No. 2014-1617-AIR-E on May 27, 2015 assessing $3,937 in administrative penalties with $787 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 CLARA HILLS CIVIC ASSOCIATION, Docket No. 2014-1652-PWS-E on May 27, 2015 assessing $822 in administrative penalties with $164 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Familia Retail Inc dba Quick N Easy Beverage Barn, Docket No. 2014-1675-PST-E on May 27, 2015 assessing $6,703 in administrative penalties with $1,340 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tasajillo RV Park, LLC and Jackie Don Sparks, Docket No. 2014-1689-OSS-E on May 27, 2015 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W-Industries of Texas, LLC, Docket No. 2014-1690-MWD-E on May 27, 2015 assessing $2,275 in administrative penalties with $455 deferred.

Information concerning any aspect of this order may be obtained by contacting Katelyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Talley Water Supply Corporation, Docket No. 2014-1697-PWS-E on May 27, 2015 assessing $504 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 1977 KINDRED II, L.P., Docket No. 2014-1725-MWD-E on May 27, 2015 assessing $7,187 in administrative penalties with $1,437 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PILOT POINT RURAL WATER SUPPLY, INC., Docket No. 2014-1743-PWS-E on May 27, 2015 assessing $1,275 in administrative penalties with $254 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Canutillo Independent School District, Docket No. 2014-1762-MWD-E on May 27, 2015 assessing $675 in administrative penalties with $135 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Meister Industries, Inc., Docket No. 2014-1771-AIR-E on May 27, 2015 assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUBHA Inc dba S Buckner Mart, Docket No. 2014-1775-PST-E on May 27, 2015 assessing $3,129 in administrative penalties with $625 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jai Maruti Corporation dba Stop and Shop 2, Docket No. 2014-1783-PST-E on May 27, 2015 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAJN ENTERPRISE, INC dba MEO Food Mart, Docket No. 2014-1785-PST-E on May 27, 2015 assessing $2,562 in administrative penalties with $512 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANDERSON WATER COMPANY, INC., Docket No. 2014-1789-PWS-E on May 27, 2015 assessing $919 in administrative penalties with $183 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2014-1795-PST-E on May 27, 2015 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAHIL BUSINESS, INC. dba Stop N Save, Docket No. 2014-1804-PST-E on May 27, 2015 assessing $3,937 in administrative penalties with $787 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ruhan Enterprises, Inc. dba Power Mart 14, Docket No. 2014-1828-PST-E on May 27, 2015 assessing $3,450 in administrative penalties with $690 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leyendecker Oil, Inc. dba Discount Tobacco & Food Mart, Docket No. 2014-1840-PST-E on May 27, 2015 assessing $3,505 in administrative penalties with $701 deferred.

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 City of Austin, Docket No. 2014-1842-EAQ-E on May 27, 2015 assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Danbury, Docket No. 2014-1882-PWS-E on May 27, 2015 assessing $178 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Katelyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angeline Grigar dba Eagle Creek Trailer Park, Docket No. 2014-1902-PWS-E on May 27, 2015 assessing $548 in administrative penalties with $109 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SENTRY DEVELOPMENT, INC. dba FRENCH SENTRY DEVELOPMENT, INC., Docket No. 2015-0012-EAQ-E on May 27, 2015 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARLINGTON LAKESIDE GROCERY & GRILL, INC. dba In & Out Store, Docket No. 2015-0015-PST-E on May 27, 2015 assessing $5,004 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Jayton, Docket No. 2015-0037-PWS-E on May 27, 2015 assessing $135 in administrative penalties with $27 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saddle & Surrey Acres Water Supply Corporation, Docket No. 2015-0042-PWS-E on May 27, 2015 assessing $420 in administrative penalties with $84 deferred.

Information concerning any aspect of this order may be obtained by contacting Katelyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WESTERN PETROLEUM, LLC, Docket No. 2015-0046-PST-E on May 27, 2015 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVIS OIL CO., INC., Docket No. 2015-0050-PST-E on May 27, 2015 assessing $1,043 in administrative penalties with $208 deferred.

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 PHILLIPS & WRIGHT INC dba J & S Quick Stop, Docket No. 2015-0056-PWS-E on May 27, 2015 assessing $154 in administrative penalties with $30 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Express Inc., Docket No. 2015-0075-PST-E on May 27, 2015 assessing $1,356 in administrative penalties with $271 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALTO RURAL WATER SUPPLY CORPORATION, Docket No. 2015-0083-PWS-E on May 27, 2015 assessing $702 in administrative penalties with $140 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Howard C. Bigham dba Key Mobile Home Park, Docket No. 2015-0103-PWS-E on May 27, 2015 assessing $122 in administrative penalties with $24 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-407, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GoPetro Transport LLC, Docket No. 2015-0107-PST-E on May 27, 2015 assessing $1,355 in administrative penalties with $271 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Somervell County Water District, Docket No. 2015-0114-PWS-E on May 27, 2015 assessing $300 in administrative penalties with $60 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COASTAL TRANSPORT CO., INC., Docket No. 2015-0145-PST-E on May 27, 2015 assessing $1,231 in administrative penalties with $246 deferred.

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.

An agreed order was entered regarding FRED GARRISON OIL COMPANY, Docket No. 2015-0161-PST-E on May 27, 2015 assessing $913 in administrative penalties with $182 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TASNIA CORPORATION dba Burkburnett Convenience Store, Docket No. 2015-0178-PST-E on May 27, 2015 assessing $2,438 in administrative penalties with $487 deferred.

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 COLUMBIA MEDICAL CENTER OF LAS COLINAS, INC., Docket No. 2015-0247-PST-E on May 27, 2015 assessing $2,943 in administrative penalties with $588 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Breckenridge Exploration Company, Inc., Docket No. 2015-0341-WR-E on May 27, 2015 assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Precision Value Homes, LLC, Docket No. 2015-0361-WQ-E on May 27, 2015 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jesus G. Piedra, Docket No. 2015-0394-WOC-E on May 27, 2015 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Adan Villanueva, Docket No. 2015-0395-WOC-E on May 27, 2015 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Keith Carothers Homes, Inc., Docket No. 2015-0459-WQ-E on May 27, 2015 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201502181
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 10, 2015

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 20, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 20, 2015.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Irma International, Inc. dba Irma's Travel Center; DOCKET NUMBER: 2014-0997-PST-E; TCEQ ID NUMBER: RN103176152; LOCATION: 2217 North United States Highway 77, Robstown, Nueces County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $7,500; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: K C UTILITIES, INC.; DOCKET NUMBER: 2013-0654-MWD-E; TCEQ ID NUMBER: RN102186459; LOCATION: approximately 3.2 miles north-northwest of the intersection of State Highway 6 and State Highway 35, adjacent to County Road 144 to the west and to the east of the Atchison, Topeka and Santa Fe Railroad tracks, Alvin, Brazoria County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d); Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012935001, Monitoring and Reporting Requirements Number 1; and TCEQ AO Docket Number 2010-1111-MWD-E, Ordering Provision Number 2.b.i., by failing to submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17); TPDES Permit Number WQ0012935001, Sludge Provisions; and TCEQ AO Docket Number 2010-1111-MWD-E, Ordering Provision Number 2.b.i., by failing to submit the annual sludge report for the monitoring period ending July 31, 2012, by September 1, 2012; TWC, §26.121(a)(1) and (e); 30 TAC §305.125(1); and TPDES Permit Number WQ0012935001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; TWC, §26.121(a)(1) and (e); 30 TAC §305.125(1) and (4); and TPDES Permit Number WQ0012935001, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge of untreated wastewater into or adjacent to water in the state; and 30 TAC §305.125(5); and TCEQ AO Docket

Number 2010-1111-MWD-E, Ordering Provision Number 2.b.ii., by failing to ensure that all of the facility's system of collection, treatment, and disposal are properly operated and maintained; PENALTY: $36,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: NORTH VICTORIA UTILITIES, INC.; DOCKET NUMBER: 2013-1695-PWS-E; TCEQ ID NUMBER: RN102673324; LOCATION: 210 Longview Drive, Victoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Reports (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter for the third quarter of 2010 - the fourth quarter of 2011; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill-paying customer by July 1st of each year and by failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii), by failing to collect routine distribution water samples for coliform analysis for the months of May and June 2013; 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect triennial lead and copper samples at the required five sample sites and provide the results to the executive director for the January 1, 2009 - December 31, 2011, monitoring period; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter for the first quarter of 2012 - the first quarter of 2013; PENALTY: $1,842; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: TEXAS FLUORESCENCE LABORATORIES, INC.; DOCKET NUMBER: 2014-0654-IHW-E; TCEQ ID NUMBER: RN102993698; LOCATION: 9415 Capitol View Drive, Austin, Travis County; TYPE OF FACILITY: facility that manufactures fluorescent ion indicators; RULES VIOLATED: 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; and 30 TAC §335.9(a)(2), by failing to submit complete and correct Annual Waste Summary; PENALTY: $6,300; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400.

(5) COMPANY: ZIGGY MART LLC; DOCKET NUMBER: 2014-1839-PST-E; TCEQ ID NUMBER: RN101546224; LOCATION: 4701 North Galloway Avenue, Suite 100, Mesquite, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system at the facility; PENALTY: $3,375; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201502169

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 9, 2015

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 20, 2015.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 20, 2015.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Charles M. Watts dba Island View Landing; DOCKET NUMBER: 2014-1754-PWS-E; TCEQ ID NUMBER: RN101239606; LOCATION: 1099 Lindsey Road near Jefferson, Marion County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.118(c)(1) and (e), by failing to collect secondary constituents samples and provide the results to the executive director; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result; 30 TAC §290.122(b)(2)(B), (c)(2)(A), and (f), by failing to provide public notifications and submit a copy of the notifications to the executive director; PENALTY: $1,737; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Edgar Gerald Alford and United Oilfield Construction LLC; DOCKET NUMBER: 2014-1205-AIR-E; TCEQ ID NUMBER: RN105696652 and RN105696637; LOCATION: Johnson

County; TYPE OF FACILITY: portable trench burners; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b); 30 TAC §122.143(4) and §122.146(2); Federal Operating Permit (FOP) Number O3280; General Operating Permit (GOP) Number 518, Terms and Conditions (b)(2) and (3)(D)(ii), by failing to submit Permit Compliance Certifications (PCCs) for Trench Burner Number 1 within 30 days after the end of the certification periods; THSC, §382.085(b); 30 TAC §122.143(4) and §122.145(2)(C); FOP Number O3280 and GOP Number 518, Terms and Conditions (b)(2) and (3)(C)(ii), by failing to submit semi-annual deviation reports for Trench Burner Number 1 within 30 days after the end of the reporting periods; THSC, §382.085(b); 30 TAC §122.143(4) and §122.146(2); FOP Number O3281; and GOP Number 518, Terms and Conditions (b)(2) and (3)(D)(ii), by failing to submit PCCs for Trench Burner Number 2 within 30 days after the end of the certification periods; and THSC, §382.085(b); 30 TAC §122.143(4) and §122.145(2)(C); FOP Number O3281; and GOP Number 518, Terms and Conditions (b)(2) and (3)(C)(ii), by failing to submit semi-annual deviation reports for Trench Burner Number 2 within 30 days after the end of the reporting periods; PENALTY: $18,000; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201502170
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 9, 2015

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Notice of Water Quality Application

The following notices were issued on June 4, 2015.

INFORMATION SECTION

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

SKYMARK DEVELOPMENT COMPANY INC. has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0014992001 to authorize changing the daily average flow for the discharge of treated domestic wastewater in the Interim I phase from 80,000 gallons per day to 52,500 gallons per day and in the Interim II phase from 470,000 gallons per day to 105,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility will be located approximately 2,650 feet east of the intersection of Howell Road and North Street, on the north side of West Fork Chocolate Bayou, in Fort Bend County, Texas 77583.

If you need more information about this permit application 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-201502178
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 10, 2015

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Notice of Water Rights Application

Notice issued May 28, 2015.

APPLICATION NO. 12732; University of Houston-Clear Lake, 2700 Bay Area Blvd., Houston, Texas 77058, Applicant, seeks a Water Use Permit to divert up to 2 acre-feet of water per year from a point on Horsepen Bayou, San Jacinto-Brazos Coastal Basin for storage in an off-channel wetland/reservoir for recreation and water quality purposes in Harris County. University of Houston-Clear Lake seeks authorization to divert up to two acre-feet per year at a maximum diversion rate of 0.0089 cfs (4 gpm) from a point on Horsepen Bayou, San Jacinto-Brazos Coastal Basin for storage in an off-channel wetland/reservoir with a normal capacity of 1.2 acre-feet for recreation and water quality purposes in Harris County. Applicant indicates that up to 1.8 acre-feet of water per year may be returned to Horsepen Bayou at a maximum rate of 0.0089 cfs (4 gpm). The proposed diversion point is located on Horsepen Bayou approximately 20 miles southeast of the City of Houston at Latitude 29.582604° N, Longitude 95.102284° W, also bearing N 34.78° E, 2,768 feet from the southeast corner of Parcel 2 of the Sarah Deel League Survey, Abstract No. 13, in Harris County, Texas in zip code 77058. The proposed off-channel wetland/reservoir is located 20 miles southeast of the City of Houston, Texas with a point on the reservoir being located at Latitude 29.582432° N and Longitude 95.101659° W in the Sarah Deel League Survey, also bearing N 37.4° E, 2,860 feet from the southwest corner of the Sarah Deel League Survey, in Harris County, Texas. The application and partial fees were received on July 28, 2011. Additional information and fees were received on December 12, 2011. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 21, 2011. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including streamflow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement I/we request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to

the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 800-687-4040.

TRD-201502177
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 10, 2015

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Public Notice - Shutdown/Default Order

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; he proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 20, 2015.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO are available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 20, 2015.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: MAIN STREET PETROLEUM, INC. dba New Kwik Pantry; DOCKET NUMBER: 2014-0742-PST-E; TCEQ ID NUMBER: RN102351962; LOCATION: 1516 East Main Street, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,816; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201502171
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 9, 2015

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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 Sue Edwards at (512) 463-5800.

Deadline: Semi-annual Report due July 15, 2014, for Candidates and Officeholders

Stephen J. Frost, 408 Ward St., Maud, Texas 75567-4432

Deadline: 8-day Pre-election Report due October 27, 2014, for Candidates and Officeholders

Eduardo R. "Eddie" Rodriguez, P.O. Box 2436, Austin, Texas 78768-2436

Deadline: 30-day Pre-election Report due October 6, 2014, for Committees

John C. Eberlan, Sustain Excellent Education, P.O. Box 6254, Katy, Texas 77491

Deadline: 8-day Pre-election Report due October 27, 2014, for Committees

John C. Eberlan, Sustain Excellent Education, P.O. Box 6254, Katy, Texas 77491

Deadline: January Semiannual Report due January 15, 2015, for Committees

John C. Eberlan, Sustain Excellent Education, P.O. Box 6254, Katy, Texas 77491

Eric Garza, Texas Leadership Council, 2374 La Feria, Brownsville, Texas 78520

Larry C. Howell, Central Texas Republican Women, P.M.B. 8164, 3809 S. General Bruce Dr., Ste. 103, Temple, Texas 76502

David G. Wager, Harris County Green Party Organizing Committee, P.O. Box 271080, Houston, Texas 77277-1080

Deadline: Monthly Report due December 5, 2014, for Committees

Ronnie Smitherman, Ironworkers State COPE Fund, 3003 Dawn Dr. #104, Georgetown, Texas 78628-2800

TRD-201502067
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: June 4, 2015

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Texas Health and Human Services Commission

Public Notice - Community Living Assistance and Support Services (ClASS) Waiver Renewal

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for a renewal of the Community Living Assistance and Support Services (CLASS) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2014. The requested effective date for the renewal is September 1, 2014, with no changes to cost neutrality. The program is currently operating under an extension granted by CMS.

This renewal request proposes to make the following changes:

- Revise the maximum number of individuals that can be enrolled in the waiver based on the 83rd Legislature appropriations.

- Revise the estimated number of individuals using each service and the estimated amounts used of each service to update the cost neutrality demonstration.

- Add the Money Follows the Person target group, allowing individuals to bypass the interest list and transition to the CLASS waiver from a nursing facility.

- Add cognitive rehabilitation therapy, including the consumer directed services option.

- Add the consumer directed services option to employment assistance services.

- Update the interest list process to reflect the bridge between waivers process, which allows an individual who has been denied CLASS waiver enrollment to be placed on one or more other waiver interest lists using their original CLASS interest list request date.

- Add to the waiver the Texas Administrative Code rule references regarding mandatory participation and eligibility criteria requirements. These requirements were already included in the Texas Administrative Code waiver rules. The policy and procedures have not changed.

- Revise educational and experiential provider qualifications for prevocational, supported employment, employment assistance, and habilitation and respite services.

- Remove the adult day health service because it was never implemented as a CLASS waiver service. Individuals will not be negatively impacted by the removal of this service from the waiver services as this service is already available through day activity and health services as a Medicaid State Plan benefit.

- Change the name consumer directed services agencies to financial management services agencies in order to provide consistency with terminology used in the other 1915(c) waivers.

- This change will not affect any of the services.

- Update the quality performance measures for consistency across waivers. This change will not affect any of the services but will increase oversight of waiver operations.

- Update the description of HHSC's administrative oversight of the Department of Aging and Disability Services. HHSC's oversight has not changed.

- Change the service name "Adaptive Aids/Medical Supplies" to "Adaptive Aids." This change will not affect the service. All medical supplies included in the previous waiver application are still available through the adaptive aids service category.

- Revise the service name "speech, hearing and language services" to "speech language pathology." This name change will better represent the service but does not change the service.

- Change the service names "Skilled Nursing" to "Nursing" and "Prescriptions" to "Prescribed Drugs." These changes will not affect the service.

- Update service definitions and provider qualifications as necessary to align with the CLASS rules in the Texas Administrative Code, the Texas Occupations Code and with other waivers.

- Appendix F is modified to update the fair hearings process information including clarification language, citations and references to the Texas Administrative Code regarding an individual's rights to a fair hearing.

- Update the CLASS Settings Transition Plan to reflect information included in the Texas Statewide Settings Transition Plan submitted to CMS in December 2014 and additional information requested by CMS, such as clarification of CLASS waiver settings being assessed by the State.

- Remove "non-routine" from the definition of respite. This will allow individuals greater access to respite services.

- Update Appendix D for consistency with the other waiver programs, to align with the Texas Administrative Code and add the requirement for the case management agency to inform applicants during enrollment and individuals annually thereafter of the CLASS mandatory participation requirements.

- Update Appendix H with additional information, for example, a description of the Quality Oversight Plan. The language changes do not reflect any changes in policy or procedure.

- Revise the monitoring frequency and review process of the financial management services agencies.

- Move "auditory integration training/auditory enhancement training" service out of the "specialized therapies" service to its own service code and rate. This change will not affect the service.

- Change the service name "nutritional services" to "dietary" and move the service out of the "specialized therapies" service to its own service code and rate. This change will not affect the service.

- Remove the requirement for the direct services agency to submit a separate level of care instrument to prevent a gap in services.

- Update Appendix B regarding spousal impoverishment based on federal regulations.

- Update Appendix E for consistency with the other waiver programs and to align with the Texas Administrative Code.

- Update Appendix G for consistency with the other waiver programs, to align with the Texas Administrative Code and add that seclusion is not permitted.

- Update Appendix I for consistency with the other waiver programs and to align with the Texas Administrative Code.

The Community Living Assistance and Support Services (CLASS) waiver, first authorized September 1, 1991, provides community-based services and supports to eligible individuals as an alternative to an intermediate care facility for individuals with intellectual disabilities. CLASS waiver services are intended to, as a whole, enhance the individual's integration into the community, maintain or improve the individual's independent functioning, and prevent the individual's admission to an institution. Services and supports are intended to enhance an individual's quality of life, functional independence, health and welfare, and to supplement, rather than replace, existing informal or formal supports and resources.

To obtain copies of the proposed waiver renewal, including the CLASS settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this renewal or the CLASS settings transition plan, interested parties may contact Felicia Hays by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 428-1931, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201502148
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 8, 2015

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Public Notice - Medicaid Waiver

The Texas Health and Human Services Commission is requesting the Centers for Medicare & Medicaid Services (CMS) approve a renewal to the Medicaid waiver for NorthSTAR Behavioral Health program, under Section 1915(b) of the Social Security Act. The current waiver is scheduled to expire September 30, 2015. The proposed effective date for the renewal is October 1, 2015.

The purpose of this waiver renewal is to continue providing NorthSTAR program services for a regular two-year waiver period. No specific changes will be made. Per guidance from CMS, HHSC will later amend the waiver to terminate it in accordance with S.B. 200, 84th Legislature, Regular Session, 2015, and with the 2016-2017 General Appropriations Act (Article II, Health & Human Services Commission, Rider 75, H.B. 1, 84th Legislature, Regular Session, 2015).

The NorthSTAR program began in 1999, and is designed to provide behavioral health services (mental health and substance abuse) to Medicaid-eligible individuals in the Dallas service delivery area via a Prepaid Inpatient Health Plan (PIHP). These services are provided to eligible youth and adults in a managed care setting. Individuals enrolled in NorthSTAR have access to coordinated mental health and substance abuse/chemical dependency services that exceed the traditional Medicaid service array. NorthSTAR serves seven counties in Texas: Collin, Dallas, Ellis, Hunt, Kaufman, Navarro, and Rockwall.

To obtain copies of the proposed waiver renewal, interested parties may contact Micah Erwin by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 424-6549, fax (512) 424-4035, or by e-mail at *TX_Medicaid_Waivers@hhsc.state.tx.us*.

TRD-201502162
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 8, 2015

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of May, 2015, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request, within 30 days of the date of publication of this notice, of a person affected by the Department's action. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). A person affected may request a hearing as prescribed in 25 TAC §289.205(c) by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Mansfield	FTI Industries L.P.	L06714	Mansfield	00	05/05/15
Throughout TX	Anderson Pollution Control Inc.	L06715	Houston	00	05/07/15
Throughout TX	4A Inspections L.L.C.	L06716	Houston	00	05/12/15

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	117	05/01/15
Abilene	Hendrick Medical Center	L02433	Abilene	118	05/08/15
Addison	Flower Mound Hospital Partners L.L.C. dba Texas Health Presbyterian Hospital Flower Mound	L06310	Addison	06	05/14/15
Alice	Christus Spohn Health System Corporation dba Christus Spohn Hospital Alice	L02390	Alice	48	05/07/15
Arlington	The University of Texas at Arlington	L00248	Arlington	55	05/11/15
Arlington	The University of Texas at Arlington	L00248	Arlington	56	05/14/15
Arlington	Texas Health Arlington Memorial Hospital	L02217	Arlington	111	05/14/15
Austin	Cardinal Health	L02117	Austin	90	05/06/15
Bedford	Texas Oncology P.A.	L05550	Bedford	30	05/06/15
Cedar Park	Cedar Park Health System L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	13	05/06/15
Corpus Christi	Valero Refining – Texas L.P. dba Valero Bill Greehey Refinery	L03360	Corpus Christi	32	05/15/15
Corpus Christi	Radiology & Imaging of South Texas L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	40	05/12/15
Corsicana	Navarro Hospital Inc., L.P. dba Navarro Regional Hospital	L02458	Corsicana	34	05/14/15
Crockett	East Texas Medical Center Crockett	L01411	Crockett	40	05/15/15

Cypress	Vitalrads P.L.L.C.	L06509	Cypress	02	05/01/15
Dallas	Texas Health Presbyterian Hospital Dallas	L01586	Dallas	103	05/12/15
Dallas	Cardinal Health	L05610	Dallas	31	05/06/15
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	63	05/05/15
El Paso	BRK Brands Inc.	L03725	El Paso	17	05/06/15
El Paso	BRK Brands Inc.	L03725	El Paso	18	05/13/15
Fort Worth	Maxum Health Services Corporation dba Insight Diagnostic Center – Eighth Avenue	L05887	Fort Worth	09	05/13/15
Groesbeck	South Limestone Hospital District dba Limestone Medical Center	L05932	Groesbeck	05	05/15/15
Houston	TH Healthcare Ltd. dba Park Plaza Hospital	L02071	Houston	62	05/08/15
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	118	05/06/15
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	33	05/12/15
Houston	Nisotopes L.L.C.	L06535	Houston	03	05/15/15
Houston	Shared Imaging L.L.C.	L06614	Houston	04	05/14/15
Irving	Las Colinas Oncology MSO L.P. dba Las Colinas Cancer Center	L06078	Irving	11	05/15/15
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	72	05/13/15
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L06028	Lubbock	15	05/05/15
Pasadena	CHCA Bayshore L.P. dba Bayshore Medical Center	L00153	Pasadena	101	05/01/15
Plainview	Methodist Hospital Plainview dba Covenant Hospital Plainview	L02493	Plainview	35	05/07/15
Plano	Columbia Medical Ctr of Plano Subsidiary L.P. dba Medical Center of Plano	L02032	Plano	103	05/15/15
Plano	Texas Health Presbyterian Hospital Plano	L04467	Plano	67	05/15/15
Plano	Physician Reliance Network Inc. dba Texas Oncology Plano West Cancer Center	L05896	Plano	27	05/05/15
Plano	Truradiation Partners Plano L.L.C.	L06617	Plano	01	05/04/15
Point Comfort	Formosa Plastics Corporation – Texas	L03893	Point Comfort	48	05/08/15
Port Arthur	Total Petrochemicals USA Inc.	L03498	Port Arthur	29	05/01/15
Port Lavaca	Seadrift Coke L.P.	L03432	Port Lavaca	28	05/14/15
Queen City	International Paper Company	L01686	Queen City	46	05/13/15
San Antonio	Shannon Clinic	L04216	San Angelo	55	05/06/15
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	339	05/06/15
San Antonio	VHS San Antonio Imaging Partners L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	92	05/04/15
Stafford	Aloki Enterprise Inc.	L06257	Stafford	32	05/12/15
Sugar Land	Methodist Health Centers dba Houston Methodist Sugar Land Hospital	L05788	Sugar Land	43	05/14/15
Texarkana	Texarkana Regional Healthcare Network dba Cardiology Specialists	L06537	Texarkana	01	05/08/15
Throughout TX	Lotus L.L.C.	L05147	Andrews	30	05/14/15
Throughout TX	RWLS L.L.C. dba Renegade Services	L06307	Andrews	30	05/07/15
Throughout TX	Weatherford International L.L.C.	L00747	Benbrook	100	05/22/15
Throughout TX	Warrior Energy Services Corp.	L06342	Broussard (LA)	12	05/06/15

Throughout TX	NE Time L.L.C.	L06590	Corpus Christi	02	05/05/15
Throughout TX	National Inspection Services L.L.C.	L05930	Crowley	36	05/11/15
Throughout TX	Tucker Energy Services Inc.	L06157	Denton	07	05/14/15
Throughout TX	D&S Engineering Labs L.L.C.	L06677	Denton	02	05/13/15
Throughout TX	Techcorr USA L.L.C. dba AUT Specialists L.L.C.	L05972	Flint	110	05/14/15
Throughout TX	Baker Hughes Oilfield Operations Inc. dba Baker Atlas	L00446	Houston	179	05/08/15
Throughout TX	Amerapex Corporation	L06417	Houston	11	05/14/15
Throughout TX	Baker Hughes Oilfield Operations Inc.	L06453	Houston	16	05/07/15
Throughout TX	Integrity Solutions NDE L.L.C.	L06713	Houston	01	05/07/15
Throughout TX	Code Compliance Inspection L.L.C.	L06703	La Porte	01	05/07/15
Throughout TX	Warrior Energy Services Corp.	L06342	Odessa	13	05/14/15
Throughout TX	Turner Industries Group L.L.C. dba Pipe Fabrication Division Tx. Operations	L05237	Paris	26	05/08/15
Throughout TX	Braun Intertec Corporation	L06643	San Antonio	04	05/04/15
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	191	05/06/15
Waco	Providence Health Services of Waco	L01638	Waco	64	05/15/15
Webster	CHCA Clear Lake L.P. dba Clear Lake Regional Medical Center	L01680	Webster	93	05/08/15
Webster	Bay Area Regional Medical Center L.L.C.	L06655	Webster	02	05/05/15

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Arlington	Texas Oncology P.A.	L05116	Arlington	26	05/12/15
Brownsville	JRG Medical Equipment L.P. dba Medical Associates of Brownsville	L05831	Brownsville	08	05/12/15
Houston	Texas Childrens Hospital	L04612	Houston	67	05/14/15
Odessa	Varadareddy T. Reddy, M.D.	L04770	Odessa	10	05/15/15
Odessa	Suresh N. Gadasalli M.D., P.A.	L05156	Odessa	16	05/15/15
Orange	Baptist Hospitals of Southeast Texas dba Baptist Beaumont Hospital	L01597	Orange	37	05/13/15
Port Arthur	The Medical Center of Southeast Texas L.P.	L01707	Port Arthur	74	04/28/15
San Antonio	SW Diagnostic Center P.A. dba Southwest Diagnostic Imaging Center P.A.	L03763	San Antonio	11	05/15/15
Sugar Land	Methodist Health Centers dba Houston Methodist Sugar Land Hospital	L05788	Sugar Land	42	05/13/15
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	28	05/05/15
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation dba Scott and White Memorial Hospital	L00331	Temple	100	05/14/15
Texarkana	Red River Pharmacy Services	L05077	Texarkana	22	05/04/15
Throughout TX	GME Consulting Services Inc.	L05128	Dallas	11	05/07/15
Throughout TX	Littleton Inspection Services	L04835	Duncanville	11	05/01/15
Throughout TX	Tolunay Wong Engineers Inc.	L04848	Houston	21	05/14/15
Throughout TX	Big State X-Ray	L02693	Odessa	87	05/05/15
Throughout TX	Geotechnical Consultants Inc.	L04819	San Antonio	13	05/14/15

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Throughout TX	FTI Industries Inc.	L02810	Mansfield	17	05/06/15
Denver (CO)	Spectrum NDT USA Inc.	L06545	Denver (CO)	03	05/08/15

TRD-201502081
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 5, 2015

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Texas Department of Housing and Community Affairs

Announcement of a Request for Proposal from Firms Interested in Providing Services of a Master Servicer

The Texas Department of Housing and Community Affairs ("TDHCA") is issuing a request for proposal from firms interested in providing services of a Master Servicer to secure commitments from Fannie Mae/Freddie Mac/GNMA, purchasing loans from participating lenders, warehousing and pooling the loans, servicing the loans, issuing Fannie Mae/Freddie Mac/GNMA certificates, and selling the certificates to the Program's Bond Trustee or other investors as directed by TDHCA.

Responses to the RFP must be received at TDHCA no later than 2:00 p.m. (CT) on Friday, July 3, 2015. The RFP #332-RFP16-1002 will be made available via the Department's website at *www.tdhca.state.tx.us* and via the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/* where you can search by the RFP number above.

TRD-201502161
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 8, 2015

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Texas Department of Insurance

Company Licensing

Application for admission to the state of Texas by AMERICAN FAMILY MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Madison, Wisconsin.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of publication in the *Texas Register,* addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201502175
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: June 10, 2015

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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 June 4, 2015, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016.

Project Title and Number: Application of Charter Communications VI, LLC d/b/a Charter Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 44799.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the city of Hudson Oaks, 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 44799.

TRD-201502144
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 5, 2015

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on June 5, 2015, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016.

Project Title and Number: Application of Comcast of Houston, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 44808.

The requested amendment is to expand the service area footprint to include the area within the boundaries of the city of Angleton, 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 44808.

TRD-201502167
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2015

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Notice of Application for Amendment to a Service Provider Certificate of Operating Authority

On June 4, 2015, Cebridge Telecom TX, L.P. d/b/a Suddenlink Communications and Altice S.A. filed an application with the Public Utility Commission of Texas to amend service provider certificate of operating authority Number 60685. Applicants seek an approval of a change in ownership/control.

Docket Style and Number: Application of Cebridge Telecom TX, L.P. d/b/a Suddenlink Communications and Altice S.A. for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 44801.

The Application: Cebridge Telecom TX, L.P. d/b/a Suddenlink Communications (Cebridge TX) and Altice S.A. (Altice) request approval of the transfer of control of Cebridge TX to Altice in connection with a transaction whereby Altice will acquire ultimate control of Cebridge

TX's current ultimate parent company, Cequel Corporation, and its subsidiaries. Cebridge TX will maintain its name, service offerings, rates, terms and conditions, and its current operating authority.

Persons wishing to 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 1-888-782-8477 no later June 24, 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 44801.

TRD-201502179
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 2015

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 3, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Quadvest, L.P. and Westside Water, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris, Waller, and Fort Bend Counties, Docket Number 44794.

The Application: Quadvest, L.P. (Quadvest) and Westside Water, LLC (Westside) filed an application for sale, transfer, or merger of facilities and certificate rights in Fort Bend, Harris, and Waller Counties. Quadvest seeks to acquire all of the water and sewer systems and certificated areas included in Westside's water Certificate of Convenience and Necessity (CCN) No. 12942 and sewer CCN No. 20878. The area includes the Lakes of Fairhaven subdivision in Harris County, the Lake Pointe Estates subdivision in Fort Bend County, and the Cane Island subdivision in Harris/Waller Counties, comprising approximately 1126 acres and 621 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. *Further information may also be obtained by calling* the commission's Office of Customer Protection at (512) 936-7120 or (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 correspondence should refer to Docket Number 44794.

TRD-201502163
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2015

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 3, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Ni America Texas Development, LLC and Wellborn Special Utility District for Sale, Transfer, or Merger of Certificate Rights in Brazos County, Docket Number 44797.

The Application: Wellborn Special Utility District (Wellborn SUD) seeks to acquire all of Ni America Texas Development, LLC's (Ni America's) certificate rights associated with water Certificate of Convenience and Necessity (CCN) No. 13177. The area includes the Meyers Reserve in Brazos County, comprising approximately 620 acres and no current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (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 correspondence should refer to Docket Number 44797.

TRD-201502165
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2015

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 3, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Flo Community Water Supply Corporation and Southeast Water Supply Corporation for Sale, Transfer, or Merger of Certificate Rights in Leon County, Docket Number 44798.

The Application: Flo Community Water Supply Corporation (Flo Community WSC) and Southeast Water Supply Corporation (Southeast WSC) filed an application for sale, transfer, or merger of certificate rights in Leon County. Southeast WSC seeks to acquire a portion of Flo Community WSC's certificate rights. Members of the Flo Community WSC system along SH 7 will be transferred from CCN No. 11585 to Southeast WSC CCN No. 12180. Flo Community WSC has been providing public water service to its members for over 25 years, and owns and operates facilities adjacent to the area to be transferred.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (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 correspondence should refer to Docket Number 44798.

TRD-201502183
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 2015

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on June 2, 2015, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Public Utilities Board of the City of Brownsville (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County. Docket Number 44792.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Raymond Corkill, President of N.O. Simmons & Associates, requesting BPUB to provide electric utility service to a 7.861 acre tract of land and a 2.249 acre tract of land. The estimated cost to BPUB to provide service to this proposed area is $223,118.98. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than June 26, 2015, 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 comments should reference Docket Number 44792.

TRD-201502114
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 5, 2015

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Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application to amend a water certificate of convenience and necessity (CCN) in Kerr County.

Docket Style and Number: Application of Wiedenfeld Water Works Inc. to Amend a Certificate of Convenience and Necessity in Kerr County, Docket No. 44803.

The Application: On June 4, 2015, Wiedenfeld Water Works, Inc. (Applicant) filed with the Public Utility Commission of Texas an application to amend water CCN No. 12052 in Kerr County. Applicant seeks an amendment to include approximately 16 acres within its certificated service area where services are already provided to two customers.

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 44803.

TRD-201502186
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 2015

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

TARIFF CONTROL NO. 44804

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 4, 2015, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Taylor Telephone Coop., Inc. Statement of Intent to Implement Minor Rate Changes Pursuant to 16 TAC §26.171; Tariff Control Number 44804.

The Application: Taylor Telephone Coop., Inc. (Taylor or Applicant) filed an application with the commission for revisions to its Member Services Tariff. Taylor proposed an effective date of July 1, 2015. The estimated revenue increase to be recognized by the Applicant is $31,042 in gross annual intrastate revenues. The Applicant has 5,347 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by July 1, 2015, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by July 1, 2015. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 44804.

TRD-201502182
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 2015

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Services

The City of Athens through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Athens, Athens Municipal Airport, TxDOT CSJ No. 15MPATHNS. Scope: Prepare an **Airport Master Plan** which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Master Plan should be tailored to the individual needs of the airport. The Airport Master Plan must also include an analysis of the need and feasibility of constructing a new runway on new alignment, with associated facilities, on land immediately adjacent and to the east of the existing airport, on land now being acquired for aeronautical use.

The DBE goal is set at 0%. The TxDOT Project Manager is Robert Jackson.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division no later than July 28, 2015, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow, using one of the delivery methods below:

Overnight Delivery

TxDOT - Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier

TxDOT - Aviation

150 East Riverside Drive

5th Floor, South Tower

Austin, Texas 78704

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Robert Jackson, Project Manager.

TRD-201502176
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 10, 2015

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Texas Water Development Board

Applications for June 2015

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73712, a request from the Northwest Harris County Municipal Utility District No. 22, c/o Baker Williams Mattiesen, LLP, 1177 W. Loop South, Ste. 1600, Houston, Texas 77027, received February 19, 2015, for a $3,080,000 loan from the Clean Water State Revolving Fund to finance design and construction phases to rehabilitate the wastewater treatment plant and collection system.

Project ID #62592, a request from the City of Amarillo, P.O. Box 1971, Amarillo, Texas 79105-1971, received March 3, 2015, for a $17,195,000 loan from the Drinking Water State Revolving Fund to finance construction of a water transmission line and pump station improvements.

TRD-201502166
Les Trobman
General Counsel
Texas Water Development Board
Filed: June 8, 2015

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Texas Workforce Investment Council

Texas Workforce System Strategic Plan

The Texas Workforce Investment Council (Council) is pleased to provide a draft of the strategic plan for the Texas workforce system for public review and comment. Following recommendation by the Executive Committee, the draft plan was approved for posting by the Council at its meeting on June 5, 2015. Written comments may be sent to *twic@governor.state.tx.us* and will be accepted through close of business on July 20, 2015.

Note to Reviewers:

Many of the performance measures that are referenced throughout the draft strategic plan are still in the process of being finalized with agency partners. It is anticipated that the final system strategic plan may include fewer performance measures than that found in the draft version of the plan.

You may access the plan on the Council's website at *http://gov.texas.gov/twic.*

TRD-201502164
Lee Rector
Director
Texas Workforce Investment Council
Filed: June 8, 2015

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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.

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.

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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code.* Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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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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